

# **International Human Rights in Anti-Poverty and Housing Strategies: Making the Connection\***

Bruce Porter

## **A. Introduction**

Calls for a “rights-based” approach to addressing poverty and homelessness have recently become commonplace, particularly within the UN human rights system.<sup>1</sup> Since the mid-1990s UN human rights bodies have urged Canadian governments to address the crisis of increasing poverty and homelessness within a human rights framework that recognizes the rights to adequate housing and an adequate standard of living as guaranteed in international human rights law ratified by Canada.<sup>2</sup> These recommendations have been echoed by parliamentary committees, civil society organizations, and human rights, legal, and policy experts.<sup>3</sup>

What is meant by a rights-based approach, however, is not always clear. Is the point of affirming social rights in the context of housing and anti-poverty strategies simply to create a moral imperative on governments to improve housing and income support programs? Does a rights-based strategy rely on allocating a central role to courts? Does it affect the design and content of housing and anti-poverty strategies or merely describe their goal?

In earlier years, socio-economic rights such as the right to housing and an adequate standard of living were relegated to a “second generation” of human rights,

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<sup>1</sup> These are described in Section B, below.

<sup>2</sup> See Section D, below.

<sup>3</sup> Martha Jackman & Bruce Porter, *International Human Rights, Health and Strategies to Address Homelessness and Poverty in Ontario: Making the Connection*, Exchange Working Paper Series, PHIRN, 3(3): 2012 at 40-46, online: RRASP/PHIRN [http://rrasp-phirn.ca/images/stories/docs/workingpaperseries/wps\\_feb2012\\_report.pdf](http://rrasp-phirn.ca/images/stories/docs/workingpaperseries/wps_feb2012_report.pdf)

considered aspirational goals of government policy rather than enforceable rights. Socio-economic rights are now understood within the UN as equal in status to civil and political rights, claimable by rights-holders and subject to adjudication and effective remedies. The modern conception of social rights calls for a new understanding of the interplay between human rights and socio-economic policy which could frame a more effective approach to anti-poverty and housing strategies. Social rights claims are now seen as a critical means to challenge and address structural disadvantage, social exclusion and political powerlessness that lies behind the troubling phenomenon of homelessness and poverty in the midst of affluence. Rights based approaches now address poverty and homelessness as denials not only of basic needs, but also of equal citizenship, dignity and rights. The new social rights paradigm brings broader strategic aspects of policy and program development into the field of human rights practice. Adjudication and remedy of rights claims is no longer relegated to a separate legal sphere but is rather incorporated into program and policy design so that the structural causes of poverty and homelessness in social exclusion and inequality are more effectively addressed. The new paradigm obliges governments to facilitate the design of strategies and programs to realize social rights within well-defined time-frames, goals and targets; to recognize the central role of rights claimants; and to strengthen accountability through complaints procedures, monitoring, and evaluation.

## **B. The International ‘Common Understanding’ of Rights-Based Approaches**

During the 1990s the Committee on Economic, Social and Cultural Rights (CESCR) wrestled, in the context of periodic reviews of state parties to the Covenant, with growing poverty and widening inequality in both developed and developing countries. The Committee identified a critical need for a better understanding of the role of human rights in poverty reduction strategies and, in 2001, asked the UN Office of the High Commissioner for Human Rights (OHCHR) to develop guidelines for integrating human rights into poverty reduction strategies. In 2002 the OHCHR published the *Draft*

*Guidelines: A Human Rights Approach to Poverty Reduction Strategies.*<sup>4</sup> In 2003 the UN development agencies adopted a ‘common understanding of a rights-based approach,’ outlined in *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies (Common Understanding.)*<sup>5</sup>

The *Common Understanding* identified four key ingredients of rights-based programming:

- Identifying the central human rights claims of rights-holders and the corresponding duties of “duty-bearers,” and identifying the structural causes of the non-realization of rights.
- Assessing the capacity of rights-holders to claim their rights and of duty-bearers to fulfill their obligations, and develop strategies to build these capacities.
- Monitoring and evaluating both outcomes and processes, guided by human rights standards and principles.
- Ensuring that programming is informed by the recommendations of international human rights bodies and mechanisms.<sup>6</sup>

The *Common Understanding* called for interdependent social policy, human rights principles and legal entitlements.<sup>7</sup> It required that strategies and programs ensure meaningful engagement with, and participation of, those living in poverty as rights-claimants, with access to effective remedies.<sup>8</sup> Rights-based programming, the UN agencies affirmed, recognizes stakeholders as “key actors” and participation as both a

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<sup>4</sup> United Nations Office of the High Commissioner for Human Rights, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (Geneva: OHCHR, 2002) at preface.

<sup>5</sup> United Nations Development Group, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (2003), online: HRBA Portal <http://hrbaportal.org> [United Nations, *Common Understanding*].

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid* at 3.

<sup>8</sup> *Ibid* at 2.

means and a goal—empowering marginalized and disadvantaged groups, promoting local initiatives, adopting measureable goals and targets, developing “strategic partnerships” and supporting “accountability to all stakeholders.”<sup>9</sup>

The 2006 publication, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies (Guidelines)*,<sup>10</sup> affirmed that “the adoption of a poverty reduction strategy is not just desirable but obligatory for States which have ratified international human rights instruments.”<sup>11</sup> It recommended that poverty reduction strategies include four categories of accountability mechanisms: judicial, quasi-judicial, administrative, and political.<sup>12</sup> No singular mechanism is sufficient for effective accountability and remedies. Poverty Reduction Strategies must recognize the role of human rights institutions and adjudication processes, and “build on, and strengthen links to, those institutions and processes that enable people who are excluded to hold policymakers to account.”<sup>13</sup>

The shift from needs-based to rights-based approaches is linked both to a more unified conception of human rights that includes social rights, and to a fundamental reconceptualization of poverty and homelessness. No longer seen solely as economic deprivation, poverty and homelessness are now understood as deprivations of rights and capacity—symptomatic of failures not just of social and economic programs and policies, but also of legal and administrative regimes, justice systems, human rights institutions and other participatory mechanisms through which governments can be held accountable to human rights and rights-holders can become active citizens. Among other sources, the new approach has drawn inspiration from the work of Nobel Prize winning

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<sup>9</sup> *Ibid* at 3.

<sup>10</sup> United Nations Office of the High Commissioner for Human Rights, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, UN Doc HR/PUB/06/12 (Geneva: OHCHR, 2006) [OHCHR, *Guidelines*].

<sup>11</sup> *Ibid* at para 19.

<sup>12</sup> *Ibid* at para 77.

<sup>13</sup> United Nations Office of the High Commissioner for Human Rights & World Health Organization, *Human Rights, Health and Poverty Reduction Strategies*, UN Doc HR/PUB/08/0 (Geneva: OHCHR, WHO, 2008) at 8 [OHCHR & WHO].

economist Amartya Sen. In his early ground-breaking research, Sen showed that poverty and famine were not generally caused by a scarcity of goods or discrete failures of programs. They involved broader “entitlement system failures” that largely arose from a devaluing of the basic rights claims of the most vulnerable members of society.<sup>14</sup> This led to Sen’s later understanding of poverty as a deprivation of capabilities that is tied, but not reducible to, low income levels.<sup>15</sup> Eliminating poverty and homelessness is about more than addressing economic needs. It requires re-valuing the rights claims of those living in poverty; empowering them as rights-holders; identifying the entitlement system failures that lie behind poverty and homelessness; challenging systemic barriers to equality that confront marginalized and disadvantaged groups; redressing failures of governmental accountability; and remedying the discrimination, and social exclusion, they experience. In short, poverty and homelessness are human rights problems that demand rights-based solutions.

### **C. International Human Rights Norms Relevant to Anti-Poverty and Housing Strategies in Canada**

#### **1) The Right to Effective Remedies for Rights Violations**

Although international human rights are not directly enforceable in Canada except through domestic law, they provide the normative framework for the rights-based approach that has emerged internationally. International human rights are an important source of both substantive and procedural rights protections for people living in poverty or denied adequate housing in Canada. As noted by the Senate Subcommittee on Cities in its seminal report, *In from the Margins: A Call to Action on Poverty, Housing and Homelessness*, international human rights are a persuasive source for interpreting the

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<sup>14</sup> Amartya Sen, “Property and Hunger” (1988) 4:1 *Economics and Philosophy* 57 reprinted in Wesley Cragg & Christine Koggel, eds, *Contemporary Moral Issues* (Toronto: McGraw-Hill Ryerson, 2004) 402.

<sup>15</sup> See Amartya Sen, *Inequality Reexamined* (New York: Russell Sage Foundation, 1992); Amartya Sen *Development as Freedom* (New York: Anchor Books, 2000).

*Charter* and other domestic law and are given effect through domestic legislation.<sup>16</sup> Moreover, international human rights violations may be remedied by way of periodic review procedures before UN treaty bodies; the Universal Periodic Review before the UN Human Rights Council; optional complaints procedures before human rights treaty bodies; or fact finding missions and recommendations from “mandate holders” such as the UN Special Rapporteur on Adequate Housing. Those affected by poverty and homelessness in Canada have increasingly turned to these international human rights procedures to advance claims that are not being heard by Canadian courts.

International procedures alone, however, are insufficient without domestic remedies for human rights violations. An overriding obligation under international law, and one implicit in the principle of the rule of law, is to provide effective domestic remedies for violations of human rights.<sup>17</sup> Where judicial remedies are not available, alternative, effective remedies for violations must be implemented, outside of courts.<sup>18</sup> For example, human rights commissions have broad authority to review legislation, hold inquiries, and develop policy statements, and thus can play a remedial role. Many other administrative bodies involved in housing or income assistance could likewise provide new opportunities for rights claimants to obtain a fair hearing and secure effective remedies.

Beyond judicial review, a rights-based approach also requires the implementation of other accessible, affordable and timely procedures to ensure effective remedies. Judicial and quasi-judicial mechanisms should be integrated with effective informal and administrative procedures for claiming and enforcing social rights under legislated housing and poverty reduction strategies.

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<sup>16</sup> Senate, Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology (Chair: Honourable Art Eggleton, PC), *In from the Margins: A Call to Action on Poverty, Housing and Homelessness* (December 2009) at 69-72, online: Parliament of Canada [www.parl.gc.ca](http://www.parl.gc.ca) [Senate, *In from the Margins*].

<sup>17</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 9: The Domestic Application of the Covenant*, UNCESCROR, 19th Sess, UN Doc E/C.12/1998/24, (1998) [General Comment 9].

<sup>18</sup> *Ibid.*

There are multiple *fora* in which rights to housing and an adequate standard of living can be claimed, defined, and applied, and many ways in which rights can and should affect policies and programs, short of court orders. The Supreme Court of Canada has yet to decide to what degree programs to remedy poverty or homelessness are constitutionally mandated, but it has affirmed that such measures are constitutionally “encouraged” by *Charter* values.<sup>19</sup> Rights-based strategies for eliminating poverty and homelessness serve to reclaim rights that have not been adequately protected by courts, providing access to new types of adjudication and remedies..

## 2) ‘Progressive Realization’ and the Obligation to Implement Strategies

Under both domestic and international law, key components of economic and social rights are subject to “progressive realization.” Obligations are assessed relative to a State party’s available resources and the stage of development of its institutions and programs.<sup>20</sup> Article 2(1) of the *ICESCR* requires a State party “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.”<sup>21</sup> The CESCR has consistently emphasized that even if the full implementation of *Covenant* rights cannot be achieved immediately, there is still an overriding obligation to “adopt a detailed plan of action for the progressive implementation” of each of the rights contained in the Covenant.<sup>22</sup> The steps taken “should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”<sup>23</sup> “Moreover, the

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<sup>19</sup> *Schachter v Canada*, [1992] 2 SCR 679.

<sup>20</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, Can TS 1976 No 46 (entered into force 3 January 1976, accession by Canada 19 May 1976) at art 2 [*ICESCR*].

<sup>21</sup> *Ibid.*

<sup>22</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 1: Report by States Parties*, UNCESCROR, 3d Sess, UN Doc E/1989/22, (1989) at para 4.

<sup>23</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 3: The Nature of States Parties Obligations (art. 2, para. 1 of the Covenant)*, UNCESCROR, 5th Sess, UN Doc E/1991/23, (1990) at para 2 [*General Comment 3*].

obligations to monitor the extent of the realization, or more especially of the non-realization, of economic, social and cultural rights, and to devise strategies and programs for their promotion, are not in any way eliminated as a result of resource constraints.”<sup>24</sup> In *General Comment No. 4* on the right to adequate housing<sup>25</sup> the CESCR noted that compliance with the right to adequate housing “will almost invariably require the adoption of a national housing strategy.”<sup>26</sup> Legal remedies must be available to groups facing evictions, inadequate housing conditions, or discrimination in access to housing.<sup>27</sup>

### 3) The Reasonableness Standard

The *Optional Protocol* to the *ICESCR* prescribes a standard of “reasonableness” in assessing steps taken to achieve progressive realization of *ICESCR* rights, requiring compliance with the substantive guarantees in Part II of the *ICESCR* while recognizing “that the State Party may adopt a range of possible policy measures for the implementation of the rights.”<sup>28</sup>

The wording used in the *Optional Protocol* was taken from the now famous *Grootboom*<sup>29</sup> decision on the right to adequate housing in South Africa, in which the South African Constitutional Court first developed its reasonableness standard for reviewing compliance with constitutional economic and social rights.<sup>30</sup>

In General Comments and in Concluding Observations on Periodic Reviews of State parties, the CESCR has further clarified the requirements of policies and strategies for compliance with article 2(1) of the *ICESCR*. Comprehensive and purposive

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<sup>24</sup> *Ibid* at para 11.

<sup>25</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing (art 11(1) of the Covenant)*, UNCESCROR, 6th Sess, UN Doc E/1992/23, (1991) [*General Comment 4*].

<sup>26</sup> *Ibid* at para 12.

<sup>27</sup> *Ibid* at para 17.

<sup>28</sup> *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 10 December 2008, GA res. 63/117, (entered into force 5 May 2013) [*Optional Protocol*].

<sup>29</sup> *Government of the Republic of South Africa v Grootboom*, [2000] ZACC 19 (SAFLII) (S Afr Const Ct) at para 41.

<sup>30</sup> See Bruce Porter, “The Reasonableness Of Article 8(4) – Adjudicating Claims From The Margins” (2009) 27:1 Nordic Journal of Human Rights 39 [Porter, “Reasonableness”].

legislative measures are almost always required,<sup>31</sup> and strategies must be informed by an equality framework that prioritizes the needs of disadvantaged groups and protects against discrimination.<sup>32</sup> Strategies must specifically address issues of systemic discrimination and remedying historic discrimination, and should include “efforts to overcome negative stereotyped images.”<sup>33</sup> They should rely on effective “coordination between the national ministries, regional and local authorities.”<sup>34</sup> Human rights institutions may scrutinize existing laws, identify appropriate goals and benchmarks, provide research and education, monitor compliance, and examine complaints.<sup>35</sup> Monitoring should include assessment of budgetary measures,<sup>36</sup> based on information such as the percentage of the budget allocated to specific rights compared with states with similar levels of development.<sup>37</sup>

As Sandra Liebenberg and Geo Quinot have argued in relation to the reasonableness standard in South African jurisprudence, the requirement of

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<sup>31</sup> *General Comment 3*, above note 23.

<sup>32</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in Economic, Social and Cultural Rights (art 2 para 2)*, UNCESCROR, 42d Sess, UN Doc E/C.12/GC/20, (2009) at para 9 [*General Comment 20*]. See also: UN Commission on Human Rights, *Note verbale dated 86/12/05 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva addressed to the Centre for Human Rights ("Limburg Principles")*, UN Doc E/CN.4/1987/17, (1987) at para 39: “Special measures taken for the sole purpose of securing adequate advancement of certain groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment of economic, social and cultural rights shall not be deemed discrimination.”

<sup>33</sup> *Ibid* at para 41.

<sup>34</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 15: The Right to Water (art 11 & 12)*, UNCESCROR, 29th Sess, UN Doc E/C.12/2002/1, (2002) at para 51 [*General Comment 15*].

<sup>35</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights*, UNCESCROR, 19th Sess, UN Doc E/C.12/1998/25, (1998) at para 3.

<sup>36</sup> *General Comment 3*, above note 23 at para 11.

<sup>37</sup> Manisuli Ssenyonjo, “Reflections on State Obligations with Respect to Economic, Social and Cultural Rights in International Human Rights Law” (2011) 15:6 Int’l JHR 969 at 980-81. See for example United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of Congo*, UNCESCROR, 43d Sess, UN Doc E/C.12/COD/CO/4, (2009) at para 16, where the Committee found that the State’s decreased allocation of resources to social sector development combined with increased levels of military spending resulted in a violation of its Covenant obligations; Brian Griffey, “The ‘Reasonableness’ Test: Assessing Violations of State Obligations under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights” (2011) 11 HRL Rev 275 at 290 [Griffey, “The Reasonableness Test?”] at 290.

‘reasonableness’ itself demands a rights-conscious strategy, commensurate with the special status of “rights” compared to other policy objectives:

It is not enough that the objectives which the State sets itself fall within the broad range of what are regarded as ‘legitimate’ State objectives. These objectives must be consistent with the normative purposes of the rights. This implies a rights-conscious social policy, planning and budgeting process.<sup>38</sup>

The Supreme Court of Canada has developed a standard of reasonableness that is compatible with the South African and international standards. In *Eldridge*, the Court found that the duty to take reasonable positive measures to accommodate needs of disadvantaged groups is a component of the guarantee of equality in section 15 and of “reasonable limits” under section 1 of the *Charter*.<sup>39</sup> In *Baker* the Court affirmed that reasonable decision-making in domestic law must conform with the *Charter* and international human rights values.<sup>40</sup> More recently in *Doré v Barreau du Québec*<sup>41</sup> the Court adopted a new “robust” administrative law test of reasonableness which applies Charter values in administrative decisions so as to provide essentially the same level of protection of *Charter* rights as a full *Charter* review and section 1 analysis.<sup>42</sup> Where decisions impact on the rights to life and security of the person, discretion must also be exercised in conformity with principles of fundamental justice,<sup>43</sup> which include international human rights norms.<sup>44</sup> Drawing on this jurisprudence, there is support for the application of both

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<sup>38</sup> Geo Quinot & Sandra Liebenberg, “Narrowing the Band: Reasonableness Review in Administrative Justice and Socio-Economic Rights Jurisprudence in South Africa” (Paper delivered at the Law and Poverty Colloquium, Stellenbosch University, South Africa, 29-31 May 2011), [unpublished, on file with authors].

<sup>39</sup> *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR. 624, at para 79.

<sup>40</sup> *Baker v Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817 at paras 69-71.

<sup>41</sup> *Doré v Barreau du Québec*, 2012 SCC 12 [*Doré*].

<sup>42</sup> *Doré*, above note 41 at para 29. For a discussion of the implications of the evolving jurisprudence on reasonableness in administrative law, see Lorne Sossin & Andrea Hill, Chapter 8.

<sup>43</sup> *Canada (AG) v PHS Community Services Society*, 2011 SCC 44.

<sup>44</sup> *Suresh v Canada (Minister of Citizenship and Immigration)* [2002] 1 SCR 3.

domestic and international standards of reasonableness as legal requirements of strategies and programs to address poverty and homelessness in Canada.<sup>45</sup>

#### **D. Recommendations for Housing and Anti-Poverty Strategies in Canada**

Concerns among international human rights bodies about the growing crisis of poverty and homelessness in Canada have reached unprecedented levels in recent years. The centerpiece of the CESCR's recommendations regarding poverty and homelessness in Canada has been a strategy for the reduction of homelessness and poverty that integrates economic, social and cultural rights.<sup>46</sup> The CESCR has emphasized that a Canadian strategy should include "measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards."<sup>47</sup>

The CESCR's recommendations were reinforced during the 2007 mission to Canada of the UN Special Rapporteur on adequate housing, Miloon Kothari. A key recommendation in Kothari's Mission Report was for "a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable."<sup>48</sup> Kothari reiterated the CESCR's recommendations that the strategy

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<sup>45</sup> Martha Jackman & Bruce Porter, *Rights-Based Strategies to Address Poverty and Homelessness in Ontario: the Constitutional Framework*, Exchange Working Paper Series, PHIRN,3(4): 2012 at 62-66, online: <http://www.rrasp-phirn.ca>.

<sup>46</sup> United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UNCESCROR, 19th Sess, UN Doc E/C.12/1/Add.31, (1998) at para 46 [*Concluding Observations* 1998]. See also United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UNCESCROR, 36th Sess, UN Doc E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, (2006) at para 60 [*Concluding Observations* 2006].

<sup>47</sup> *Concluding Observations* 1998, *ibid* at para 62; United Nations Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, UNCESCROR, 25th Sess, UN Doc E/C.12/2001/1, (2001) at para 3

<sup>48</sup> 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)*, UNHRCOR, 10th Sess, UN Doc A/HRC/10/7/Add.3, (2009) at para 90 [*SR Mission to Canada*].

include measurable goals and timetables, complaints procedures, and transparent accountability mechanisms.<sup>49</sup> He recommended that federal and provincial governments cooperate to “commit stable and long-term funding to a comprehensive national housing strategy”<sup>50</sup> and that the “right to adequate housing be recognized in federal and provincial legislation as an inherent part of the Canadian legal system.”<sup>51</sup>

The UN Human Rights Council’s two reviews of Canada under the new *Universal Periodic Review (UPR)* procedure have also highlighted the need for anti-poverty and housing strategies based on human rights. Among the recommendations in Canada’s 2009 UPR were that Canada develop “a national strategy to eliminate poverty” and “consider taking on board the recommendation of the Special Rapporteur on adequate housing, specifically to extend and enhance the national homelessness programme.”<sup>52</sup> Recommendations for strategies to address homelessness and poverty were made again in Canada’s 2013 UPR, supplemented by further recommendations for strategies to ensure food security and the rights to water and sanitation.<sup>53</sup>

A range of domestic authorities have also called for national rights-based housing and anti-poverty strategies in Canada. In its report *In from the Margins*,<sup>54</sup> the Senate Subcommittee on Cities noted that feedback from numerous experts and civil society representatives emphasized the need for rights-based approaches and called for a national housing and homelessness strategy.<sup>55</sup> The Report cited then UN High Commissioner on Human Rights Louise Arbour’s statement that poverty “describes a complex of interrelated and mutually reinforcing deprivations, which impact on people’s ability to claim and access their civil, cultural, economic, political and social rights. In a

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<sup>49</sup> *Ibid* at para 90.

<sup>50</sup> *Ibid* at para 92.

<sup>51</sup> *Ibid* at para 88.

<sup>52</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada*, UN Human Rights Council OR, 11th Sess, UN Doc A/HRC/11/17, (2009) at paras 45, 72 & 75 [2009 UPR Canada].

<sup>53</sup> United Nations Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: Canada*, UNHRCOR, 16th Sess, UN Doc A/HRC/WG.6/16/L.9 (2013) at paras 129.124 – 129, 127 [2013 UPR Canada].

<sup>54</sup> *Senate, In from the Margins*, above note 16.

<sup>55</sup> *2013 UPR Canada*, above note 53 at 104.

fundamental way, therefore, the denial of human rights forms part of the very definition of what it is to be poor.”<sup>56</sup> The Subcommittee recommended that the federal government “explicitly cite international obligations ratified by Canada in any new federal legislation or legislative amendments relevant to poverty, housing and homelessness.”<sup>57</sup>

In 2010 the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee) held hearings and issued a report on a federal poverty reduction plan.<sup>58</sup> The Committee reported that:

The Committee was told that we also need a shift in perspective if we are to significantly reduce poverty in Canada. Poverty reduction measures must not be seen only as charity work or only be guided by moral principles, but must be set within a human rights framework, specifically the recognition that governments have a duty to enforce socio-economic and civil rights. Adopting a human rights framework also limits the stigmatization of people living in poverty. The Committee fully endorses such a framework in this report.<sup>59</sup>

The HUMA Committee noted the importance of Canada’s international obligations under the *UDHR* and in ratified human rights treaties to ensure an adequate standard of living, including adequate housing.<sup>60</sup> It recommended the federal government “endorse the *United Nations Declaration on the Rights of Indigenous Peoples* and implement the standards set out in this document.”<sup>61</sup> The Committee also

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<sup>56</sup> *Ibid* at 71.

<sup>57</sup> *Ibid*.

<sup>58</sup> House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, (Chair: Candice Hoepfner), *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada* (November 2010), online: Parliament of Canada <http://www.parl.gc.ca> [HUMA Committee].

<sup>59</sup> *Ibid* at 2.

<sup>60</sup> HUMA Committee, above note 58 at 53.

<sup>61</sup> *Ibid* at 164.

emphasized the importance of ensuring that measures to reduce poverty among people with disabilities are linked to human rights protections, including the *Convention on the Rights of Persons with Disabilities* (CRPD.)<sup>62</sup> The HUMA Committee recommended a federal poverty reduction action plan that incorporates a human rights framework and provides for engagement with provincial and territorial governments, Aboriginal governments and organizations, the public and private sector, and people living in poverty.<sup>63</sup>

### **E. Conclusion: Emerging Sites for Social Rights Practice in Canada**

Provincial governments have taken important steps in implementing housing and anti-poverty strategies. However, the strategies to date have remained largely within the older paradigm of social rights as moral aspirations. They have failed to consider the need for revitalized human rights institutions and rights claiming mechanisms as has been promoted within the UN.<sup>64</sup>

The model of rights-based approaches to poverty and homelessness that has evolved within international human rights is highly relevant to the ongoing crisis of poverty and homelessness in Canada and to the design of strategies to address it. Sen's early insight that famine and hunger are linked to entitlement system failures rather than resource scarcity certainly applies to homelessness and poverty in Canada. Economic deprivation amidst affluence must be understood as a socially constructed systemic failure of law, policy and decision-making, deriving from the devaluing of the rights of those who have been stigmatized and marginalized. Social program cuts and budgetary decisions have occurred within this broader context. As Marie-Eve Sylvestre and Céline Bellot observed, "As programmatic responses that addressed the causes of homelessness such as social housing, investment in health care, or employment policies have been reduced or eliminated, governments have adopted unprecedented measures based on the

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<sup>62</sup> *Ibid* at 134.

<sup>63</sup> *Ibid* at 96.

<sup>64</sup> Vincent Greason, "Poverty as a Human Rights Violation (Except in Government Anti-poverty Strategies)" in Martha Jackman & Bruce Porter, eds, *Advancing Social Rights in Canada* (Toronto: Irwin Law, 2014) 107.

stigma of homelessness as a perceived moral failure and designed to make homeless people disappear from the public sphere, rendering these social and economic changes invisible.”<sup>65</sup> It is no accident that historically unprecedented social program cuts in Canada have been accompanied by withdrawal of funding and support for any rights-based advocacy on behalf of the groups most affected. The attack on programs and the attack on rights are inextricably linked.<sup>66</sup>

What will rights-based strategies look like in Canada? They will start from the understanding of social rights as claimable rights that has emerged internationally. Goals and timelines for reducing and eliminating homelessness will not simply be targets for governments to aim toward, but legal entitlements to decision-making that is consistent with meeting the targets. Human rights norms will be included in a range of programs and legislation, reforming the mandate of administrative bodies such as human rights commissions, landlord and tenant, social benefits and labour tribunals to ensure that their decisions are consistent with the rights to housing and an adequate standard of living. Courts will be required to engage more constructively with positive obligations of governments to implement effective strategies and to progressively realize social rights. All of these changes will begin to ensure that the myriad of entitlement system failures that create and perpetuate poverty and homelessness are brought within a human rights lens and made subject to effective remedies.

It is time that governments in Canada responded to the chorus of recommendations, from the UN, parliamentary bodies, experts and community grassroots movements, to incorporate Canada’s international human rights obligations into housing and anti-poverty strategies. Rights-based strategies for the elimination of poverty and homelessness may serve as the next critical frontier through which to reclaim human rights that have been too long ignored.

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<sup>65</sup> Marie-Eve Sylvestre, “Affidavit for *Tanudjaja v Canada*” (Ont Sup Ct File no CV-10-403688) (2011) [Sylvestre, “Affidavit for *Tanudjaja*”].

<sup>66</sup> Bruce Porter, “Claiming Adjudicative Space: Social Rights, Equality and Citizenship” in Margot Young et al, eds, *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver: UBC Press, 2007) 77.