

## International Human Rights and Strategies to Address Homelessness and Poverty in Canada: Making the Connection

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### Abstract

International human rights law has evolved from a system that considered social and economic rights as non-justiciable, to a more unified approach that recognizes the need for adjudication and remedy when socio-economic rights are violated. This paper is the first part of a two-part research project that considers what this new paradigm of social rights means for the design and implementation of programs and strategies to address poverty and homelessness, particularly in Canada. The paper reviews the international law sources of substantive and procedural rights that are relevant to poverty reduction and housing strategies. It describes how advocacy organizations have increasingly identified and challenged conditions of inequality and deprivation for Canadians in poverty within the international human rights framework, and it concludes that Canada needs better domestic procedures to hold all levels of government accountable for implementing the right to adequate housing and the right to an adequate standard of living in Canada.

**Keywords:** International Human Rights Law, anti-poverty, housing, Canada

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## A) INTRODUCTION

On the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights (UDHR)*<sup>1</sup> and the establishment of the World Health Organization (WHO), the United Nations High Commissioner on Human Rights, Navanethem Pillay, wrote the following in the foreword to the joint WHO-OHCHR report, *Human Rights, Health and Poverty Reduction Strategies*:

The UDHR proclaimed 'freedom from fear' and 'freedom from want' as the highest aspiration of all peoples and affirmed the inherent dignity and equality of every human being. The WHO Constitution enshrined the enjoyment of the highest attainable standard of health as a fundamental human right. The key messages of the UDHR and the Constitution of the WHO – now both 60 years old – are more relevant than ever. Globalization has brought an increased flow of money, goods, services, people and ideas. Yet, gaps are widening, both within and between countries – in life expectancy, in wealth, and in access to life-saving technology. Those left behind, and experiencing poverty and ill health, feel disempowered, marginalized and excluded. The human rights principles of equality and freedom from discrimination are central to any efforts to improve health. We should strive to go beyond statistical averages and identify vulnerable and marginalized groups. And beyond identifying the most vulnerable, we must engage them as active participants and generators of change. This is not only to ensure that health policies and programmes are inclusive. It is also a question of empowering people.<sup>2</sup>

Recognition of the interdependence of human rights, poverty reduction, access to adequate housing, and health is not new. Since the adoption of the *UDHR* in 1948, poverty and homelessness and the adverse health consequences that flow from them have been understood not only as issues of economic and social deprivation but also as matters of basic human rights. The *UDHR* and subsequent international human rights treaties,

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<sup>1</sup> *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810, (1948) 71 [*UDHR*].

<sup>2</sup> UNOHCHR & WHO, *Human Rights, Health and Poverty Reduction Strategies*, UN Doc HR/PUB/08/0 (Geneva: OHCHR, WHO, 2008) [OHCHR & WHO].

most notably the *International Covenant on Economic, Social and Cultural Rights*<sup>3</sup> (*ICESCR*), have recognized social and economic rights as fundamental human rights guarantees, including the right to an adequate standard of living, the right to housing, the right to just and favourable conditions of work, the right to social security, the right to food, and the right to the highest attainable standard of health.

What it means to *legally* recognize these economic and social rights has been the subject of considerable debate. The separation of economic, social, and cultural rights, guaranteed in the *ICESCR*, from civil and political rights, codified in a sister covenant, the *International Covenant on Civil and Political Rights*<sup>4</sup> (*ICCPR*), encouraged a historical differentiation between these two sets of rights, which has taken more than forty years to correct. Economic and social rights involve future-oriented undertakings to develop policies and programs to realize rights over a period of time, subject to available resources. In earlier years, it was often argued that this obligation to ‘progressively realize’ economic and social rights places these rights beyond the competence or remedial authority of courts, which are accustomed to assessing the legality of government actions in the present and providing immediate remedies to any violations of rights, rather than overseeing longer term strategies or programming to realize them over time.

The historical differentiation of two categories of rights around the question of their ‘justiciability’ has now largely been replaced by a more unified conception of human rights: one that is more reflective of the entire interdependent framework of rights set out in the *UDHR*. The unified approach recognizes that all human rights must be subject to the rule of law and the overarching principle that individuals must have access to effective remedies if their rights are violated. If governments are to be held accountable for failure to meet their obligations with respect to economic and social rights, institutional mechanisms must be in place to enable rights holders to claim their rights. Human rights, reduced to governmental commitments, without any mechanism to

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<sup>3</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) [*ICESCR*].

<sup>4</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].

empower those whose rights have been denied, have proven to be ineffective tools for addressing the structural causes of poverty and homelessness, and their negative consequences for health, security and life expectancy. In many ways, the historical conception of economic and social rights as rights without claimants—understood solely in relation to governments and their commitments—reinforced patterns of exclusion of the most powerless and marginalized groups that human rights are supposed to remedy.<sup>5</sup>

In addition to the emerging international consensus that there must be a right to the adjudication and remedy of socio-economic rights claims, civil and political rights have also evolved in a manner that undermines the traditional dichotomy between the two sets of rights. With more substantive understandings of the right to life, equality and non-discrimination, many of the programmatic obligations traditionally associated with economic and social rights have become subject to legal claims within the civil and political rights domain.<sup>6</sup> Homelessness and poverty, with their documented effect on health, threaten life and security of the person and disproportionately affect disadvantaged groups. They are thus violations of civil and political rights at the same time as violations of socio-economic rights.<sup>7</sup> The positive measures necessary to address systemic inequality or to protect the right to life and security of the person, by ensuring access to housing or healthcare, are not fundamentally different in nature from the programmatic measures needed to realize social and economic rights. Rigid distinctions with respect to justiciability, or the types of remedies that are required by the two

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Philip Alston, "No Right to Complain About Being Poor: The Need for an Optional Protocol to the Economic Rights Covenant" in Asbjørn Eide & Jan Helgesen, eds, *The Future of Human Rights Protection in a Changing World: Fifty Years since the Four Freedoms Address. Essays in Honour of Torkel Opsahl* (Oslo: Norwegian University Press, 1991) 79; Bruce Porter, "The Right to be Heard: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: What's at Stake?", online: (2005) 11:3 Human Rights Tribune 1 <<http://www.hri.ca/pdfs/HRT%20Volume%2011,%20No.3%20Autumn%202005.pdf>>; 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 [Porter, "Claiming"].

<sup>6</sup> Bruce Porter, Aoife Nolan & Malcolm Langford, "The Justiciability of Social and Economic Rights: an Updated Appraisal", online: (2007) Center for Human Rights and Global Justice Working Paper Series 15 <<http://www.scribd.com/doc/57177908/Justiciability-of-ESCR>>; Craig Scott, "Reaching Beyond (Without Abandoning) the Category of 'Economic, Social and Cultural Rights'" (1999) 21:3 Hum Rts Q 633; Martha Jackman, "What's Wrong With Social and Economic Rights" (2000) 11 NJCL 235.

<sup>7</sup> See e.g. *ICCPR*, above note 4 at art 2,6,9, 26 (right to equality, right to life, right to security of the person, and right to non-discrimination, respectively).

categories of rights, have therefore proven both impracticable and conceptually flawed.<sup>8</sup> It is simply no longer tenable to suggest that socio-economic rights are not amenable to adjudication and remedy by courts or tribunals. The UN General Assembly eradicated the final vestiges of the historic distinction between the two sets of rights by adopting the *Optional Protocol to the ICESCR* on December 10, 2008.<sup>9</sup> This historic acknowledgement of the equal status of economic, social, and cultural rights has been eloquently heralded by Louise Arbour, then UN High Commissioner on Human Rights, as “human rights made whole.”<sup>10</sup>

The principle that adequate housing and freedom from poverty are basic human rights has been long been put forward by both civil society and governments as the moral underpinning to income support and affordable housing programs. Human rights discourse has lent legitimacy to demands that government develop programs and policies to better address poverty and homelessness. This use of social rights as a ‘moral yardstick’ for governments remains important. Beyond its traditional function as a moral imperative for governments to act, the conception of social rights as claimable and subject to ongoing adjudication and remedy opens up possibilities for a considerably richer understanding of the interplay between human rights and socio-economic policy. It facilitates a shift toward seeing rights as transformative: as tools for challenging structural disadvantage and social exclusion, and for addressing poverty and homelessness as denials not only of basic immediate needs, but also of equal citizenship and dignity.

New social rights-based approaches address the structural causes of poverty and homelessness, requiring strategies to correct injustice over time while also identifying needs and entitlements that must be addressed immediately. Although structural causes of poverty may be directly attributable to the actions of private actors, patterns of systemic exclusion and disadvantage are sustained and reinforced by failures of the state

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<sup>8</sup> Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press, 2008); Martha Jackman & Bruce Porter, “Socio-Economic Rights Under the Canadian Charter” in Malcolm Langford, ed, *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (New York: Cambridge University Press, 2008) 209.

<sup>9</sup> *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, GA Res 63/117, UNGAOR, 63d Sess, Supp No 49, UN Doc A/RES/63/117, (2008) [*Optional Protocol*].

<sup>10</sup> Louise Arbour, “Human Rights Made Whole” *Project Syndicate* (26 June 2008), online: Project Syndicate <<http://www.project-syndicate.org/commentary/arbours1/English>>.

to prevent and remedy them. As the Supreme Court of Canada noted in *Vriend v. Alberta*, “[e]ven if the discrimination is experienced at the hands of private individuals, it is the state that denies protection from that discrimination. Thus the adverse effects are particularly invidious.”<sup>11</sup> This link between state policy and the exclusions and inequality created by the private market is central to systemic human rights claims. The new conception of rights creates the foundation for a more principled and strategic approach to rights-based policy development, bringing future-oriented, strategic aspects of policy and program development and planning, that were previously outside the lens of human rights, squarely into an expanded human rights framework. A failure to adopt appropriate strategies and plans to realize rights to adequate housing or adequate income within a reasonable period of time can now be seen as actionable violations, subject to rights claims and to adjudication in the present.

The interplay between human rights and future-oriented plans and strategies to implement and realize rights within a reasonable period of time has thus become a critical issue in the emerging field of social rights practice, arising in both legal and social policy domains. In the legal sphere, with the adjudication of more complex structural social rights claims, advocates and judges are called upon to devise new approaches to judicial remedies and enforcement. Here, the challenges relate to developing effective programmatic remedies that extend into the future: to ensure the development and implementation of necessary legislation, programs and strategies within a reasonable period of time; to facilitate meaningful participation of rights claimants in the design and implementation of programs; to guarantee ongoing accountability of governments; and to monitor outcomes against projected timelines and appropriate indicators.<sup>12</sup>

Beyond the judicial sphere and extending into the social policy domain, the new understanding of social rights has also inspired the emergence of innovative approaches

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<sup>11</sup> *Vriend v Alberta*, [1998] 1 SCR 493 at para 103; see generally Martha Jackman, “Giving Real Effect to Equality: *Eldridge v. British Columbia (A.G.)* and *Vriend v. Alberta*” (1998) 4:2 Rev Const Stud 352; Bruce Porter, “Beyond Andrews: Substantive Equality and Positive Obligations after *Eldridge* and *Vriend*” (1999) 9:3 Const Forum Const 71.

<sup>12</sup> See e.g. John Squires, Malcolm Langford & Bret Thiele, eds, *The Road to Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights* (Sydney: Australian Human Rights Centre, 2005). See also “Project on Enforcement of ESCR Judgments” (International Symposium, Bogota, Colombia, 6-7 May 2010), online: ESCR-Net <[http://www.escr-net.org/actions/actions\\_show.htm?doc\\_id=1156637](http://www.escr-net.org/actions/actions_show.htm?doc_id=1156637)>.



to addressing poverty and homelessness in a rights-based framework, drawing on some of the same principles that have been developed in the legal context. The new conception of social rights encourages and obliges governments to facilitate the design of strategies and programs to realize rights within identified time-frames and with measurable goals and targets; to recognize the central role that must be played by rights claimants; and to strengthen governmental accountability through complaints procedures, monitoring, and evaluation. The new conception of social rights as claimable rights is thus not restricted to justiciability in the narrow sense. Even without the intervention of courts, governments are obliged to take appropriate measures to realize rights over time and to consider how their programs and strategies can incorporate and be made compliant with, human rights frameworks.

The new rights-based approach reconceptualizes poverty and homelessness. No longer considered solely in terms of economic deprivation, poverty and homelessness are now equally seen 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. Among other sources, the new approach has drawn inspiration from the work of Nobel Prize winning 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 but rather by structural “entitlement system failures” that arose, in large part, from a devaluing of the basic rights claims of the most vulnerable members of society.<sup>13</sup>

New rights-based approaches to poverty are also influenced by Sen’s later understanding of poverty as deprivation of capabilities tied, but not reducible to, low-income levels.<sup>14</sup> Eliminating poverty and homelessness has thus come to be seen not only as attending to unmet economic needs, but also as re-valuing the rights claims of those living in poverty, empowering them as rights-holders, identifying the entitlement system failures that lie behind poverty, hunger, and homelessness, challenging systemic

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<sup>13</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>14</sup> See Amartya Sen, *Inequality Reexamined* (New York: Russell Sage Foundation, 1992); Amartya Sen *Development as Freedom* (New York: Anchor Books, 2000).

barriers to equality that confront marginalized and disadvantaged groups, redressing failures of governmental accountability towards them, and remedying the forms of discrimination and social exclusion they experience.

Designing and implementing such rights-based strategies requires a consideration of what specific rights need to be protected, where and how they are to be claimed, what institutional competency is available for hearing and adjudicating them, what remedies ought to be available, how outcomes are to be evaluated and monitored, and what corrective mechanisms will be in place where desired outcomes are not forthcoming. The role of courts, human rights institutions, civil society, and local organizations must be re-examined and measures taken to ensure that available remedies are responsive and effective. Strategies and program design will vary depending on socio-economic circumstances and legal contexts. It is understood that rights-based programs and strategies will necessarily be implemented in different ways in different circumstances—whether in Malawi, in indigenous communities in Australia, or in federal and provincial housing and anti-poverty strategies in Canada. However, the new social rights framework rests upon a common understanding of key principles and a shared methodology that has emerged within the international community over the past two decades.

The present, two-part, research project will consider what the new paradigm of social rights and the re-unified system of human rights means for the design and implementation of programs and strategies to address poverty and homelessness and, more specifically, the implications for poverty reduction and housing strategies in Canada. This first paper will examine the evolution of rights-based approaches to poverty and homelessness at the international level and will review the increasing calls for such an approach in Canada. The paper will go on to review the sources, under international law, of substantive and procedural rights that are relevant to poverty reduction and housing strategies. The second paper will consider what a coherent rights-based approach to housing and anti-poverty strategies in Canada would look like if it were informed by international and domestic constitutional human rights norms and if it were integrated with effective human rights procedures for claiming and enforcing rights. The second paper will begin by reviewing the Canadian constitutional framework. It will

go on to identify unexplored potential in existing federal and provincial law and institutions, as well as outlining legislative changes and new institutional mandates that might be required to effectively implement rights-based strategies to address poverty and homelessness in Canada.

## B) THE INTERNATIONAL CONTEXT

### 1) A 'COMMON UNDERSTANDING' OF NEW RIGHTS-BASED APPROACHES

With growing attention on social and economic rights as claimable rights, UN bodies have heard increasing calls from stakeholders and civil society for rights-based approaches to housing and poverty issues. Scott Leckie, founder of the Centre on Housing Rights and Evictions, was among the first to advocate for such an approach.<sup>15</sup> Leckie argued that a “human rights approach provides a method and a process of evaluating government policies and responses to housing problems and for demanding that all necessary measures be taken.”<sup>16</sup> A rights-based approach, he suggested, could reduce the “impact of ideological changes which can occur when one government replaces another.”<sup>17</sup> Efforts were made in the 1990s to integrate legal practice with social movements that aimed to reduce poverty and defend housing rights. During that period, the Asian Forum for Human Rights and Development (Forum-Asia) convened a number of expert meetings between legal advocates working in the field of economic and social rights and NGOs involved with housing, poverty, health and development issues, to try to better integrate these two areas of work and to consider how rights claims could be incorporated into community-based advocacy and law reform addressing poverty and homelessness.<sup>18</sup>

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<sup>15</sup> Scott Leckie, “Housing as a Human Rights” (1989) 1:2 *Environment and Urbanization* 90. See also Selim Jahan, *Human Rights-Based Approach to Poverty Reduction – Analytical Linkages, Practical Work and UNDP* (New York: United Nations Development Programme, 2004).

<sup>16</sup> Leckie, above note 15 at 95.

<sup>17</sup> *Ibid.*

<sup>18</sup> See e.g. Asian Forum for Human Rights and Development, *Circle of Rights: Economic, Social and Cultural Rights Activism* (Washington, DC: Institute of International Education, International Human Rights Internship Program, 2000), online: University of Minnesota Human Rights Resource Centre <<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/toc.htm>>.

By the latter half of the 1990s, UN development agencies were also supporting the call for rights-based approaches. The UN Population Fund (UNFPA) described the shift to the “rights-based” approach as follows:

Before 1997, most UN development agencies pursued a ‘basic needs’ approach: they identified basic requirements of beneficiaries and either supported initiatives to improve service delivery or advocated for their fulfilment.

UNFPA and its UN partners now work to fulfil the rights of people, rather than the needs of beneficiaries. There is a critical distinction: a need not fulfilled leads to dissatisfaction. In contrast, a right that is not respected leads to a violation, and its redress or reparation can be legally and legitimately claimed. A human rights-based approach to programming differs from the basic needs approach in that it recognizes the existence of rights. It also reinforces capacities of duty bearers (usually governments) to respect, protect and guarantee these rights.

In a rights-based approach, every human being is recognized both as a person and as a right-holder. A rights-based approach strives to secure the freedom, well-being and dignity of all people everywhere, within the framework of essential standards and principles, duties and obligations. The rights-based approach supports mechanisms to ensure that entitlements are attained and safeguarded.<sup>19</sup>

In 2001, the Chairperson of the CESCR asked the UN Office of the High Commissioner for Human Rights (OHCHR) to develop guidelines for the integration of human rights into poverty reduction strategies. In response to this request, Mary Robinson, the UN High Commissioner, asked three experts—professors Paul Hunt, Manfred Nowak, and Siddiq Osmani—to prepare draft guidelines and, in the process, to consult with national officials, civil society, and international development agencies.<sup>20</sup> This resulted in the OHCHR’s publication in 2002 of the *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*.<sup>21</sup> 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*

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<sup>19</sup> United Nations Population Fund, *The Human Rights-Based Approach*, online: United Nations Population Fund <<http://www.unfpa.org/rights/approaches.htm>>.

<sup>20</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>21</sup> *Ibid.*

(*Common Understanding*)<sup>22</sup> was then adopted by UN development agencies in 2003. Four key ingredients of rights-based programming were identified in the *Common Understanding*:

- 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>23</sup>

The *Common Understanding* affirmed that “the application of ‘good programming practices’ does not by itself constitute a human rights-based approach and requires additional elements.”<sup>24</sup> It asserted that human rights principles must inform all phases of programming “including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.”<sup>25</sup> It called for a dynamic interdependence of social policy, human rights principles, and legal entitlements, requiring that strategies and programs ensure meaningful engagement with, and participation of, those living in poverty as rights-claimants, with access to effective remedies. Rights-based programming, the UN agencies affirmed, recognizes stakeholders as “key actors” and participation as both a means and a goal—empowering marginalized and disadvantaged groups, promoting local initiatives, adopting measurable goals and targets, developing “strategic partnerships”

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<sup>22</sup> United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (2003) [United Nations, *Common Understanding*] (adopted by the UN Development Group in 2003).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid* at 3.

<sup>25</sup> *Ibid* at 2.

and supporting “accountability to all stakeholders.”<sup>26</sup> The *Common Understanding* emphasized that rights-based strategies and programs should also:

- Monitor and assess budgetary allocations.
- Build awareness of rights among rights-holders.
- Ensure effective participation by stakeholders in the design, implementation, monitoring, and evaluation of programs.
- Develop appropriate indicators and data collection disaggregated by gender and other characteristics.
- Integrate international, national, sub-national, and local initiatives and strategies.
- Address critical emerging issues, such as migration, urbanization, and demographic changes.
- Integrate equality and non-discrimination principles into strategies.
- Address forms of social exclusion affecting those living in poverty.
- Integrate recommendations of UN treaty bodies and the UN Human Rights Council (HRC).<sup>27</sup>

The OHCHR further elaborated the rights-based approach in its 2004 publication *Human Rights and Poverty Reduction: A Conceptual Framework*<sup>28</sup> and the 2006 publication: *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies (Guidelines)*.<sup>29</sup> The latter document was intended to “provide policymakers and practitioners involved in the design and implementation of poverty reduction strategies with guidelines for the adoption of a human rights approach to poverty reduction.”<sup>30</sup> As noted in the introduction to the *Guidelines*, “the adoption of a

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<sup>26</sup> *Ibid* at 3.

<sup>27</sup> *Ibid* at 2.

<sup>28</sup> United Nations Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework*, UN Doc HR/PUB/04/1 (Geneva: OHCHR, 2004) [OHCHR, *Conceptual*].

<sup>29</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>30</sup> *Ibid* at 2.

poverty reduction strategy is not just desirable but obligatory for States which have ratified international human rights instruments.”<sup>31</sup> The *Guidelines* explain the basic human rights approach as follows:

The essential idea underlying the adoption of a human rights approach to poverty reduction is that policies and institutions for poverty reduction should be based explicitly on the norms and values set out in international human rights law. Whether explicit or implicit, norms and values shape policies and institutions. The human rights approach offers an explicit normative framework—that of international human rights. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies, including poverty reduction strategies.<sup>32</sup>

The *Guidelines* emphasize that the premise behind the rights-based approach is that it is essential to challenge the imbalance of power and the denial of rights that lies behind poverty: “[a]s is now widely recognized, effective poverty reduction is not possible without the empowerment of the poor. The human rights approach to poverty reduction is essentially about such empowerment.”<sup>33</sup> The United Nations High Commissioner for Human Rights has explained the role of empowerment in the following terms:

36. Empowerment is a broad concept, but I use it in two distinct senses. Experience from many countries teaches us that human rights are most readily respect, protected and fulfilled when people are empowered to assert and claim their rights. Our work, therefore, should empower rights holders.

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<sup>31</sup> *Ibid* at 19.

<sup>32</sup> *Ibid* at para 16.

<sup>33</sup> *Ibid* at para 18. See also World Health Organization, Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health* (Geneva: World Health Organization, 2008) at 155 (for a definition of empowerment. CSDH has described empowerment as “changing the distribution of power within society and global regions, especially in favour of disenfranchised groups and nations.” It “requires strengthening the fairness by which all groups in a society are included or represented in decision-making about how society operates,” in particular, it “depends on social structures, supported by the government, that mandate and ensure the rights of groups to be heard to presented themselves – through, for example, legislation and institutional capacity – and on specific programmes supported by those structures, through which active participation can be realized.”)

37. Additionally, successful strategies to protect human rights depend on a favourable government response to claims that are advanced. Empowerment is also about equipping those with a responsibility to implement human rights with the means to do so.<sup>34</sup>

The *Guidelines* recommend that poverty reduction strategies include four categories of accountability mechanisms: judicial, quasi-judicial, administrative, and political<sup>35</sup> and that “[t]hose responsible for formulating and implementing the poverty reduction strategy receive basic human rights training so that they are familiar with the State's human rights commitments and their implications.”<sup>36</sup> In addition to these more formal mechanisms, the *Guidelines* propose that “innovative and non-formal monitoring” tools should be developed<sup>37</sup> and that all monitoring and evaluation mechanisms should be developed “in close collaboration with people living in poverty.”<sup>38</sup> The *Guidelines* recommend that civil society organizations and other rights-holders should also have a role in monitoring poverty and housing strategies to ensure that governments are held to account for failures (or successes) and to best identify areas that may need increased attention and resources.<sup>39</sup>

As the UN recommendations underscore, the challenge in housing and poverty reduction strategies is to establish effective accountability through enhanced links with judicial and quasi-judicial rights claiming and enforcement processes, while at the same time implementing new rights-based accountability within program design and administration. No singular mechanism should be relied upon for effective accountability and remedies. As the WHO and the OHCHR’s joint report on health and poverty reduction explains:

Some processes of accountability are specific to human rights, for example inquiries by national human rights institutions and reporting to the UN human rights treaty-monitoring bodies. Others are general, including administrative systems for monitoring service provision, fair elections, a free press, parliamentary commissions and civil society monitoring. The

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<sup>34</sup> United Nations High Commissioner for Human Rights, *The OHCHR Plan of Action: Protection and Empowerment* (Geneva: OHCHR, 2005) at paras 36-7.

<sup>35</sup> OHCHR, *Guidelines*, above note 29 at para 77.

<sup>36</sup> *Ibid* at para 40.

<sup>37</sup> *Ibid* at para 79.

<sup>38</sup> *Ibid* at para 79.

<sup>39</sup> *Ibid* at para 75; para 86.



principle of accountability requires that PRS [Poverty Reduction Strategy] processes of design, implementation and monitoring should be transparent and decision makers should answer for policy process and choices. In order to achieve this, the PRS should build on, and strengthen links to, those institutions and processes that enable people who are excluded to hold policymakers to account.<sup>40</sup>

## 2) MONITORING, EVALUATION AND INDICATORS

Along with the new attention to rights-based approaches and future-oriented strategies for realizing rights over time, has come a growing interest and focus on monitoring and evaluating progress towards established targets and the development of new approaches to indicators of progress. The OHCHR's *Guidelines* recommend that States set targets, benchmarks, and priorities "in a participatory manner ... so that they reflect the concerns and interests of all segments of the society" when creating human rights-based strategies.<sup>41</sup> Further to this, States "should identify appropriate indicators, so that the rate of progress can be monitored and, if progress is slow, corrective action can be taken."<sup>42</sup> The *Guidelines* distinguish between human rights indicators and more traditional indicators of poverty, noting that a human rights indicator is explicitly derived from a human rights norm and its purpose is "human rights monitoring with a view to holding duty-bearers to account."<sup>43</sup> The *Guidelines* emphasize the importance of disaggregating indicators to "reflect the condition of people living in poverty and of specially disadvantaged groups among them."<sup>44</sup> In its joint report on health and poverty reduction, the WHO and the OHCHR emphasize that indicators should also measure

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<sup>40</sup> OHCHR & WHO, above note 2 at 8.

<sup>41</sup> OHCHR, *Guidelines*, above note 29 at para 55.

<sup>42</sup> *Ibid* at para 53.

<sup>43</sup> *Ibid* at para 13. For supplemental information about human rights indicators see Audrey R Chapman, "Indicators and Standards for Monitoring Economic, Social and Cultural Rights" (Paper delivered at the Second Global Forum on Human Development, Rio de Janeiro, Brazil, 9-10 October 2000), online: United Nations Development Programme <[http://hdr.undp.org/docs/events/global\\_forum/2000/chapman.pdf](http://hdr.undp.org/docs/events/global_forum/2000/chapman.pdf)>; Eibe Riedel, Jan-Michael Arend & Ana María Suárez Franco, *Indicators – Benchmarks – Assessment – Scoping: Background Paper* (Berlin: Friedrich Ebert Stiftung, 2010); Food and Agriculture Organization of the United Nations, *Methods to Monitor the Human Right to Adequate Food: Volume II An Overview of Approaches and Tools* (Rome: FAO, 2008).

<sup>44</sup> OHCHR, *Guidelines*, above note 29 at para 12.

adherence to human rights standards and principles, including non-discrimination, participation, accountability, and transparency.<sup>45</sup>

In his 2007 report, the UN's former Special Rapporteur on adequate housing, Miloon Kothari, developed a framework for indicators, benchmarks, and monitoring mechanisms for assessing the implementation of the right to adequate housing in various contexts.<sup>46</sup> Kothari emphasized the importance of disaggregated data to describe the situation of groups most vulnerable to homelessness and of participatory mechanisms for accessing necessary information and providing accountability to stakeholders.<sup>47</sup> In his report, Kothari identified three types of indicators necessary for assessing the right to adequate housing:

- Structural indicators to consider the extent of legislative or programmatic coverage of the various components of the right to housing, such as the coverage of a national housing strategy, including affordable housing supply, adequate income or rent supplements, and necessary support services.
- Process indicators, including goals, timetables, or “milestones” to assess and ensure progress in implementing the right to adequate housing.
- Outcome indicators, to assess the extent to which the right to adequate housing has been successfully implemented, considering data such as the number of households who are homeless or in housing need.<sup>48</sup>

In his previous role as the United Nations Special Rapporteur on the Right to Health, Paul Hunt similarly advocated for the use of a human rights-based approach to indicators, which monitors outcomes and the processes by which they are achieved.<sup>49</sup> Hunt agrees with Kothari that indicators should be disaggregated to reveal whether

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<sup>45</sup> OHCHR & WHO, above note 2 at 59.

<sup>46</sup> *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari*, UN Human Rights Council, 4th Sess, UN Doc A/HRC/4/18, (2007).

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid* at paras 10-12.

<sup>49</sup> *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Paul Hunt*, Commission on Human Rights, 62d Sess, UN Doc E/CN.4/2006/48 (2006).

disadvantaged individuals and communities are “suffering from *de facto* discrimination.”<sup>50</sup> Kothari and Hunt also agree that a human rights approach must ensure that indicators are created with the involvement and advice of the communities they will be measuring. Hunt cautions, however, against exaggerating the role of indicators in determining how well goals and targets are being met, since indicators will never provide a “complete picture” of how well a certain right is being experienced.<sup>51</sup>

As Lucie Lamarche and Vincent Greason have pointed out, there is a serious danger that the current preoccupation with indicators may shift the focus of anti-poverty and housing advocacy from debates about how best to eliminate, to debates about how best to define and measure, poverty and homelessness.<sup>52</sup> The result can be the opposite of the empowering, participatory, approach that must be central to rights-based strategies. Social policy analysts and statisticians devising and analyzing quantifiable indicators, rather than rights-holders, may become the key actors and the human, contextual dimension to human rights claiming may be lost. As Vincent Greason has noted:

Poverty has become an object to be debated amongst those experts who are producing different ways to measure it and a contest over who has the best, most accurate, indicator. The poor become dispossessed of their own reality; their voices are not heard because they are not important. The poor person is the person deemed poor by the choice of indicator: change the indicator and you change the poor person...<sup>53</sup>

Greason further warns: “[t]he means chosen will aim at meeting the target. The fight against poverty thus becomes the fight to attain pre-determined indicators. It really has little to do with moving poor people out of their situation of poverty as they experience it.”<sup>54</sup>

As Salim Jahan notes, there is a need to develop better methodologies for assessing legislation and policy from the standpoint of whether it enables people to claim

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<sup>50</sup> *Ibid* at para 26.

<sup>51</sup> *Ibid* at para 31.

<sup>52</sup> Lucie Lamarche & Vincent Greason, “Poverty Impact Analysis (PIA) and Governmental Action: «Made in Québec»...Again?” (2008), online: Social Rights in Canada: A Community-University Research Alliance Project <<http://www.socialrightscura.ca/documents/publications/margot/LamarcheGreason.pdf>>.

<sup>53</sup> Vincent Greason, *Poverty as a Human Rights Violation: A Comparative Look at Canadian Provincial Anti-Poverty Initiatives* (2011), working draft, on file with the authors at 11.

<sup>54</sup> *Ibid*.

their rights effectively.<sup>55</sup> In contrast to earlier approaches to indicators, Jahan argues that a rights-based approach must not only include indicators of progress, but also standards that must be met in order to comply with human rights norms.<sup>56</sup>

### 3) THE EMERGENCE OF POVERTY REDUCTION AND HOUSING STRATEGIES IN DEVELOPED COUNTRIES

Historically, rights-based approaches to poverty were largely focused on poverty reduction strategies in developing countries. Ironically, at a time when developed countries such as Canada were witnessing unprecedented problems of poverty and homelessness, growing social and economic inequality, and the political marginalization of impoverished and homeless groups within their own societies, OECD countries were continuing to develop rights-based approaches to poverty and participatory governance focused almost exclusively on their relationships with developing countries.<sup>57</sup> In particular, as will be documented below, calls by UN human rights bodies for Canadian governments to develop and apply rights-based approaches to poverty and homelessness within Canada were ignored. More recently, however, elements of the rights-based approaches adopted by UN development agencies and advocated by the OHCHR have emerged within developed countries, primarily as a result of mobilization by non-governmental organizations and civil society. An increasing number of governments in more affluent countries have responded to demands for rights-based strategies to address poverty and homelessness within the new human rights framework.

European countries have taken a lead in this respect. In 2000, the European Union (EU) initiated a *Social Protection and Social Inclusion Strategy* to work towards eradicating poverty by 2010.<sup>58</sup> The EU provided a framework for member countries to

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<sup>55</sup> Jahan, above note 15.

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

<sup>57</sup> See e.g. OECD, International Development, *The DAC Guidelines: Poverty Reduction* (Paris: OECD, 2001).

<sup>58</sup> European Commission, Employment, Social Affairs and Inclusion, Social Protection Committee, *Social Protection and Social Inclusion*, online: European Commission <<http://ec.europa.eu/social/main.jsp?catId=750&langId=en>> [EU Strategy] (statistics for 2010 are not published). See European Commission, Employment, Social Affairs and Inclusion, Social Protection Committee, *Joint Report on Social Protection and Social Inclusion 2010* (Luxembourg: Publications Office of the European Union, 2010) at 25-6 (for 2008 statistics, which show the European Union “at-risk-of-poverty rate” remaining stable at 16 percent between 2005-2008. However, these numbers do not reflect the

develop their own plans to address poverty and social inclusion, which was based on a set of commonly agreed upon objectives. The goal of the *Strategy* was to encourage EU countries to critically examine their policies and look to their EU peers to see how they could improve their performance. The commonly agreed upon goals were:

- To eradicate child poverty by breaking the vicious circle of intergenerational inheritance.
- To promote the active inclusion in society and the labour market of the most vulnerable groups.
- To ensure decent housing for everyone.<sup>59</sup>
- To overcome discrimination and increase the integration of people with disabilities, ethnic minorities and immigrants, and other vulnerable groups.
- To tackle financial exclusion and over-indebtedness.<sup>60</sup>

The EU *Strategy* also included a number of commonly agreed upon indicators to assess progress, such as the “at-risk-of-poverty” rate that was disaggregated by various characteristics including gender household type and accommodation tenure, inequality of income distribution, long-term unemployment rate, educational attainment, and life

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challenges faced by EU member states during the global financial crisis).

<sup>59</sup> European Commission, Employment, Social Affairs and Inclusion, Social Protection Committee, *Joint Report on Social Protection and Social Inclusion 2010* (Luxembourg: Publications Office of the European Union, 2010) at 87 (while this was defined as a commonly agreed upon goal, common indicators regarding housing were not introduced until 2009. “The need to develop or improve ways of collecting statistical data to improve the understanding of homelessness and housing exclusion in the various Member States is widely recognised. The lack of data is at least partly responsible for the lack of a consistent and robust information and evaluation strategy in most Member States. The Peer Review on “Counting the homeless – improving the basis for planning assistance” that took place in Vienna, Austria in November 2009 concluded that the EU must reinforce cooperation in this field and encourage political will in Member States to enhance data collection and develop corresponding monitoring systems.”)

<sup>60</sup> European Commission, Employment, Social Affairs and Inclusion, Social Protection Committee, *Poverty and Social Exclusion*, online: European Commission <<http://ec.europa.eu/social/main.jsp?catId=751&langId=en>>.

expectancy.<sup>61</sup> In some cases, EU member countries chose to supplement the common list of goals and indicators to better reflect their localized concerns and issues.<sup>62</sup>

Under the EU *Strategy*, each participating country was required to produce periodic national reports to assess the progress made in meeting goals using shared indicators. The national reports were then analyzed by the European Commission and the Council of the National Reports on Strategies for Social Protection and Social Inclusion to assess member countries' progress, to determine key priorities, and to "identify good practice and innovative approaches of common interest to the Member States."<sup>63</sup> The EU *Strategy* also instituted a "peer review" process during which a host country would present a selected "good practice" to other EU countries, members of the European Commission, and stakeholder groups.<sup>64</sup> The process has been used by host countries to gather advice from other member countries to "inform the process of preparation of a major policy reform" in the field of social inclusion.<sup>65</sup>

In addition to such regional strategies, domestic plans and strategies to reduce and eliminate homelessness have also become common features in developed countries in recent years.<sup>66</sup> For example:

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<sup>61</sup> European Commission, Employment, Social Affairs and Inclusion, Social Protection Committee, *Portfolio of Indicators for the Monitoring of the European Strategy for Social Protection and Social Inclusion – 2009 Update* (Brussels: European Commission, 2009).

<sup>62</sup> Austria, Federal Ministry of Social Affairs and Consumer Protection, *Austrian Report on Strategies for Social Protection and Social Inclusion 2008-2010* (Vienna: Federal Ministry of Social Affairs and Consumer Protection, 2008).

<sup>63</sup> European Commission, Employment, Social Affairs and Inclusion, Social Protection Committee, *Joint Reports*, online: European Commission <<http://ec.europa.eu/social/main.jsp?catId=757&langId=en>>.

<sup>64</sup> European Commission, Employment, Social Affairs and Inclusion, *Peer Reviews*, online: European Commission: <[http://www.peer-review-social-inclusion.eu/peer-reviews/peer-reviews/view?set\\_language=en](http://www.peer-review-social-inclusion.eu/peer-reviews/peer-reviews/view?set_language=en)>.

<sup>65</sup> *Ibid.* (through the peer review process, countries have had the opportunity to assess the success of their programs and exchange experiences with countries that are implementing or preparing similar programs or strategies. See e.g. "The Finnish National Programme to reduce long-term homelessness", online: <<http://www.peer-review-social-inclusion.eu/peer-reviews/2010/the-finnish-national-programme-to-reduce-long-term-homelessness>> (countries can also seek the input of other member states on a policy issue of interest); "Counting the homeless – improving the basis for planning assistance", online <<http://www.peer-review-social-inclusion.eu/peer-reviews/2009/counting-the-homeless>> (Austria sought feedback on the topic of "How can the planning basis for the Assistance to the Homeless be improved?").

<sup>66</sup> See Bill Edgar, *European Review of Statistics on Homelessness, 2009* (Brussels: FEANTSA, 2009) at 31-39, online: <http://eohw.horus.be/files/freshstart/European%20Statistics%20Reports/2009%20European%20Review%20of%20Statistics/chapter4-EN.pdf> (for an overview of homelessness strategies in Europe).

- Finland’s 2008 strategy to reduce homelessness states that one of the goals of the strategy is to “acknowledge the commitments [it] has made in several international treaties to prevent, reduce and eliminate homelessness.”<sup>67</sup> The main objective of the *Finnish Government’s Programme to Reduce Long-Term Homelessness, 2008-2011* was “to halve long-term homelessness by 2011.”<sup>68</sup> In a press release dated March 23, 2011, the Finnish government claims to have exceeded this goal.<sup>69</sup>
- France has adopted the *Homeless and Poorly Housed People National Strategy 2008-2012*.<sup>70</sup> The French government signed a convention with the French ombudsman “to ensure access to fundamental rights to the most excluded people” and also enacted the *Enforceable Right to Housing Act* in 2008 to guarantee housing to homeless people and those who are precariously housed.<sup>71</sup>
- Denmark introduced a three-year homelessness strategy in 2009 designed to ensure that no citizens live on the street, that young people are offered alternative solutions to staying in care homes, that periods in shelters or care homes do not exceed four months, and that accommodation options are available for people released from prison or discharged from treatment programs or hospitals.<sup>72</sup>

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<sup>67</sup> Finland, *Finnish Government’s Programme to Reduce Long-Term Homelessness 2008 - 2011* (Helsinki: Government of Finland, 2008) at 4.

<sup>68</sup> *Ibid* at 1.

<sup>69</sup> Finland, Ministry of Social Affairs and Health, Press Release, “Target of Halving Long-term Homelessness Reached” (23 March 2011) online: Finnish Government <<http://www.government.fi/ajankohtaista/tiedotteet/tiedote/en.jsp?oid=324613>>.

<sup>70</sup> France, Services du Premier ministre, *La nouvelle stratégie française de prise en charge des personnes sans-abri ou mal logées: Chantier national prioritaire 2008 - 2012 pour l’hébergement et l’accès au logement des personnes sans-abri ou mal logées* (Paris : Services du Premier ministre, 2010).

<sup>71</sup> *Ibid* at 5.

<sup>72</sup> Denmark, *The Government’s Homelessness Strategy: A Strategy To Reduce Homelessness In Denmark, 2009-2012* (Copenhagen: Ministry of the Interior and Social Affairs, 2009) at 8, 10-3.

- The United Kingdom introduced a homelessness strategy in 2005, in which the government committed to “halv[ing] the number of households living in temporary accommodation by 2010” to 50,500 households.<sup>73</sup> By the end of June 2010, the UK government had exceeded this goal with 50,400 households residing in temporary accommodation.<sup>74</sup>
- Scotland adopted legislation in 2001, requiring that local councils each prepare a “local housing strategy.”<sup>75</sup> Further legislation adopted in 2003<sup>76</sup> required the Scottish Minister for Communities to develop a plan of action to “meet the target that, by 2012, all people who are unintentionally homeless will be entitled to a permanent home.”<sup>77</sup> A

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<sup>73</sup> United Kingdom, Office of the Deputy Prime Minister, *Sustainable Communities: Settled Homes; Changing Lives* (London: Office of the Deputy Prime Minister, 2005) at 5.

<sup>74</sup> UK, Department of Communities and Local Government, *Statutory Homelessness: June Quarter 2010 England* (London: Department for Communities and Local Government, September 2010) (unfortunately, a change in government and the global financial crisis has seen England’s homelessness numbers rise once again). See UK, Department of Communities and Local Government, *Statutory Homelessness Statistics*, online:

<http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/homelessnesstatistics/publicationshomelessness> (since July 2010, the number of households seeking housing assistance under the UK’s homelessness legislation has increased between 17 and 23 percent over the previous quarters); Daniel Boffey & Toby Helm, “Eric Pickles warns David Cameron of rise in homeless families risk”, *The Guardian* (2 July 2011) online: Guardian.co.uk <<http://www.guardian.co.uk/politics/2011/jul/02/eric-pickles-david-cameron-40000-homeless?intcmp=239>>; Homeless Link, *Counting the Cost of Cuts to Homelessness Support* (22 March 2011), online: Homeless Link <

[http://homeless.org.uk/sites/default/files/Homeless\\_Link\\_Counting\\_the\\_Cost\\_of\\_Cuts\\_final.pdf](http://homeless.org.uk/sites/default/files/Homeless_Link_Counting_the_Cost_of_Cuts_final.pdf)> (there has also been concern expressed by both members of the government and housing advocates over the new coalition government’s proposed changes to housing and social programs that were introduced in the *Welfare Reform Bill, 2011*); UK, Department of Communities and Local Government, *Vision to End Rough Sleeping: No Second Night Out Nationwide* (London: Department for Communities and Local Government, July 2011), online: <http://www.communities.gov.uk/documents/housing/pdf/1939099.pdf> (the UK government attempted to alleviate concerns through the establishment of the Ministerial Working Group on preventing and tackling homelessness and the introduction of a new plan to end “rough sleeping” in July 2011).

<sup>75</sup> *Housing (Scotland) Act 2001*, ASP 2001, c 10, s 89.

<sup>76</sup> *Homelessness etc (Scotland) Act 2003*, ASP 2003, c 10 (this legislation also included details about what constitutes suitable accommodation for homeless persons, changes to the operation of the intentionally homeless test and plans to abolish the priority need test).

<sup>77</sup> Scottish Executive, *Helping Homeless People - Homelessness Consultation Responses: Ministerial Statement on Abolition of Priority Need by 2012 – A Summary of Responses to the Consultation on Ministerial Statement required by section 3 of the Homelessness etc (Scotland) Act 2003* (Edinburgh: Scottish Executive, 2005) at iii.



2007 evaluation of Scotland's homelessness prevention efforts showed positive progress.<sup>78</sup>

- Ireland introduced a strategy in 2008, aiming to eliminate long-term homelessness by 2010 and establishing local housing fora to develop, implement and monitor three-year action plans.<sup>79</sup>

In Canada, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) conducted an analysis of poverty reduction strategies in the United Kingdom and Ireland in 2010.<sup>80</sup> HUMA found that both countries had made positive advances on a number of indicators, but expressed concern that this progress was in jeopardy as a result of global economic recession.<sup>81</sup> During the HUMA hearings, “[w]itnesses from both countries identified the need to learn from past efforts at poverty reduction and adopt a broad understanding of poverty and social exclusion to address the root causes of these problems.”<sup>82</sup>

Similar initiatives have been implemented in countries outside of Europe as well. Australia introduced a twelve-year plan to reduce homelessness in 2008, aiming to halve homelessness and to provide supported accommodation to all “rough sleepers” who need it by the year 2020.<sup>83</sup> The United States Interagency Council on Homelessness tabled

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<sup>78</sup> Hal Pawson, Emma Davidson & Gina Netto, *Evaluation of Homelessness Prevention Activities in Scotland* (Edinburgh: Scottish Executive Social Research, 2007).

<sup>79</sup> Ireland, Department of the Environment, Heritage and Local Government, *The Way Home: A Strategy to Address Adult Homelessness in Ireland 2008-2013* (Dublin: Department of the Environment, Heritage and Local Government, 2008). See Jamie Smyth, “Increase in numbers sleeping on Dublin streets”, *Irish Times* (6 December 2010) online: [Irish Times <http://www.irishtimes.com/newspaper/ireland/2010/1206/1224284846907.html>](http://www.irishtimes.com/newspaper/ireland/2010/1206/1224284846907.html) (while counts of homeless people in Dublin showed initial progress in the first year of the Strategy, The Homeless Agency in Ireland found 70 people living on the streets in Dublin in 2010, up from 60 people in 2009, suggesting that Ireland has yet to successfully reach its 2010 target). On April 10, 2011, the Central Statistics Office of Ireland conducted its first ever count of homeless people in Dublin. A report of its findings expected in 2012.

<sup>80</sup> House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada* (November 2010) [HUMA Committee].

<sup>81</sup> *Ibid* at 89-90.

<sup>82</sup> *Ibid* at 90.

<sup>83</sup> Australia, Homelessness Task Force, *The Road Home: A National Approach to Reducing Homelessness* (Canberra, Austl: Department of Families, Housing, Community Services and Indigenous Affairs, 2008)

*Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* in 2010.<sup>84</sup>

The strategy aims to end chronic homelessness in the U.S. within five years, to prevent and end homelessness among veterans within five years, to prevent and end homelessness for families, youth, and children within ten years, and to set a path to ending all types of homelessness in the U.S.<sup>85</sup> Aside from this federal government initiative, over 240 plans to end homelessness have been introduced at the state, regional, and local level in the U.S.<sup>86</sup>

Recent economic downturns in many developed countries have created considerable new challenges and prevented the realization of projected targets in many cases. Strategies implemented to date lack key components of the rights-based framework that has been advocated internationally. There has been little attempt to integrate procedures through which rights can be claimed and adjudicated with governmental accountability for meeting targets and timelines. Mechanisms for independent oversight and accountability, such as human rights institutions, have been lacking or remain in early stages of development. The subsequent paper will provide a more detailed assessment of the successes and failures of strategies implemented in other jurisdictions and will consider the lessons that can be learned for Canada from these experiences. What is clear, however, is that forward looking strategies to address poverty and homelessness within specified time-frames have become the norm rather than the exception, and the need to incorporate more robust rights-based approaches, in line with the principles affirmed at the international level by the OHCHR and other UN bodies, has been widely acknowledged in developed as well as developing countries.<sup>87</sup>

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(through the *National Affordable Housing Agreement*, which is comprised of the *National Partnership Agreement on Homelessness* and the *National Partnership Agreement on Social Housing*, the Commonwealth, state and territorial governments have committed several billion dollars to implementing this plan. Australia will conduct a homeless person count during its next census in August 2011 to get a snapshot of the state of homelessness in the country).

<sup>84</sup> United States Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness, 2010* (Washington, DC: United States Interagency Council on Homelessness, 2010).

<sup>85</sup> *Ibid.*

<sup>86</sup> National Alliance to End Homelessness, *A Shifting Focus: What's New in Community Plans to End Homelessness* (Washington, DC: National Alliance to End Homelessness, 2009) at 4.

<sup>87</sup> See e.g. FEANTSA, the European Federation of National Organisations Working with the Homeless, online: <<http://www.feantsa.org>>; National Law Centre on Homelessness and Poverty, online: <<http://www.nlchp.org>>.

#### 4) CANADIAN INITIATIVES

In 2008, the Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology held a national consultation on housing and homelessness, soliciting feedback from numerous experts and civil society representatives. In its report, *In from the Margins: A Call To Action On Poverty, Housing and Homelessness*, the Subcommittee noted that:

Whether the subject was poverty, housing or homelessness, many witnesses described the problems in terms of rights denied. Pointing to both domestic human rights legislation and international commitments made by Canada to United Nations declarations and conventions, these witnesses identified the failure of governments to live up to these obligations, and the importance of providing access for individuals to hold governments accountable and to claim rights in appropriate courts and tribunals.<sup>88</sup>

The Subcommittee's report went on to cite then-UN High Commissioner on Human Rights, Louise Arbour, who affirmed 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 fundamental way, therefore, the denial of human rights forms part of the very definition of what it is to be poor."<sup>89</sup>

The Senate Subcommittee called for a national housing and homelessness strategy to complement similar initiatives being launched at the provincial/territorial level.<sup>90</sup> In support of a rights-based approach, the report identified three main sources of legal rights relevant to poverty and homelessness: i) international law that has been ratified by Canada; ii) the *Canadian Charter of Rights and Freedoms*; and iii) provincial and federal human rights legislation.<sup>91</sup> The Subcommittee recommended measures to enhance the ability of people living in poverty to claim their rights, including legal representation in

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<sup>88</sup> Senate, Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology, *In from the Margins: A Call to Action on Poverty, Housing and Homelessness* (December 2009) (Chair: Honourable Art Eggleton, PC) at 15 [Senate, *In from the Margins*].

<sup>89</sup> *Ibid* at 71.

<sup>90</sup> *Ibid* at 104.

<sup>91</sup> *Ibid* at 69-72.

“law reform cases with respect to their human rights.”<sup>92</sup> In order to strengthen the status of international human rights law in relation to the treatment of poverty and homelessness in Canada, 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>93</sup>

In 2010, following up on the recommendations by the Senate Subcommittee, 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>94</sup> The Committee reported that:

Throughout this study, Committee members listened to a large number of Canadians who shared their experience of living in poverty and to organizations and social policy experts who shared their knowledge about the living conditions of Canadians living in poverty or at-risk of poverty, and who suggested means of raising these groups out of poverty, whether through existing programs or by creating new initiatives. 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>95</sup>

The HUMA Committee referred to the development of a new human rights paradigm for poverty reduction at the international level, quoting from a 2004 publication of the Office of the High Commissioner for Human Rights, which led to the adoption of the 2006 OHCHR *Guidelines*:

The recognition that the way poor people are forced to live often violates their human rights—or that promoting human rights could alleviate poverty—was a long time in coming. Now a human rights

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<sup>92</sup> *Ibid* at 16.

<sup>93</sup> *Ibid*.

<sup>94</sup> HUMA Committee, above note 80.

<sup>95</sup> *Ibid* at 2.

approach to poverty reduction is increasingly being recognized internationally and is gradually being implemented.<sup>96</sup>

The HUMA Committee noted the importance of Canada's international obligations, both under the *UDHR* and in ratified human rights treaties, to ensure an adequate standard of living, including adequate housing.<sup>97</sup>

The Committee took note of the concerns emanating from UN human rights bodies, including the characterization of Canadian governments' failure to address poverty as a human rights crisis, finding they "echo the concerns and recommendations of many witnesses that appeared before our Committee asking the federal, provincial and territorial governments to join forces and adopt a clear agenda to considerably reduce poverty in Canada."<sup>98</sup> The Committee noted specific concerns about poverty and inadequate housing in Aboriginal communities, reporting that witnesses made it clear "the Government of Canada should also be compelled to act from a human rights perspective" when addressing Aboriginal poverty.<sup>99</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>100</sup> The Committee also emphasized the importance of ensuring that measures to reduce poverty among people with disabilities are linked to human rights protections, including the recently ratified *Convention on the Rights of Persons with Disabilities* (CRPD), quoting from Anna Macquarrie, from the Canadian Association for Community Living, that the CRPD "provides us a really useful tool and can provide a great framework to move forward on legislation here in Canada."<sup>101</sup>

The central recommendation of the HUMA Committee was for a rights-based federal action plan for the reduction of poverty. In the Committee's view:

This action plan should incorporate a human rights framework and provide for consultations with the provincial and territorial governments, Aboriginal

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<sup>96</sup> *Ibid* at 92, citing OHCHR, *Conceptual*, above note 28 at iii.

<sup>97</sup> HUMA Committee, above note 80 at 53.

<sup>98</sup> *Ibid* at 93.

<sup>99</sup> *Ibid* at 163.

<sup>100</sup> *Ibid* at 164.

<sup>101</sup> *Ibid* at 134.

governments and organizations, the public and private sector, and people living in poverty, as needed, to ensure an improvement in lives of impoverished people.<sup>102</sup>

In considering what legislation implementing a poverty reduction strategy within a human rights framework might look like, the Committee suggested that:

Among other components, federal legislation to reduce poverty in Canada would likely include a preamble that would define poverty, outline the Government of Canada's values and principles with regard to the right to dignity and a life free of poverty for all Canadians, and situate the legislation within a broader human rights framework. Witnesses recommended that a federal poverty reduction act should include a clause requiring that the Government of Canada develop and regularly update a federal action plan to reduce poverty (e.g., every five years) and that this plan should include specific goals and timelines to reduce poverty in Canada (e.g., reduce poverty by half by 2020). The legislation could also require Statistics Canada, in collaboration with the lead department(s) and other stakeholders, to conduct research on poverty measures and advise the federal government as to which measures and indicators of poverty should be used to monitor the progress of a federal poverty reduction plan.<sup>103</sup>

An important initiative to incorporate international human rights within federal legislation along the lines suggested by the HUMA Committee is found in Bill C-304, *An Act to ensure secure, adequate, accessible and affordable housing for Canadians*.<sup>104</sup> The Bill, as amended, was referred to the House of Commons for third reading in January, 2011 but did not come to a vote before the dissolution of Parliament for the spring 2011 election call. The Bill was introduced as a Private Member's Bill by New Democratic Party (NDP) MP Libby Davies and received the support of the three federal opposition parties at second reading, as well as widespread support from civil society organizations across the country.<sup>105</sup> As a result of submissions from stakeholder groups, it was

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<sup>102</sup> *Ibid* at 96.

<sup>103</sup> *Ibid* at 102.

<sup>104</sup> Bill C-304, *An Act to ensure secure, adequate, accessible and affordable housing for Canadians*, 3d Sess, 40th Parl, 2011 (Committee report presented in House of Commons 21 March 2011) [Bill C-304].

<sup>105</sup> Rob Rainer, "The Right to Housing: The Red Tent Campaign and Bill C-304" *Canada Without Poverty Advocacy Network* (14 July 2010), online: Social Policy in Ontario <<http://spon.ca/the-right-to-housing-the-red-tent-campaign-and-bill-c-304/2010/07/17>>.

substantially amended after second reading to include a more robust human rights framework, in line with recommendations from UN treaty bodies.

The amendments to Bill C-304 required the implementation of “a national housing strategy designed to respect, protect, promote, and fulfil the right to adequate housing as guaranteed under international human rights treaties ratified by Canada.”<sup>106</sup>

The Bill called for the national housing strategy to include:

- Targets and timelines for the elimination of homelessness.
- An independent process for bringing, reviewing and reporting on complaints about possible violations of the right to adequate housing.
- A process for reviewing and following-up on any concerns or recommendations from UN human rights bodies with respect to the right to adequate housing.
- A focus on the needs of those who are homeless, groups facing discrimination, people with disabilities, and Aboriginal communities.
- A key role for civil society organizations, including those representing groups in need of housing and Aboriginal communities, in designing the delivery, monitoring, and evaluation of programs required to implement the right to adequate housing.
- A provision recognizing Quebec's unique commitment to the rights in the *ICESCR*.<sup>107</sup>

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<sup>106</sup> Bill C-304, above note 104 at s 3(1).

<sup>107</sup> *Ibid* at s 3.1 (the provision reads: “Le Québec peut, ayant adhéré au *Pacte international relatif aux droits économiques, sociaux et culturels*, utiliser les avantages découlant de la présente loi dans le cadre de ses propres choix, de ses propres programmes et de sa propre stratégie en matière d'habitation sur son territoire.” The French provision provides that Quebec “adhered to” or “acceded to” the ICESCR in 1976. This provision was incorrectly translated in the English version of Bill C-304 to read: “Quebec may, as a party to the *International Covenant on Economic, Social and Cultural Rights*, participate in the benefits of this Act with respect to its own choices, its own programs and its own approach related to housing on its territory” [emphasis added]. Quebec has set a unique standard for provincial adherence to international human rights treaties that could be a model for other provinces. While other provinces have informally agreed to the federal government’s ratification of human rights treaties, Quebec has formally “ratified” key treaties and committed itself to compliance in areas of its jurisdiction. On April 21, 1976, by Order-in-Council (1438-76), Quebec “ratified” the ICESCR, signed it and transmitted a signed copy of the treaty to the Federal Government. The Order-in-Council reads as follows: “ Que le gouvernement du Québec ratifie le *Pacte international relatif aux droits économiques, sociaux et culturels*, le *Pacte international relatif aux droits civils et politiques*, le *Protocole facultative se rapportant au Pacte international relatif aux droits*

A 2010 report of the Standing Committee on Foreign Affairs and International Development noted that Bill C-304 “directly responds to concerns repeatedly raised by UN treaty bodies”<sup>108</sup> The NDP has stated that it intends to reintroduce the Bill in the new Parliament.<sup>109</sup> With a new majority Conservative government, the support of at least some Government MPs would be required in order for the Bill to be adopted. Whether or not this occurs, the extent of support Bill C-304 has received across the country, within and beyond the housing and anti-poverty communities, demonstrates the strength of civil society and public commitment to its underlying rights-based approach.

## 5) PROVINCIAL INITIATIVES

Provincial initiatives to follow-up on international developments in relation to poverty reduction strategies were first initiated in Quebec and have since been put forward in five other provinces, including Ontario, Newfoundland and Labrador, Nova Scotia, Manitoba, and New Brunswick. The Government of Prince Edward Island has released a discussion paper outlining options for its provincial anti-poverty strategy,<sup>110</sup> while advocacy groups in British Columbia, Alberta, and Saskatchewan have all called for the creation and implementation of poverty reduction plans.<sup>111</sup>

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civils et politiques; Que le texte officiel des modalités et du mécanisme de participation des provinces à la mise en oeuvre de ces instruments internationaux soit signé par le ministre des Affaires intergouvernementales et par le ministre de la Justice; Que le ministre des Affaires intergouvernementales soit chargé de transmettre aux autorités fédérales cette ratification et le texte signé de l’entente; Que cette ratification et cette entente entrent en vigueur à partir du moment où elles auront été communiqués au gouvernement fédéral.”). See

<<http://www.socialrightscura.ca/documents/Quebec%20Order%20in%20Council.pdf>> (for full text).

<sup>108</sup> House of Commons, Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, *Canada’s Universal Periodic Review and Beyond – Upholding Canada’s International Reputation as a Global Leader in the Field of Human Rights* (November 2010) at 16 [House of Commons, *Universal*].

<sup>109</sup> Interview of Nathan Jackson, Assistant to Andrew Cash, Deputy Housing Critic for the New Democratic Party (21 July 2011) on file with author.

<sup>110</sup> Prince Edward Island, Community Services, Seniors and Labour, *Preventing and Reducing Poverty in Prince Edward Island: A Strategy for Engagement*, (July 2011), online:

<[http://www.gov.pe.ca/photos/original/cssl\\_povertyred.pdf](http://www.gov.pe.ca/photos/original/cssl_povertyred.pdf)>

<sup>111</sup> See Poverty Free Saskatchewan, online: <<http://www.povertyfreesask.ca>>; Action to End Poverty in Alberta, online: <<http://www.actiontoendpovertyinalberta.org>>; BC Poverty Reduction Coalition <<http://bcpovertyreduction.ca>>. NDP MLA Shane Simpson has recently introduced the “[BC Poverty Reduction Act](#),” which proposes the establishment of poverty targets and measures.



As Lucie Lamarche has documented, Quebec's anti-poverty strategy was significantly influenced by international and European initiatives.<sup>112</sup> Quebec's *National Strategy to Combat Poverty and Social Exclusion* was adopted in August 2002 and the subsequent *Act to combat poverty and social exclusion* was adopted on December 13, 2002.<sup>113</sup> The Quebec *Strategy* was the result of considerable advocacy efforts by a diverse network of community organizations, including housing groups. The *Strategy* states that it is "derived from the recognition of economic and social rights in keeping with the *Québec Charter of Human Rights and Freedoms*<sup>114</sup> and part of an international movement linking the fight against poverty and social exclusion with the struggle for human rights. Fighting poverty means promoting gender equality, personal development for all, and a better exercise of rights."<sup>115</sup>

The *Act to Combat Poverty and Social Exclusion* similarly references the *Québec Charter* in its preamble and states that poverty is an obstacle to the respect for human dignity.<sup>116</sup> The *Act* defines poverty as "the condition of a human being who is deprived of the resources, means, choices, and power necessary to acquire and maintain economic self-sufficiency or to facilitate integration and participation in society."<sup>117</sup> As Lamarche notes, the preamble clearly draws from the work of economist Amartya Sen, affirming "the basic elements of the capabilities theory."<sup>118</sup> The *Strategy's* goals are to be met over a ten-year period through the promotion of five types of action:

- Preventing poverty by focusing on individual development (training and employability programs).
- Strengthening the social safety net.
- Promoting access to employment.

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<sup>112</sup> Lucie Lamarche, "The 'Made in Québec' Act to Combat Poverty and Social Exclusion: Exploring the Complex Relationship between Poverty and Human Rights" in Young, above note 5 at 139.

<sup>113</sup> Quebec, Ministère de l'Emploi, de la Solidarité sociale et de la Famille, *The Will to Act, The Strength to Succeed: National Strategy to Combat Poverty and Social Exclusion* (Quebec: Ministère de l'Emploi, de la Solidarité sociale et de la Famille, 2002) [Quebec, *National Strategy*]; *An Act to Combat Poverty and Social Exclusion*, RSQ c L-7. See Lamarche, above note 112; Lamarche & Greason, above note 52 (for critical analyses of Quebec's strategy).

<sup>114</sup> *Charter of Human Rights and Freedoms*, RSQ c C-12.

<sup>115</sup> Quebec, *National Strategy*, above note 113 at 12.

<sup>116</sup> *An Act to Combat Poverty and Social Exclusion*, above note 113.

<sup>117</sup> *Ibid* at s 2.

<sup>118</sup> Lamarche, above note 112 at 139.

- Promoting the involvement of society.
- Ensuring consistent interventions at all levels.<sup>119</sup>

The affirmation of a rights-based framework in Quebec's *Strategy* and subsequent *Act to Combat Poverty and Social Exclusion* is not, however, implemented through any mechanisms for claiming and enforcing rights beyond what already exists in the *Quebec Charter*. Nor does it provide for any concrete legal or other mechanism for holding governments accountable for meeting the goals of the *Strategy*. Lamarche notes that, in this respect, the international origins of Quebec's strategy are more closely linked to development-based approaches to addressing extreme poverty, emerging from the Copenhagen Summit on Social Development. The *Copenhagen Declaration on Social Development*<sup>120</sup> did not incorporate economic and social rights in any meaningful way, did not call for any explicit implementation of development goals as legally enforceable obligations linked to rights, and did not call on States to create and implement effective remedies to violations of socio-economic rights as a component of poverty reduction plans. Similar shortcomings are evident in the *Quebec Act* and in subsequent initiatives in other provinces. As will be discussed in the second paper, all of these initiatives, though positive in some respects and showing modest successes in some cases, fall short of the new social rights paradigm in their failure to ensure claimable rights as a necessary starting point of a poverty reduction strategy.

In addition to poverty reduction plans, almost every province in Canada has instituted or is developing a strategy to address housing and homelessness. British Columbia, Alberta, Manitoba, Newfoundland and Labrador and, most recently, Ontario have all implemented housing and homelessness strategies. In Alberta, seven municipalities, including Edmonton and Calgary, joined together to successfully persuade the Alberta government to introduce a strategy to end homelessness. These municipalities also developed their own plans to end homelessness and to address issues related to inadequate housing. As with experiences elsewhere, the results of these strategies have

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<sup>119</sup> Quebec, *National Strategy*, above note 113.

<sup>120</sup> *Report of the World Summit for Social Development (including Copenhagen Declaration on Social Development)*, UNGAOR, UN Doc A/CONF.166/9, (1995).

been mixed, and there is a general concern that an effective rights-based framework has been lacking.

Proposals for a rights-based approach at the provincial level that were most closely aligned with international human rights norms were in Ontario, where amendments were proposed to legislation implementing Ontario's housing strategy along the lines of those that had been adopted federally in Bill C-304.<sup>121</sup> Bill 140, the *Strong Communities through Affordable Housing Act, 2011*,<sup>122</sup> provides for the implementation of key components of Ontario's *Long-Term Affordable Housing Strategy*. During hearings on Bill 140 before the Standing Committee on Justice Policy, MPPs heard from over thirty community stakeholders regarding the *Act*.<sup>123</sup> Submissions from the Centre for Equality Rights in Accommodation (CERA), the Social Rights Advocacy Centre (SRAC), the Wellesley Institute, the Ontario Nurses' Association, the Federation of Metro Tenants' Associations, and other community groups reinforced the critical need for Ontario to amend its legislation to create a human rights framework, drawing on international human rights norms.<sup>124</sup> Leilani Farha, representing CERA, outlined five key components that should be incorporated into the housing strategy legislation to ensure compliance with international human rights law and the recommendations of UN treaty bodies. According to Farha, the housing strategy should:

- Prioritize needs of those groups most vulnerable to homelessness and inadequate housing;
- Ensure meaningful participation of all affected groups in the design, implementation and monitoring of the strategy;
- Set enforceable targets and timelines;

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<sup>121</sup> Ontario, Ministry of Municipal Affairs and Housing, *Building Foundations: Building Futures: Ontario's Long-Term Affordable Housing Strategy* (Toronto: Queen's Printer for Ontario, 2010).

<sup>122</sup> *Strong Communities through Affordable Housing Act*, SO 2011 c C-6.

<sup>123</sup> Ontario, Legislative Assembly, Standing Committee on Justice Policy, "Bill 140, Strong Communities through Affordable Housing Act, 2011" in *Official Report of Debates (Hansard)*, No JP-8 (24 March 2011) [Ontario, SCJP, 24 March 2011]; Ontario, Legislative Assembly, Standing Committee on Justice Policy, "Bill 140, Strong Communities through Affordable Housing Act, 2011" in *Official Report of Debates (Hansard)*, No JP-9 (31 March 2011) [Ontario, SCJP, 31 March 2011].

<sup>124</sup> *Ibid* at 162 (Registered Nurses' Association of Ontario); at 166-69 (Social Rights Advocacy Centre) at 198 (Federation of Metro Tenants' Associations).

- Include accountability mechanisms, independent monitoring, and an individual complaints mechanism; and
- Be based in human rights law, including the international right to adequate housing.<sup>125</sup>

Cheri DiNovo, an NDP MPP, proposed a number of key amendments to Bill 140 that would have implemented the recommendations made by CERA and other groups in relation to an enhanced human rights framework. Tabled amendments would have required the provincial Minister of Municipal Affairs and Housing to negotiate the terms of a rights-based provincial-municipal housing strategy that would include recognition of housing as a human right, clear goals and timetables for reducing and eliminating homelessness, independent monitoring of progress in meeting agreed-upon targets, a complaints mechanism for violations of the right to adequate housing, and measures to ensure follow-up to concerns and recommendations from international human rights bodies.<sup>126</sup> However, none of the proposed amendments were adopted.

It is evident from these experiences that, as in other countries, the development of adequate rights-based approaches to poverty and homelessness in Canada remains a working progress. Civil society organizations and stakeholder groups have become increasingly vocal in advocating for a new rights-based approach to poverty and housing; however, although their proposals have been widely endorsed by experts and, more recently, by parliamentary committees, they have not been adopted by governments. A number of provinces have initiated housing and poverty reduction strategies, but none has incorporated a strong rights-based approach. The successes and failures in this regard, and the lessons learned, will be more closely considered in the subsequent paper.

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<sup>125</sup> Ontario, SCJP, 24 March 2011, above note 123 at 164 (Centre for Equality Rights in Accommodation).

<sup>126</sup> Ontario, Legislative Assembly, Standing Committee on Justice Policy, “Bill 140, Strong Communities through Affordable Housing Act, 2011” in *Official Report of Debates (Hansard)*, No JP-10 (7 April 2011) [Ontario, SCJP, 7 April 2011].

## C) INTERNATIONAL LAW RELEVANT TO ANTI-POVERTY AND HOUSING STRATEGIES IN CANADA

### 1) THE RIGHT TO EFFECTIVE REMEDIES FOR RIGHTS VIOLATIONS

As has been emphasized by the UN OHCHR and UN development agencies, the critical difference between a ‘rights-based’ and ‘needs-based’ approach to homelessness and poverty is that, under a rights-based approach, a deprivation can be legally challenged as a violation of rights. Program ‘beneficiaries’ become rights claimants empowered to identify structural and systemic causes of homelessness and poverty and to demand remedies—even if these involve longer-term strategies that will take time to implement. The OHCHR *Guidelines* explain:

The human rights approach to poverty reduction emphasizes the accountability of policymakers and others whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability. It is therefore an intrinsic feature of the human rights approach that institutions and legal/administrative arrangements for ensuring accountability are built into any poverty reduction strategy.<sup>127</sup>

In order to consider how rights claims may be integrated into the design and implementation of poverty reduction and homelessness strategies and in provincial programs and legislation, it is necessary to first consider international law sources of both substantive and procedural rights protections for those who are living in poverty or who are denied adequate housing.

International human rights are not directly enforceable in Canadian courts and, on that account, have frequently been treated as moral rather than legal imperatives. As the Senate Report *In from the Margins* explains, international human rights are considered persuasive sources for the interpretation of the *Charter* and other domestic law and may be given effect by being incorporated into domestic legislation.<sup>128</sup> Remedies for international human rights violations may also be sought through periodic review procedures before UN treaty bodies. at the Universal Periodic Review before the UN Human Rights Council, through optional complaints procedures before human rights

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<sup>127</sup> OHCHR, *Guidelines*, above note 29 at para 24.

<sup>128</sup> Senate, *In from the Margins*, above note 88 at 69-72.

treaty bodies, or by way of missions and recommendations from “mandate holders” such as the UN Special Rapporteur on Adequate Housing.

Canada cannot, however, rely solely on international remedies and procedures in respect to the enforcement of socio-economic rights, including those relating to poverty and homelessness. 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. This obligation applies equally to economic and social rights as to civil and political rights.<sup>129</sup> While effective judicial review is important to a rights-based approach, more accessible, affordable and timely procedures must also be available. It is important to ensure that judicial remedies are supplemented by adequate and effective administrative or quasi-judicial procedures through which rights can be more expeditiously claimed and enforced. What is envisioned in the interplay between human rights and poverty reduction and housing strategies is not simply a more effective judicial review mechanism that enforces international standards in relation to social and economic rights. The new approach calls for a more thorough integration of law and policy. Judicial and quasi-judicial mechanisms should be integrated with effective informal or administrative procedures for claiming and enforcing social rights under legislated housing and poverty reduction strategies.

The judicial system in Canada has been rendered increasingly inaccessible to poor people and Canadian courts have too often failed to provide adequate remedies or even fair hearings to those who allege violations of rights linked to poverty or homelessness.<sup>130</sup> Both the federal and Ontario governments have taken the position that rights to housing and to an adequate standard of living should not generally be amenable to domestic judicial enforcement.<sup>131</sup> The denial of judicial remedies for violations of economic and social rights is a serious violation of the right to effective remedies and treaty monitoring

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<sup>129</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>130</sup> Martha Jackman, “Constitutional Castaways: Poverty and the McLachlin Court” (2010) 50 Sup Ct L Rev 297.

<sup>131</sup> For a review of arguments advanced in domestic courts by the governments of Ontario and Canada see Charter Committee on Poverty Issues, *The Right to Effective Remedies: Review of Canada’s Fourth and Fifth Periodic Reports under the ICESCR* (May 5 & 8, 2006) at 16-25, online: OHCHR <<http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/CCPI.pdf>>.

bodies such as the CESCR have urged Canadian governments and courts to change their position. However, the CESCR also acknowledges the need for some flexibility as to how effective remedies are provided. In particular, the Committee recognizes that, while judicial remedies are required, the enforcement of socio-economic rights need not rely exclusively on courts. The CESCR has emphasized that where judicial remedies are not available, alternative, effective remedies for violations of the right to adequate housing and an adequate standard of living must be implemented, outside of courts.<sup>132</sup> For example, human rights commissions have broad authority to review legislation, to hold inquiries, and to develop policy statements and, thus, can play an important remedial role. Many other administrative bodies involved in housing or income assistance could likewise provide new venues through which rights claimants can obtain a hearing and secure effective remedies.

Commitments made, or rights and values affirmed under international, constitutional, or human rights law do not belong solely to the courts. There are multiple *fora* in which rights 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>133</sup> Chief Justice McLachlin has observed that *Charter* rights do not belong to the courts but “to the people.”<sup>134</sup> Rights-based strategies for the elimination of poverty and homelessness in Ontario may serve as one way to reclaim rights and to provide access to new types of adjudication and remedies, which are too often denied within the judicial system as it currently operates.<sup>135</sup>

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<sup>132</sup> *General Comment 9*, above note 129.

<sup>133</sup> *Schachter v Canada*, [1992] 2 SCR 679.

<sup>134</sup> *Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para 70 (McLachlin J, dissenting).

<sup>135</sup> As noted in the introduction, the subsequent paper will consider in more detail what a rights-based housing and anti-poverty strategy in Canada would require in terms of program and legislative reform, institutional mandates, engagement with international human rights review, and more constructive roles for courts, tribunals, and international review mechanisms.

## 2) PROVINCIAL ACCOUNTABILITY TO INTERNATIONAL HUMAN RIGHTS LAW

Provincial/territorial governments' obligations under international human rights law have not received the same attention as those of the federal government, yet they are equally important. While the federal government is responsible for signing and ratifying international treaties, the accepted practice is to first obtain the agreement of provinces and territories. Under the *Vienna Convention on the Law of Treaties*,<sup>136</sup> treaty obligations are to be performed in good faith and the domestic constitutional division of powers cannot be invoked as a justification for non-compliance.<sup>137</sup> Provincial governments must therefore comply with Canada's international treaty obligations in areas of provincial jurisdiction, just as the federal government must respect its international commitments in areas of federal jurisdiction. And, as is the case in relation to federal legislation, Canadian courts attempt, wherever possible, to interpret and apply municipal by-laws and provincial legislation in a manner consistent with Canada's international human rights obligations.<sup>138</sup> To do otherwise would be to place Canada in violation of its international treaty obligations. While the federal government takes the lead on submitting periodic reports to UN human rights treaty-monitoring bodies, Ontario and other provinces also report on their compliance with international human rights agreements as a component of the federal reporting process.

Provinces carry the greatest responsibility for ensuring compliance with international human rights norms in relation to the right to an adequate standard of living and the right to adequate housing. UN human rights treaty bodies have therefore expressed concern in recent years at the absence of meaningful provincial accountability in these areas. The CESCR noted in its 1998 review of Canada that the repeal of the *Canada Assistance Plan Act* in 1996<sup>139</sup> amounted to the abandonment of the requirement that provincial income support programs provide for basic necessities, including food and

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<sup>136</sup> *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, Can TS 1980 No 37 (entered into force 27 January 1980, accession by Canada 14 October 1970).

<sup>137</sup> *Ibid* at arts 26-7.

<sup>138</sup> *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40.

<sup>139</sup> *Canada Assistance Plan*, RSC 1985, c C-1. See generally Martha Jackman, "Women and the Canada Health and Social Transfer: Ensuring Gender Equality in Federal Welfare Reform" (1995) 8 CJWL 372; Shelagh Day & Gwen Brodsky, *Women and the Canada Social Transfer: Securing the Social Union* (Ottawa: Status of Women Canada 2007).



housing, as a condition of federal cost-sharing. As the CESCR underscored, a critical lever of provincial accountability and access to remedies for violations of the right to an adequate standard of living and the right to housing had been lost:

The replacement of the Canada Assistance Plan (CAP) by the Canada Health and Social Transfer (CHST) entails a range of adverse consequences for the enjoyment of Covenant rights by disadvantaged groups in Canada. The Government informed the Committee in its 1993 report that CAP set national standards for social welfare, required that work by welfare recipients be freely chosen, guaranteed the right to an adequate standard of living and facilitated court challenges of federally-funded provincial social assistance programmes which did not meet the standards prescribed in the Act. In contrast, CHST has eliminated each of these features... The Committee regrets that, by according virtually unfettered discretion to provincial governments in relation to social rights, the Government of Canada has created a situation in which Covenant standards can be undermined and effective accountability has been radically reduced.<sup>140</sup>

The CESCR reiterated its concerns about the absence of provincial accountability in its most recent review of Canada in 2006, recommending that:

[c]ovenant rights should be enforceable within provinces and territories through legislation or policy measures, and that independent and appropriate monitoring and adjudication mechanisms be established in this regard. In particular, the State party should establish transparent and effective mechanisms, involving all levels of government as well as civil society, including indigenous peoples, with the specific mandate to follow up on the Committee's concluding observations.<sup>141</sup>

Accountability to international human rights norms and follow-up on concerns and recommendations of treaty monitoring bodies is a critical component of the rights-based strategies that have been promoted by the OHCHR and other UN bodies. As

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<sup>140</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 19 [*Concluding Observations* 1998].

<sup>141</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, 36th Sess, UN Doc E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, (2006) [*Concluding Observations* 2006] at para 35.

discussed in greater depth in the second paper, developing improved mechanisms and processes for both provincial and federal accountability to international human rights will be a critical element of a potential human rights framework for housing and poverty reduction strategies in Canada.

### 3) THE RIGHT TO AN ADEQUATE STANDARD OF LIVING AND TO ADEQUATE HOUSING UNDER INTERNATIONAL HUMAN RIGHTS LAW

Article 11 of the *ICESCR* requires governments to “take appropriate steps to ensure the realization” of “the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing.”<sup>142</sup> Other human rights treaties ratified by Canada also contain guarantees related to the right to an adequate standard of living and the right to adequate housing. Article 27 of the *Convention on the Rights of the Child* obligates States to “recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”<sup>143</sup> The *Convention on the Elimination of Racial Discrimination* recognizes the right of everyone, without distinction as to race, colour, or national or ethnic origin, to enjoy, *inter alia*, the right to housing and the right to social security and social services.<sup>144</sup> Article 28 of the *Convention on the Rights of Persons with Disabilities* (CRPD) not only guarantees a general right to non-discrimination, including the right to reasonable accommodation of disabilities, but also guarantees the right to an adequate standard of living, to adequate housing and to measures of social protection as stand-alone economic and social rights.<sup>145</sup>

In addition, rights in the *ICCPR*, such as the right to non-discrimination (article 26) and the right to life (article 6), place obligations on governments to address poverty

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<sup>142</sup> *ICESCR*, above note 3 at art 11.

<sup>143</sup> *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 27, Can TS 1992 No 3 (entered into force 2 September 1990, ratified by Canada 13 December 1991) at art 27.

<sup>144</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 660 UNTS 195, art 5, Can TS 1970 No 28 (entered into force 4 January 1969, ratified by Canada 14 October 1970).

<sup>145</sup> *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/611, (2007) 2 at art 28.

and homelessness.<sup>146</sup> The UN Human Rights Committee, which oversees compliance with the *ICCPR*, has pointed out the discriminatory impacts of poverty and social program cuts in Canada on women and other disadvantaged groups.<sup>147</sup> The Human Rights Committee has further noted the effects of homelessness on health and on the right to life, stating that “positive measures are required by article 6 [the right to life] to address this serious problem.”<sup>148</sup> In its 2006 review of Canada, the UN Human Rights Committee responded to evidence of people with mental disabilities being detained in institutions because of lack of supportive housing, recommending that governments “ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.”<sup>149</sup> In this sense, an effective strategy to eliminate homelessness is a legal obligation not only with respect to the right to adequate housing under the *ICESCR*, but also in relation to right to life and non-discrimination guarantees under the *ICCPR*.

#### 4) ‘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 the available resources and to the stage of development of institutions and programs within the State party, and some components of rights may be realized over time rather than immediately.<sup>150</sup> Article 2(1) of the *ICESCR* requires the government of a State party “to take steps...to the maximum of its available resources, with a view to achieving

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<sup>146</sup> *ICCPR*, above note 4 at arts 26, 6.

<sup>147</sup> United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Canada*, UNHRCOR, 65th Sess, UN Doc CCPR/C/79/Add.105, (1999) at para 20 [*Concluding Observations HRC 1999*].

<sup>148</sup> *Ibid* at para 12.

<sup>149</sup> United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Canada*, UNHRCOR, 85th Sess, UN Doc CCPR/C/CAN/CO/5, (2006) at para 17.

<sup>150</sup> *ICESCR*, above note 3 at art 2.

progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”<sup>151</sup>

Where violations of the right to housing or to an adequate standard of living result from a denial of an immediate, minimal entitlement that is within the government’s means to provide, such as an entitlement to an adequate welfare benefit or access to public housing, the remedy is straightforward: the government is ordered to provide the benefit that has been denied. Beyond these immediate obligations, however, the progressive realization standard creates future-oriented obligations to fulfill the right to adequate income or housing within a reasonable time and, at the same time, to address broader structural patterns of disadvantage and exclusion which cannot be immediately remedied. While housing and poverty reduction strategies are future-oriented, in terms of fulfilling relevant rights within a reasonable time, the requirement to design and implement appropriate strategies through legislation and programs aimed at achieving full human rights compliance in the future is an immediate obligation.

## 5) GENERAL COMMENTS OF THE CESCR

The CESCR has produced a series of General Comments intended to assist States in their understanding of the rights set out in the *ICESCR*. These General Comments are internationally recognized as authoritative jurisprudence on the interpretation and application of the *Covenant*, and are frequently relied upon by domestic courts and human rights institutions in their own decisions relating to *ICESCR* rights.

The CESCR first grappled with the issue of progressive realization in its *General Comment No 1*, adopted in 1989, in clarifying States’ reporting requirements.<sup>152</sup> The Committee emphasized, and has continued to stress in subsequent jurisprudence, that even if the full implementation of *Covenant* rights cannot be achieved immediately because of resource or related constraints, this does not relieve governments of all immediate obligations.<sup>153</sup> There is still an overriding obligation to develop “clearly stated and carefully targeted policies, including the establishment of priorities which

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<sup>151</sup> *Ibid.*

<sup>152</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).

<sup>153</sup> *Ibid.*

reflect the provisions of the Covenant.”<sup>154</sup> There is also a specific obligation “to work out and adopt a detailed plan of action for the progressive implementation” of each of the rights contained in the Covenant.<sup>155</sup> This is clearly implied, according to the CESCR, by the obligation in Article 2(1) “to take steps ... by all appropriate means.”<sup>156</sup>

The immediate obligation to develop clear strategies and plans and to monitoring progress toward identified goals, was further clarified in *General Comment No 3, on the nature of States parties obligations (art 2, para 1 of the Covenant)*.<sup>157</sup> The CESCR noted that while *Covenant* rights are subject to progressive realization, there are two over-riding obligations which are of immediate effect: the obligation to ensure non-discrimination and the obligation “to take steps.” The steps taken, according to *General Comment No 3*, “should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.”<sup>158</sup> “Moreover, the 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 programmes for their promotion, are not in any way eliminated as a result of resource constraints.”<sup>159</sup> Legislative measures are almost always desirable and, in some cases, indispensable. The CESCR notes that it will be particularly interested in whether legislative measures “create any right of action on behalf of individuals or groups who feel that their rights are not being fully realized.”<sup>160</sup>

*General Comment No 4*, adopted by the CESCR in 1991, elaborated on State parties’ obligation to achieve the full realization of the right to adequate housing (Article 11 of the *ICESCR*).<sup>161</sup> In the Comment, the CESCR noted that the *ICESCR* “clearly requires that each State party take whatever steps are necessary” for fulfilling the right to adequate to housing. The Committee clarifies that this “will almost invariably require the

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<sup>154</sup> *Ibid* at para 4.

<sup>155</sup> *Ibid*.

<sup>156</sup> *ICESCR*, above note 3 at art 2(1).

<sup>157</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) [*General Comment 3*].

<sup>158</sup> *Ibid* at para 2.

<sup>159</sup> *Ibid* at para 11

<sup>160</sup> *Ibid* at para 6.

<sup>161</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*].

adoption of a national housing strategy.”<sup>162</sup> In their development of such a strategy, States are also required to consult extensively with, and to encourage the participation of, groups who are affected by inadequate housing.<sup>163</sup> Legal remedies must be available to groups facing evictions, inadequate housing conditions, or discrimination in access to housing.<sup>164</sup>

Adopted in 1997, *General Comment No 7* clarified obligations with respect to evictions.<sup>165</sup> Of particular relevance to provincial governments in Canada is the principle that where evictions cannot be avoided, they “should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.” States are obliged to “take all appropriate measures...to ensure that adequate alternative housing...is available.”<sup>166</sup> In the CESCR’s last review of Canada in 2006, it “strongly” recommended that “the State party take appropriate measures, legislative or otherwise, to ensure that those affected by forced evictions are provided with alternative accommodation and thus do not face homelessness, in line with the Committee’s general comment No. 7 (1997).”<sup>167</sup> The Centre for Equality Rights in Accommodation (CERA) noted in a 2007 study on evictions in Ontario tens of thousands of Ontario households are evicted each year with no consideration of whether they will become homeless, the majority owing less than one month’s rent.<sup>168</sup>

The CESCR has also published General Comments, including those relating to the right to adequate food,<sup>169</sup> the right to social security,<sup>170</sup> the right to work,<sup>171</sup> the right to

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<sup>162</sup> *Ibid* at para 12.

<sup>163</sup> *Ibid*.

<sup>164</sup> *Ibid* at para 17.

<sup>165</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 7: The Right to Adequate Housing: Forced Evictions (art 11(1) of the Covenant)*, UNCESCROR, 16th Sess, UN Doc E/1998/22, annex IV (1997).

<sup>166</sup> *Ibid* at para 16.

<sup>167</sup> *Concluding Observations* 2006, above note 141 at para 63.

<sup>168</sup> Centre for Equality Rights in Accommodation, National Working Group on Women and Housing & Social Rights Advocacy Centre, *Submission to the Ontario Human Rights Commission on Human Rights and Rental Housing In Ontario* (2007) at 35-6, online: Centre for Equality Rights in Accommodation <<http://www.equalityrights.org/cera/wp-content/uploads/2010/04/FINAL-CERA-SRAC-NWG-Submissionto-OHR-on-HR-in-Housing-07Sep20.doc>>.

<sup>169</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 12: The Right to Adequate Food (art 11)*, UNCESCROR, 20th Sess, UN Doc E/C.12/1999/5, (1999) [*General Comment 12*].

<sup>170</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art 9)*, UNCESCROR, 39th Sess, UN Doc E/C.12/GC/19, (2007) [*General Comment 19*].

health,<sup>172</sup> and the right to water.<sup>173</sup> In each of these General Comments, the CESCR calls on States to create targeted national strategies based on human rights principles to ensure rights are fulfilled. In *General Comment No 18*, on the right to work, CESCR calls for State governments to adopt an “employment strategy targeting disadvantaged and marginalized individuals and groups,” which includes “indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed.”<sup>174</sup> In *General Comment No 12*, on the right to food, the CESCR “affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person” and requires States to adopt “appropriate economic, environmental and social policies...oriented to the eradication of poverty and the fulfillment of all human rights” as well as “a national strategy to ensure food and nutrition security for all.”<sup>175</sup>

*General Comment No 19* on the right to social security requires States to “develop a national strategy for the full implementation of the right to social security,” while also taking “positive measures to assist individuals and communities to enjoy the right to social security,” including a review of existing legislation, strategies, and policies “to ensure that they are compatible with obligations arising from the right to social security.”<sup>176</sup> In *General Comment No 14*, on the right to health, CESCR outlines State parties’ core obligation to adopt and implement national health strategies and plans of action based on a “participatory and transparent process.”<sup>177</sup> National health strategies must include measures of prevention and “right to health indicators and benchmarks, by which progress can be closely monitored.”<sup>178</sup> Strategies and plans of action must also pay “particular attention to all vulnerable or marginalized groups” and address the social determinants of health.<sup>179</sup> Similar obligations are enumerated with respect to the

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<sup>171</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 18: The Right to Work (art 6)*, UNCESCROR, 35th Sess, UN Doc E/C.12/GC/18, (2006) [*General Comment 18*].

<sup>172</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (art 12)*, UNCESCROR, 22d Sess, UN Doc E/C.12/2000/4, (2000) [*General Comment 14*].

<sup>173</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (arts 11 and 12)* E/C.12/2002/11 (2002) [*General Comment 15*]

<sup>174</sup> *Ibid* at para 31.

<sup>175</sup> *General Comment 12*, above note 169 at paras 4, 21.

<sup>176</sup> *General Comment 19*, above note 170 at paras 41, 48, 67.

<sup>177</sup> *General Comment 14*, above note 172 at para 43(f).

<sup>178</sup> *Ibid.*

<sup>179</sup> *Ibid.*

development of “comprehensive and integrated strategies and programmes” to implement the right to water.<sup>180</sup>

## 6) THE REASONABLENESS STANDARD

The standard to be applied in assessing whether strategies or programs comply with the “progressive realization” standard under Article 2(1) of the *ICESCR* was the object of intense debate during the drafting of the optional complaints procedure to the *ICESCR*. Skeptical States, such as Canada, the U.S., and Australia, argued that the *Optional Protocol* should prescribe a very deferential standard of review, encouraging the *ICESCR* to apply a “broad margin of discretion” or to require a finding of “unreasonableness” before a finding of a violation could be made.<sup>181</sup> Other States argued that such a deferential standard would defeat the very purpose of the *Optional Protocol*, by undermining any meaningful accountability of States in relation to the *ICESCR*’s key substantive programmatic obligations.<sup>182</sup> In the end, proposals for a deferential standard of review were not accepted and references to a margin of discretion were omitted. The final text of the *Optional Protocol* emphasizes that steps taken to achieve progressive realization of *ICESCR* rights must be in accordance with the substantive guarantees in Part II of the *ICESCR*. It prescribes a standard of “reasonableness” in assessing steps taken, recognizing that in many instances there may be a variety of ways for governments to achieve the results necessary for compliance:

[w]hen examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with Part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights.<sup>183</sup>

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<sup>180</sup> *General Comment 15*, above note 173 at para 28.

<sup>181</sup> United Nations Committee on Economic, Social and Cultural Rights, *Report of the Open-ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on its Third Session*, UN Commission on Human Rights, 62d Sess, UN Doc E/CN.4/2006/47, (2006) at para 92.

<sup>182</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”]; 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 (Porter and Griffey provide descriptions of the debates on the reasonableness standard).

<sup>183</sup> *Optional Protocol*, above note 9.



The specific wording used in the *Optional Protocol* was taken from a paragraph of the now famous *Grootboom*<sup>184</sup> decision on the right to adequate housing in South Africa, in which the South African Constitutional Court first developed its reasonableness standard for review of compliance with the justiciable economic and social rights in the South African Constitution.<sup>185</sup> In adopting this formulation, the Open Ended Working Group mandated to draft the *Optional Protocol* was also guided by a statement prepared by the CESCR: *An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant*, in which the Committee suggested for the first time that, in evaluating compliance with article 2(1) of the *ICESCR*, it would assess the “reasonableness” of steps taken.<sup>186</sup> In its statement, the CESCR identified a number of possible factors to be considered in determining whether steps taken by a State party meet the reasonableness standard, including:

- The extent to which the measures taken were deliberate, concrete, and targeted towards the fulfilment of economic, social, and cultural rights.
- Whether discretion was exercised in a non-discriminatory and non-arbitrary manner.
- Whether resource allocation is in accordance with international human rights standards.
- Whether the State party adopts the option that least restricts *Covenant* rights.
- Whether the steps were taken within a reasonable timeframe.
- Whether the precarious situation of disadvantaged and marginalized individuals or groups has been addressed.
- Whether policies have prioritized grave situations or situations of risk.

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<sup>184</sup> *Government of the Republic of South Africa v Grootboom*, [2000] ZACC 19, 11 BCLR 1169 (S Afr Const Ct).

<sup>185</sup> Porter, “Reasonableness,” above note 182.

<sup>186</sup> United Nations Committee on Economic, Social and Cultural Rights, *An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” under an Optional Protocol to the Covenant*, UNCESCROR, 38th Sess, UN Doc E/C.12/2007/1, (2007) [CESCR, “Maximum Available Resources”]; Malcolm Langford, “Closing The Gap? – An Introduction To The Optional Protocol To The International Covenant On Economic, Social And Cultural Rights” (2009) 27:1 Nordic Journal of Human Rights 2.

- Whether decision-making is transparent and participatory.<sup>187</sup>

Beyond the CESCR’s commentary on a reasonableness standard under the *Optional Protocol*, there is extensive jurisprudence in its General Comments and in its Concluding Observations on Periodic Reviews of State parties that provides further clarification as to the requirements of policies and strategies for compliance with article 2(1) of the *ICESCR*. Comprehensive and purposive legislative measures are almost always required, though the CESCR points out that the “adoption of legislative measures, as specifically foreseen by the Covenant, is by no means exhaustive of the obligations of States parties.”<sup>188</sup>

In the CESCR’s view, all reasonable strategies must be informed by an equality framework, prioritizing the needs of disadvantaged groups and ensuring protection from discrimination.<sup>189</sup> States have an immediate, unqualified duty to ensure both formal and substantive equality in the implementation of policies.<sup>190</sup> Strategies must specifically address issues of systemic discrimination and the barriers faced by individuals who have suffered historic discrimination or present prejudice.<sup>191</sup> Mirroring the CESCR’s statements in *General Comment No 20* on non-discrimination in economic, social and cultural rights, Manisuli Ssenyonjo explains that “since discrimination undermines the fulfilment of ESC rights for a significant proportion of the world’s population, anti-discrimination legislation must cover not only discrimination in the public sector, but also discrimination by non-state actors.”<sup>192</sup> The CESCR has insisted that reasonable policies

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<sup>187</sup> CESCR, “Maximum Available Resources,” above note 186.

<sup>188</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) [*General Comment 3*].

<sup>189</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) [*General Comment 20*] at para 9. 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 (“[s]pecial 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>190</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.

<sup>191</sup> *General Comment 20*, above note 189 at para 8.

<sup>192</sup> Ssenyonjo, above note 190 at 976.

should include “efforts to overcome negative stereotyped images.”<sup>193</sup> Additionally, policies should rely on effective “coordination between the national ministries, regional and local authorities.”<sup>194</sup> Human rights institutions may scrutinize existing laws, identify appropriate goals and benchmarks, provide research, monitor compliance, examine complaints of alleged infringements, and disseminate educational materials.<sup>195</sup>

Another critical component of reasonable, rights-based strategies is the provision of effective remedies for violations of *ICESCR* rights. The CESCR has recognized that courts may not always be the best place for marginalized groups to seek remedies, and has acknowledged the potentially important role of administrative remedies. However, as stated in the CESCR’s *General Comment No. 9*, administrative remedies must be accessible, affordable, timely and effective, and there must be an ultimate recourse to courts to enforce the rule of law, as rights “cannot be made fully effective without some role for the judiciary.”<sup>196</sup>

Meaningful participation of affected constituencies has also been identified by the CESCR as a critical procedural component of the reasonableness standard. As stated in *General Comment No 4*, “both for reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected.”<sup>197</sup> Once implemented, the strategy should operate according to the principles of accountability which the Committee has identified as including: transparency, participation, decentralization, legislative capacity, judicial independence, institutional responsibility for process, monitoring procedures, and redress procedures.<sup>198</sup> The CESCR has suggested that both long- and short-term timelines should be adopted, with particular attention paid to interim steps such as “temporary special measures [which] may

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<sup>193</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 6: The Economic, Social and Cultural Rights of Older Persons*, UNCESCROR, 13th Sess, UN Doc E/1996/22, (1995) at para 41.

<sup>194</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>195</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>196</sup> *General Comment 9*, above note 129 at para 9

<sup>197</sup> *General Comment 4*, above note 161 at para 12.

<sup>198</sup> *General Comment 12*, above note 169 at paras 23, 29.

sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others.”<sup>199</sup>

The CESCR has emphasized that monitoring and redress should also include assessment of budgetary measures. Effective participatory rights and monitoring depend on the transparent allocation and expenditure of resources.<sup>200</sup> The reasonableness of budgetary allotment can be assessed based on information about the percentage of the budget allocated to specific rights under the *Covenant* in comparison to areas of spending that are not related to fulfilling human rights. The State party’s resource allocation may also be compared to that of other states with similar levels of development.<sup>201</sup> Substantive elements required of a reasonable policy have been characterized by “Four A’s”:

- Availability (access to relevant services).
- Accessibility (physical and economic accessibility, as well as non-discriminatory access).
- Acceptability (based on qualitative standards).
- Adaptability (flexible and geared to meeting of particular cultural and other needs, as well as responsive to changes in circumstances).<sup>202</sup>

As Brian Griffey notes “questions remain as to how the ‘reasonableness’ test will be applied, but the answer must be consistent with *ICESCR* obligations and the object

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<sup>199</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 16: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights (art 3)*, UNCESCROR, 34th Sess, UN Doc E/C.12/2005/4, (2005) at para 15.

<sup>200</sup> *General Comment 3*, above note 188 at para 11.

<sup>201</sup> Ssenyonjo, above note 190 at 980-81. See e.g. 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 (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); Griffey, above note 182 at 290.

<sup>202</sup> Components of the “four A’s” vary with each specific right. See e.g. United Nations Committee on Economic, Social and Cultural Rights, *General Comment 13: The Role of Education (art 13)*, UNCESCROR, 21st Sess, UN Doc E/C.12/1999/1, (1999) at para 6; *General Comment 14*, above note 172 at para 12; *General Comment 15*, above note 188 at para 11.

and purpose of the *Optional Protocol*.<sup>203</sup> Reasonable strategies will be based on a rigorous standard of “the maximum of available resources” and a commitment to ensuring access to adequate housing and freedom from poverty as fundamental human rights that can be effectively claimed and enforced.

While the standard of reasonableness under the *Optional Protocol* to the *ICESCR* should be developed as a distinctive standard consistent with the purposes of the *ICESCR*, the *CESCR* may also benefit from relevant jurisprudence from other UN treaty bodies. The UN Human Rights Committee has affirmed that reasonableness analysis must be both purposive and contextual, and that a policy must be consistent with the purpose of the *Covenant* read as a whole.<sup>204</sup> The Committee on the Rights of the Child has affirmed that a strategy to implement children’s rights must go beyond a list of good intentions or vague commitments—it must set specific, attainable goals with implementation measures, timelines, and provisions for necessary resource allocation.<sup>205</sup> A reasonableness standard will also emerge in the jurisprudence of the newly formed UN Committee on the Rights of Persons with Disabilities under the *Optional Protocol* to the *Convention on the Rights of Persons with Disabilities*, both with respect to the right to reasonable accommodation and the realization of the economic, social, and cultural rights included in the *Convention*.<sup>206</sup>

In summary, the reasonableness standard imposes obligations on all actors to make decisions that are consistent with the recognition of adequate housing and a decent level of income as fundamental rights subject to effective remedy and meaningful participatory rights. A reasonableness standard must inform all components of a program or strategy, infusing all aspects of decision-making and program design with human rights values. 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>203</sup> Griffey, above note 182 at 304.

<sup>204</sup> United Nations Human Rights Committee, *Sandra Lovelace v Canada*, *Communication No R.6/24*, UNHRCOR, 1981, Supp No 40, UN Doc A/36/40, (1981).

<sup>205</sup> United Nations Committee on the Rights of the Child, *General Comment 5: General Measures of Implementation of the Convention on the Rights of the Child*, UNCRCOR, 34th Sess, UN Doc CRC/GC/2003/5, (2003) at paras 32-3.

<sup>206</sup> *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, UN Doc A/RES/61/106, (2006).

‘reasonableness’ itself demands a rights-conscious strategy, commensurate with the special status of “rights” in comparison to other legitimate 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. It is noteworthy in this context that one of the core obligations identified by the UN Committee on Economic, Social and Cultural Rights in relation to the rights protected in the International Covenant on Economic, Social and Cultural Rights (1966) is the adoption of a national strategy and plan of action aimed at the realisation of the relevant rights. Such a national plan must be participatory and transparent and set clear goals as well as indicators and benchmarks by which progress can be monitored. Particular attention must be given in the plan to vulnerable or marginalised groups.<sup>207</sup>

## D) RECOMMENDATIONS OF INTERNATIONAL TREATY MONITORING BODIES RELEVANT TO HOUSING AND ANTI-POVERTY STRATEGIES IN CANADA

### 1) CONCERNS AND RECOMMENDATIONS FROM THE CESCR

Further guidance in relation to the issues that need to be addressed in housing and anti-poverty strategies is provided in the commentary of the CESCR and of other treaty bodies in their Periodic Reviews of Canada. The CESCR has reviewed Canada’s implementation of the *ICESCR* on three separate occasions (1993, 1998, and 2006), publishing *Concluding Observations* that outline concerns and recommendations with respect to both the federal and provincial/territorial governments. In particular, the CESCR has criticized the apparent unwillingness of governments in Canada to address poverty and homelessness as serious systemic human rights violations, as well as governments’ ongoing failure to respond to the concerns and recommendations expressed by treaty monitoring bodies.

In its review of Canada in 1993, the CESCR noted the prevalence of homelessness and inadequate living conditions, high rates of poverty among single

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<sup>207</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].

mothers and children, evidence of families being forced to relinquish their children to foster care because of their inability to provide adequate housing or other necessities, inadequate welfare entitlements, growing reliance on food banks, widespread discrimination in housing, and inadequate protection of security of tenure for low-income households.<sup>208</sup> The CESCR expressed “concern about the persistence of poverty” in Canada, particularly that “[t]here seems to have been no measurable progress in alleviating poverty...nor in alleviating the severity of poverty among a number of particularly vulnerable groups.”<sup>209</sup> These concerns were reiterated in the CESCR’s 1998 and 2006 reviews.

In its 1998 review, in a relatively rare expression of “grave concern,” the CESCR singled out the 21.6 percent cut in social assistance rates in Ontario, stating that “[t]he Committee expresses its grave concern at learning that the Government of Ontario proceeded with its announced 21.6 percent cuts in social assistance in spite of claims that this would force large numbers of people from their homes.”<sup>210</sup> The Committee pointed to the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing.<sup>211</sup> It expressed alarm that “such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada’s 10 largest cities have now declared homelessness a national disaster.”<sup>212</sup> It noted that provincial social assistance rates and other income assistance measures have clearly not been adequate to cover rental costs of the poor.<sup>213</sup>

Issues of access to effective remedies to poverty and homelessness as human rights violations have also featured prominently in reviews of Canada. A consistent recommendation from the CESCR has been that human rights legislation be amended to include the right to housing and other social and economic rights.<sup>214</sup> The Committee has been harshly critical of arguments put forth by provincial governments in *Charter* cases

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<sup>208</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, 1993, UN Doc E/C.12/1993/5 [*Concluding Observations* 1993].

<sup>209</sup> *Ibid* at para 12.

<sup>210</sup> *Concluding Observations* 1998, above note 140 at para 27.

<sup>211</sup> *Ibid* at para 28.

<sup>212</sup> *Ibid* at para 24.

<sup>213</sup> *Ibid* at para 25.

<sup>214</sup> *Ibid* at para 51; *Concluding Observations* 1993, above note 208 at para 25.

involving issues of poverty and homelessness. The Committee has noted that “provincial governments have urged upon their courts in these cases an interpretation of the *Charter* which would deny any protection of Covenant rights.”<sup>215</sup> At Canada’s most recent review in 2006, three critical recommendations were made by the CESCR to address the problem of effective remedies in the provincial domain, in particular that:

- [F]ederal, provincial and territorial legislation be brought in line with the State party’s obligations under the Covenant, and that such legislation should protect poor people in all jurisdictions from discrimination because of their social or economic status.
- [Provinces take] immediate steps, including legislative measures, to create and ensure effective domestic remedies for all Covenant rights in all relevant jurisdictions.
- [F]ederal, provincial and territorial governments promote interpretations of the Canadian Charter of Rights and other domestic law in a way consistent with the Covenant.<sup>216</sup>

Concern has also been expressed about barriers to access to justice created by inadequate civil legal aid and the restriction of the former Court Challenges Program of Canada to federal programs and legislation.<sup>217</sup> The Committee recommended in its 2006 review that the Court Challenges Program be extended to permit funding of challenges with respect to provincial/territorial legislation and policies and that adequate civil legal aid be provided to those living in poverty to ensure legal representation in cases related to their economic, social, and cultural rights.<sup>218</sup> Instead of implementing this recommendation, however, a newly elected federal Conservative government cancelled funding to the Court Challenges Program altogether in the fall of 2006.<sup>219</sup>

The centerpiece of the CESCR’s recommendations with respect to poverty and homelessness has been a “strategy for the reduction of homelessness and poverty” that

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<sup>215</sup> *Ibid* at para 14.

<sup>216</sup> *Concluding Observations* 2006, above note 141 at paras 39-41.

<sup>217</sup> *Ibid* at paras 13-4.

<sup>218</sup> *Ibid* at paras 42-3.

<sup>219</sup> S Laurel Weldon, *When Protest Makes Policy: How Social Movements Represent Disadvantaged Groups* (Ann Arbor: University of Michigan Press, 2011) at 164-65.



integrates economic, social and cultural rights.<sup>220</sup> The CESCR has emphasized that the 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>221</sup> The CESCR has also referred Canada to its statement, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, which is aimed at “encouraging the integration of human rights into poverty eradication policies by outlining how human rights generally, and the *ICESCR* in particular, can empower the poor and enhance anti-poverty strategies.”<sup>222</sup> The CESCR has emphasized that “anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable, and meaningful to those living in poverty if they are based upon international human rights.”<sup>223</sup>

## 2) RECOMMENDATIONS FROM THE UN SPECIAL RAPPORTEUR ON ADEQUATE HOUSING

In 2007, the UN Special Rapporteur on adequate housing, Miloon Kothari, conducted a mission to Canada. Special Rapporteurs are experts selected and mandated by the UN Human Rights Council to investigate and report on particular human rights issues. During his mission to Canada, the Special Rapporteur developed specific recommendations in light of what he learned about poverty and housing issues in Canada. Many of his recommendations echoed those of the CESCR. One of the central recommendations in his Mission Report on Canada was for “a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable.”<sup>224</sup> Reiterating the recommendations of the CESCR, the Special Rapporteur stated that the strategy should include “measurable goals and

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<sup>220</sup> *Concluding Observations* 1998, above note 140 at para 46. See also *Concluding Observations* 2006, above note 141 at para 60.

<sup>221</sup> *Ibid* at para 62.

<sup>222</sup> 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 [*Poverty and the ICESCR*].

<sup>223</sup> *Ibid* at para 13.

<sup>224</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)*, UN Human Rights Council OR, 10th Sess, UN Doc A/HRC/10/7/Add.3, (2009) at para 90 [*SR Mission to Canada*].

timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms.”<sup>225</sup> He also recommended that federal and provincial governments work in close collaboration and coordination and “commit stable and long-term funding to a comprehensive national housing strategy.”<sup>226</sup>

The Special Rapporteur strongly advocated for the improvement of legal remedies for poverty and homelessness, recommending that the “right to adequate housing be recognized in federal and provincial legislation as an inherent part of the Canadian legal system.”<sup>227</sup> The Special Rapporteur recommended that current housing legislation be assessed and amended, where necessary, to meet the standards required by international human rights obligations.<sup>228</sup> The Special Rapporteur was consulted by the Ontario Human Rights Commission regarding the ways in which international human rights law and the right to adequate housing could be applied in interpreting and applying Ontario’s *Human Rights Code*. Information from that meeting was integrated into the development of the Commission’s *Policy on Human Rights and Rental Housing*, which was adopted in July 2009.<sup>229</sup> The Special Rapporteur also commended the Commission’s *Right at Home* report in his mission report, suggesting that government authorities implement the detailed recommendations included in it.<sup>230</sup>

Subsequent to his mission and mandate as Special Rapporteur, Kothari has continued to be consulted by politicians, experts, and stakeholders in Canada to monitor housing-related developments. He recently wrote to Ontario’s Minister of Municipal Affairs and Housing to express his disappointment with Ontario’s *Long-Term and Affordable Housing Strategy* and the *Strong Communities through Affordable Housing Act, 2011*, noting that it contained none of the key components of an effective housing strategy as recommended by the CESCR and in his Mission Report.<sup>231</sup> He pointed out that the strategy and legislation made no reference to the right to adequate housing, had

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<sup>225</sup> *Ibid* at para 90.

<sup>226</sup> *Ibid* at para 92.

<sup>227</sup> *Ibid* at para 88.

<sup>228</sup> *Ibid* at paras 98-9.

<sup>229</sup> Ontario Human Rights Commission, *Policy on Human Rights and Rental Housing* (Toronto: Queen’s Printer for Ontario, 2009) [OHRC, *Policy*].

<sup>230</sup> *SR Mission to Canada*, above note 224 at para 93.

<sup>231</sup> Letter from Miloon Kothari to Honourable Rick Bartolucci, Minister of Municipal Affairs and Housing (6 April 2011).

no targets for the reduction and elimination of homelessness, had no independent monitoring or complaints mechanism, and made no commitment to address the obstacles facing vulnerable groups, including persons with disabilities. Kothari urged the Minister to consider the amendments tabled by MPP Cheri DiNovo to bring the legislation into conformity with these recommendations.<sup>232</sup> MPP DiNovo made extensive reference to Kothari's letter during the clause-by-clause debate on the Bill 140 but, as noted above, all of the proposed amendments were defeated.<sup>233</sup>

### 3) RECOMMENDATIONS FROM THE UNIVERSAL PERIODIC REVIEW

The UN Human Rights Council's 2009 *Universal Periodic Review (UPR)* of Canada also highlighted the need for anti-poverty and housing strategies based on human rights.<sup>234</sup> The *UPR* was created in 2006 and involves UN member states reviewing the human rights records of other member states and making recommendations on how they could improve their adherence to international human rights obligations. Civil society organizations across Canada were significantly engaged with this new process, despite a lack of timely consultation by the Canadian government. The Human Rights Council provides a formal process for stakeholder organizations, NGOs, and human rights institutions to make written submissions to the OHCHR and the Council prior to the *UPR*. Forty-eight NGOs and Aboriginal organizations made formal submissions, as did the Canadian Human Rights Commission.

A formal joint submission was also made by a coalition of over fifty organizations, expressing their shared concern about the gap between Canada's international human rights obligations and the implementation of those rights domestically. The Coalition made a number of recommendations for improved monitoring, implementation, and remedies. In particular, the Coalition argued that a coordinated and accountable process for monitoring implementation of Canada's international human rights obligations, involving both levels of government as well as Aboriginal people and civil society, had to be developed. As part of any such process, the

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<sup>232</sup> *Ibid.*

<sup>233</sup> Ontario, SCJP, 7 April 2011, above note 126.

<sup>234</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) [*UPR Canada*].

Coalition pointed to the need for a high-level focal point for the implementation of Canada's international obligations that, at a minimum, met the following criteria:

- Regular public reporting and transparency.
- On-going engagement with civil society organizations, citizens, and the media.
- Following engagement with affected stakeholder populations, public response to concluding observations from UN treaty body reviews, and other UN-level recommendations within a year of receipt.
- A mandate to investigate and resolve complaints, including those related to co-ordination with provinces on matters that cross federal/provincial jurisdiction.

The Coalition further argued that a more concerted effort must be made to ensure that effective remedies for all of the rights contained in human rights treaties ratified by Canada be available, so that governments can be held accountable by Canadian courts and human rights institutions for their failure to comply with international rights.<sup>235</sup>

Subsequent to the submission of written briefs, but prior to Canada's appearance for its *UPR* before the UN Human Rights Council, an NGO Steering Committee coordinated six meetings in cities across the country with civil society and Aboriginal organizations, as well as representatives from the federal and provincial governments. Drawing on these meetings, which involved over 200 NGOs, a briefing document outlining major human rights concerns was prepared and provided to members of the Human Rights Council in informal meetings in Geneva in the days leading up to Canada's review.<sup>236</sup> The Briefing Document highlighted poverty and homelessness as

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<sup>235</sup> *Promise and Reality: Canada's International Human Rights Gap*, Joint NGO Submission to the United Nations Human Rights Council in relation to the February 2009 Universal Periodic Review of Canada (8 September 2008) at 3, online: Social Rights in Canada: A Community-University Research Alliance Project <[http://socialrightscura.ca/documents/UPR/JS1\\_CAN\\_UPR\\_S4\\_2009\\_SocialRightsAdvocacyCentre\\_Etal\\_JOINT.pdf](http://socialrightscura.ca/documents/UPR/JS1_CAN_UPR_S4_2009_SocialRightsAdvocacyCentre_Etal_JOINT.pdf)>.

<sup>236</sup> *The Universal Periodic Review of Canada: February 2009: An Overview of a Select Number Canadian NGO Concerns and Recommendations* (31 January 2009), online: Social Rights in Canada: A Community-University Research Alliance Project <<http://www.socialrightscura.ca/documents/UPR/Briefing%20for%20Canada%20UPR%202009%20Jan%2009.pdf>>.

the issues of greatest concern to all NGOs, Aboriginal communities, and stakeholders and strongly recommended the development of human rights-based strategies to address both.<sup>237</sup>

Recommendations considered under the *UPR* come from other States participating in the *UPR* process and may be either formally accepted or rejected by the State under review—Canada received sixty eight such recommendations. Poverty and homelessness were frequently mentioned as key areas of concern. Recommendations included 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>238</sup> Furthermore, it was recommended that Canada “intensify the efforts already undertaken to better ensure the right to adequate housing, especially for vulnerable groups and low-income families.”<sup>239</sup> In its response to the *UPR*, Canada formally accepted the recommendations with respect to the right to adequate housing. However, the recommendation that Canada adopt a national poverty reduction strategy was not accepted. The Government of Canada stated that “[p]rovinces and territories have jurisdiction in this area of social policy and have developed their own programs to address poverty. For example, four provinces have implemented poverty reduction strategies.”<sup>240</sup> The federal government expressed support for the provincial strategies but refused to commit to implementing the recommended federal plan.

During the *UPR*, Canada was also encouraged to recognize “the justiciability of social, economic and cultural rights,” to ensure legal enforcement of those rights in domestic courts, and to create “a transparent, effective and accountable system... to monitor publicly and regularly report on the implementation of Canada’s human rights obligations.”<sup>241</sup> Canada responded by noting that it did not accept that “all aspects of economic, social, and cultural rights are amenable to judicial review or that its

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<sup>237</sup> *Ibid.*

<sup>238</sup> *UPR* Canada, above note 234 at paras 70, 45.

<sup>239</sup> *Ibid* at para 72.

<sup>240</sup> United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada, Addendum, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review*, UN Human Rights Council OR, 11th Sess, UN Doc A/HRC/11/17/Add.1, (2009) at para 27 [Response to *UPR*].

<sup>241</sup> *UPR* Canada, above note 234 at paras 40, 68.

international human rights treaty obligations require it to protect rights only through legislation.”<sup>242</sup> Canada did, however, commit to “considering options” for improving its monitoring and implementation of international human rights obligations in the context of federalism.<sup>243</sup> Canada’s next *UPR* will be in 2013, during which a key focus will be on measures taken to follow-up on the recommendations that Canada accepted from its 2009 *UPR*.

## E) CONCLUSION: TAKING INTERNATIONAL HUMAN RIGHTS SERIOUSLY

Civil society organizations, human rights organizations, and groups advocating for people living in poverty and without adequate housing have increasingly turned to international human rights for a framework through which to identify and challenge conditions of inequality and deprivation in Canada. The National Anti-Poverty Organization and the Charter Committee on Poverty Issues prompted reform of UN treaty body procedures in the early 1990s when they requested and were granted permission to appear before a UN Human Rights Treaty Monitoring body in the context of a periodic review for compliance with a human rights treaty. Until then, stakeholders had no formal voice in the process.<sup>244</sup> Since that time, Canadian NGOs have shown a unique commitment to making the international treaty monitoring processes work more effectively. Reviews of Canada before human rights bodies are well known within the UN system for the extensive involvement of NGOs, both in terms of the numbers of groups and coalitions of groups engaging with the process and the depth and range of their oral and written submissions. In particular, Canadian NGOs have consistently pressed for reform of domestic procedures to ensure more effective follow-up to, and implementation of, treaty body concerns and recommendations.<sup>245</sup> These NGO recommendations have been taken up by House of Commons and Senate committees but

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<sup>242</sup> Response to *UPR*, above note 240 at para 17.

<sup>243</sup> *Ibid* at para 14.

<sup>244</sup> Bruce Porter, “Using Human Rights Treaty Monitoring Bodies in Domestic Social And Economic Rights Advocacy: Notes From Canada” (1999) 2:1 Economic and Social Rights Review 2.

<sup>245</sup> Shelagh Day, “Minding the Gap: Human Rights Commitments and Compliance” in Young, above note 5 at 355; Porter, “Claiming,” above note 5.

have, so far, met with no response from the federal government.<sup>246</sup> The Human Rights Sub-committee of the Standing Committee on Foreign Affairs and International Development reported on its hearings into Canada's *UPR* as follows:

[w]hat spoke clearly to Subcommittee Members throughout this study, from all witnesses, including government witnesses, is the need for a better system and improved human rights mechanisms in Canada...All witnesses firmly stressed the importance of ongoing consultations between federal-provincial-territorial governments and civil society as a condition for effective implementation and enforcement of Canada's human rights obligations.<sup>247</sup>

Shared accountability of *all* levels of government—municipal, provincial/territorial, and federal—is critical to implementing the right to adequate housing and the right to an adequate standard of living in Canada. Recalcitrance on the part of one level of government, however, should not prevent others from implementing their own mechanisms, procedures, and strategies for ensuring meaningful accountability to international human rights. City or municipal charters can be adopted to implement the right to housing and an adequate standard of living within all areas of municipal authority. Provincial/territorial housing and anti-poverty strategies along with improved provincial human rights legislation in line with UN treaty body recommendations need not wait for similar federal initiatives. Advances made in one area will spread to others. Creating new models of rights-based strategies, programming, and governmental accountability in multiple fora will create a critical mass for a new political and legal culture in Canada in which poverty and homelessness are identified and addressed as human rights violations and the goal of eliminating them becomes realizable. Housing and anti-poverty strategies present an ideal opportunity to develop new forms of accountability at all levels of government, with clear goals and timetables and effective monitoring, complaints procedures, hearings, and remedies being implemented through a variety of institutional mechanisms, from local to national, and from the relatively informal, to the highest levels of the judiciary.

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<sup>246</sup> Senate, Standing Committee On Human Rights, *Canada's Universal Periodic Review Before The United Nations Human Rights Council* (May 2009) (Chair: The Honourable Raynell Andreychuk); House of Commons, *Universal*, above note 108.

<sup>247</sup> *Ibid* at 11.

As François Saillant from the Front d'action populaire en réaménagement urbain (FRAPRU) stated before the House of Commons HUMA Committee on Poverty

Reduction:

[i]t is not without reason that Canada, on several occasions, has been criticized by UN authorities, particularly the Committee on Economic, Social and Cultural Rights in 2006 and by the United Nations Special Rapporteur on the right to adequate housing in 2007. The United Nations Human Rights Council, again quite recently, during its universal periodic review last March, criticized Canada for its weak performance in upholding the right to an adequate standard of living and also the right to housing. We were in a sustained period of economic growth and budgetary surpluses. Now, circumstances have changed; there is an economic crisis and we are once again facing a deficit. We must not use these two reasons, the crisis and the deficits, to fail to act to relieve poverty. I feel that these responsibilities not only still exist, they're even greater in such times.

FRAPRU's first recommendation is to respect the international commitments that Canada has made in terms of human rights, and particularly social rights, rights which the government and society have agreed to uphold. It seems to me to be the very least we could do to take the various UN committees' recommendations into account.<sup>248</sup>

Louise Arbour and Fannie Lafontaine have affirmed that “Canada has much to gain and nothing to lose in opening up to international tools for solving its domestic troubles.”<sup>249</sup> With this in mind, the second paper in this two-part research project will explore opportunities for the federal, provincial/territorial, and municipal governments, in consultation with civil society and affected constituencies, to create new forms of accountability to international human rights norms. It will explore the potential role of parallel domestic protections of human rights in the *Canadian Charter of Rights and Freedoms*, federal and provincial human rights legislation, and other statutory regimes in ensuring that adequate housing and an adequate standard of living are ensured as fundamental human rights throughout Canada.

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<sup>248</sup> HUMA Committee, above note 80 at 93.

<sup>249</sup> Louise Arbour & Fannie Lafontaine, “Beyond Self-Congratulations: The *Charter* at 25 in an International Perspective” (2007) 45:2 Osgoode Hall LJ 239 at 257.