

É/Exchange

Working Paper Series

International Human Rights, Health and Strategies to Address Homelessness and Poverty in Ontario: Making the Connection

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A. INTRODUCTION*

On the 60th anniversary of the *Universal Declaration of Human Rights (UDHR)*¹ 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.²

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, most notably the *International Covenant on Economic, Social and Cultural Rights*³ (*ICESCR*), have recognized social and economic rights, 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, as fundamental human rights guarantees.

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*

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

² United Nations Office of the High Commissioner for Human Rights & World Health Organization, *Human Rights, Health and Poverty Reduction Strategies*, UN Doc HR/PUB/08/0 (Geneva: OHCHR, WHO, 2008) [OHCHR & WHO].

³ *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*].

*Political Rights*⁴ (*ICCPR*), encouraged a historical differentiation between the two sets of rights which has taken more than forty years to correct. When the *ICCPR* was adopted in 1966, an optional complaints procedure for alleged violations of civil and political rights was introduced to accompany it.⁵ Both the *ICCPR* and its *Optional Protocol* came into force in 1976. However the *ICESCR*, which was introduced and came into force at the same time as the *ICCPR*, had no parallel complaints procedure. For many years, debate focused on the questions of whether this institutional inconsistency was justified by the different characteristics of economic and social rights; whether the *ICESCR* should have a similar complaints procedure to the *ICCPR*; and, more generally, whether economic and social rights should be subject to judicial review and remedy under domestic law.

In the early years of the debate, economic and social rights were often described as governmental aspirations and commitments, rather than legally enforceable rights. It was argued that realization of this category of rights requires legislation, programs and services that may involve a significant allocation of budgetary resources, and that socio-economic rights obligations often take the form of future commitments rather than immediate entitlements. The traditional view held that such future-oriented undertakings, to develop policies and programs to realize rights over a reasonable period, could not be subject to immediate judicial remedy and should not, therefore, be assigned to courts to adjudicate.

Over time, however, this view has been replaced by a more unified conception of human rights and a more flexible view of the role of courts: one that is more reflective of the entire interdependent framework of rights set out in the *UDHR*, and which adopts a broader understanding of the kinds of remedies courts may order. This unified approach recognizes that all human rights require access to effective remedies. If governments are to be held accountable for failures 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. Denying groups living in poverty or without adequate housing or access to food any recourse for violations of their rights, and leaving socio-economic rights entirely to governments to define and implement according to their own priorities, simply reinforces patterns of exclusion of the most powerless and marginalized groups that human rights are supposed to remedy.

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

⁴ *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*].

⁵ *Optional Protocol to the International Covenant on Civil and Political Rights*, GA Res 2200(XXI), UNGAOR, 21st Sess, UN Doc A/RES/2200(XXI), (1966) [*OP-ICCPR*].

of the programmatic obligations traditionally associated with socio-economic rights have become subject to legal claims within the civil and political rights domain.⁶ For instance, the right to life has come to be understood as requiring positive measures of protection, such as ensuring access to health care or adequate food. The right to equality and non-discrimination has come to be understood as requiring positive measures by governments and other actors, for example, to remove barriers to equal participation for people with disabilities. Similarly, homelessness and poverty, with their documented effect on health, can also be understood as violations of the rights to life and security of the person, which are civil and political rights guaranteed under the *ICCPR*. Homelessness and poverty also disproportionately affect disadvantaged groups, so policies which create poverty or homelessness can be challenged for their discriminatory effect on protected groups such as women or people with disabilities.⁷ The positive measures necessary to address systemic inequality or to protect the right to life and security of the person, are not fundamentally different in nature from the programmatic measures needed to realize social and economic rights. Rigid distinctions with respect to justiciability, or availability of legal remedies, for each category of rights have therefore proven both impracticable and conceptually flawed.⁸ It is simply no longer tenable to suggest that socio-economic rights are not amenable to adjudication and remedy by courts or tribunals.

An ever-increasing number of countries have included socio-economic rights, such as the right to housing or health care, as fully justiciable rights in their domestic constitutions.⁹ Regional human rights monitoring and enforcement systems, including the African Commission and Court on Human and Peoples' Rights, the Inter-American Commission and Court of Human Rights, the European Committee of Social Rights, and the European Court of Human Rights, have all recognized economic and social rights as justiciable.¹⁰ On December 10, 2008, 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*.¹¹ Once it is in force,¹² the *Optional*

⁶ 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.

⁷ See e.g. *ICCPR*, *supra* note 4 at arts 2 (right to equality), 6 (right to life), 9 (right to security of the person), 26 (right to non-discrimination).

⁸ 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.

⁹ Jurisdictions in which social and economic rights have been deemed justiciable and judicially enforceable include, *inter alia*, Argentina, Chile, Bangladesh Colombia, Finland, Kenya, Hungary, Latvia, the Philippines, Switzerland, Venezuela, South Africa and India. For descriptions of judicial roles in enforcing economic and social rights in various jurisdictions, see Langford, *supra* note 8.

¹⁰ Porter, Nolan & Langford, *supra* note 6 at 2-3.

¹¹ *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) [*OP-ICESCR*].

Protocol will permit the Committee on Economic, Social and Cultural Rights (CESCR) to adjudicate petitions alleging violations of *ICESCR* rights in the same manner as the Human Rights Committee does with regards to civil and political rights. This historic acknowledgement of the equal status of economic, social and cultural rights was heralded by Louise Arbour, then UN High Commissioner on Human Rights, as “human rights made whole.”¹³

Human rights discourse has, for many years, lent legitimacy to demands that governments develop and adequately maintain and fund programs and policies to better address poverty and homelessness, providing a kind of ‘moral yardstick’ against which to assess government measures and progress over time. However, the new 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. Rather than being seen only as worthy social policy goals, social rights are now seen as transformative tools for challenging structural disadvantage and social exclusion, and for addressing poverty and homelessness as denials not only of basic needs, but also of equal citizenship and dignity. Social rights are now seen as a process, as much as a goal, and effective strategies to support the implementation and fulfillment of socio-economic rights over time are understood as central obligations of governments. Even if the rights cannot be realized immediately, a coherent plan can still be put in place.

New social rights-based approaches require strategies to correct injustice over time, while also identifying needs and entitlements that must be addressed immediately. They demand actions to address structural causes of poverty and to meet obligations to realize socio-economic rights commensurate with the maximum of available resources. While 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 to prevent and remedy them. Thus new rights-based approaches require not only government programs to provide for those in need, but also regulation of private actors to address market-driven causes of inequality and deprivation. As the Supreme Court of Canada noted in *Vriend v Alberta*: “Even if the discrimination is experienced at the hands of private individuals, it is the state that denies

¹² The present Protocol will enter into force three months after the tenth ratification, see *OP-ICESCR*, *supra* note 11 at art 18(1). As of July 31, 2011, 36 states had signed the *Optional Protocol*, indicating an intention to ratify it, and three states had formally ratified it: Spain, Ecuador and Mongolia. For updates on signatures and ratifications, see United Nations Treaty Collection, online:

<http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en>. The current Government of Canada has indicated that it does not intend to ratify the *Optional Protocol*, see 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 paras 9, 11 [Response to UPR].

¹³ Louise Arbour, “Human Rights Made Whole” *Project Syndicate* (26 June 2008), online: Project Syndicate <<http://www.project-syndicate.org/commentary/arbours1/English>>.

protection from that discrimination.”¹⁴ The new conception of social rights claims 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 and the actions of a range of actors that were previously beyond the lens of human rights, squarely into an expanded human rights framework.

Under the new rights-based approach, the experience of poverty and homelessness is no longer considered solely in terms of economic deprivation. These conditions are now understood as deprivations of rights and capacity – symptomatic of failures not only of social and economic programs and policies, but also of legal and administrative regimes, justice systems, human rights institutions and other participatory mechanisms through which governments can be held accountable to human rights and citizens can claim their right to dignity to realize their full potential. 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 particular programs but rather by structural “entitlement system failures” that arise in large part from a devaluing of the basic rights claims of the most vulnerable members of society.¹⁵ Whether in an impoverished country or in an affluent country like Canada, hunger or homelessness occurs when certain groups are left without access to food or housing because the existing system of land and property rights, housing laws, social programs, wage protections and regulations of private actors, leaving them without the means to produce or purchase adequate food or to secure adequate housing.

From this perspective, solving hunger and homelessness is no longer seen simply as a matter of ensuring that governments or charitable agencies provide the poor with housing and food. The entitlement system that has denied certain groups dignity and security must be transformed into one which gives priority to the rights of those groups. Sen’s analysis exposes poverty as deprivation of capabilities tied, but not reducible to, low-income levels.¹⁶ Eliminating poverty and homelessness requires a re-valuing of the capacities and rights of those living in poverty: empowering them as rights-holders to identify the entitlement system failures that lie behind poverty, hunger and homelessness; challenging systemic barriers to equality that confront

¹⁴ *Vriend v Alberta*, [1998] 1 SCR 493 at para 103, 156 DLR (4th) 385 [*Vriend*]; see generally Martha Jackman, “Giving Real Effect to Equality: *Eldridge v British Columbia (AG)* 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.

¹⁵ 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.

¹⁶ See Amartya Sen, *Inequality Reexamined* (New York: Russell Sage Foundation, 1992); Amartya Sen *Development as Freedom* (New York: Anchor Books, 2000).

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 all levels of governments, courts, administrative tribunals, human rights institutions, program administrators, 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. However, as will be described below, the new social rights framework rests upon a common understanding of key principles and a shared methodology that has emerged within the international community and among diverse civil society actors over the past two decades.

The present research project will review the evolution of this new understanding of the relationship between human rights and anti-poverty and housing strategies; it will consider what the new paradigm of social rights and the re-unified system of human rights in international human rights law means for the design and implementation of these strategies; it will assess the extent to which the new paradigm of social rights can be given domestic effect through constitutional rights in Canada and, finally, it will consider what poverty reduction and housing strategies in Ontario would look like if they were to incorporate this new understanding of rights-based approaches to poverty and homelessness.

This first paper (*Making the Connection*) will examine the evolution of rights-based approaches to poverty and homelessness at the international level; consider the sources, under international law, of substantive and procedural rights that are relevant to poverty reduction and housing strategies in Canada; and review the increasing calls for rights-based approaches in Canada and in Ontario. The second paper, entitled “Strategies to Address Homelessness and Poverty in Ontario: Constitutional Framework” (*Constitutional Framework*), considers the extent to which Canada’s constitutional human rights norms may be interpreted and applied to provide a domestic constitutional framework for the rights-based approaches that are required under international human rights law. And finally, a third paper will consider what a rights-based strategy in Ontario would look like, drawing on both international and domestic sources of human rights.

B. INTERNATIONAL HUMAN RIGHTS AND HOUSING AND ANTI-POVERTY STRATEGIES

i) A ‘Common Understanding’ of new Rights-Based Approaches

With growing attention to socio-economic rights as claimable rights, UN bodies have faced 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.¹⁷ 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.”¹⁸ A rights-based approach, he suggested, could reduce the “impact of ideological changes which can occur when one government replaces another.”¹⁹

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.²⁰ 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.

¹⁷ 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).

¹⁸ Leckie, *supra* note 17 at 95.

¹⁹ *Ibid.*

²⁰ 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>>.

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.²¹

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, UN High Commissioner Mary Robinson asked three experts to prepare draft guidelines and, in the process, to consult with national officials, civil society and international development agencies.²² This resulted in the OHCHR's publication in 2002 of the *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies*.²³ Following consultations on the *Draft Guidelines*, a 'common understanding of a rights-based approach' was developed and *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies [Common Understanding]*²⁴ was 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.²⁵

The *Common Understanding* affirmed that a human rights-based approach involves more than 'good programming practices.'²⁶ It asserted that human rights principles must inform all

²¹ United Nations Population Fund, *The Human Rights-Based Approach*, online: United Nations Population Fund <<http://www.unfpa.org/rights/approaches.htm>>.

²² 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. The three experts who prepared the Guidelines were Paul Hunt, Manfred Nowak and Siddiq Osmani.

²³ *Ibid.*

²⁴ United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (2003). Adopted by the UN Development Group in 2003. [United Nations, *Common Understanding*]

²⁵ *Ibid.*

phases of programming “including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.”²⁷ 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” and supporting “accountability to all stakeholders.”²⁸ 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).²⁹

The OHCHR further elaborated the rights-based approach in its 2004 publication *Human Rights and Poverty Reduction: A Conceptual Framework*³⁰ and in its 2006 publication: *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*

²⁶ *Ibid* at 3.

²⁷ *Ibid* at 2.

²⁸ *Ibid* at 3.

²⁹ *Ibid* at 2.

³⁰ 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*].

(*Guidelines*).³¹ 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.”³² As noted in the introduction to the *Guidelines*, “the adoption of a poverty reduction strategy is not just desirable but obligatory for States which have ratified international human rights instruments.”³³ The *Guidelines* set out 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.³⁴

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. It explains that it “is now widely recognized, [that] effective poverty reduction is not possible without the empowerment of the poor. The human rights approach to poverty reduction is essentially about such empowerment.”³⁵ The United Nations High Commissioner for Human Rights has described 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.

³¹ 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*].

³² *Ibid* at 2.

³³ *Ibid* at 19.

³⁴ *Ibid* at para 16.

³⁵ *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 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.³⁶

The *Guidelines* recommend that poverty reduction strategies include four categories of accountability mechanisms: judicial, quasi-judicial, administrative, and political³⁷ 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.”³⁸ In addition to these more formal mechanisms, the *Guidelines* propose that “innovative and non-formal monitoring” tools should be developed³⁹ and that all monitoring and evaluation mechanisms should be developed “in close collaboration with people living in poverty.”⁴⁰ 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.⁴¹ Effective accountability relies on enhanced links with judicial and quasi-judicial rights claiming, adjudication and enforcement processes, but also relies on 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 puts it:

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 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.⁴²

³⁶ United Nations High Commissioner for Human Rights, *The OHCHR Plan of Action: Protection and Empowerment* (Geneva: OHCHR, 2005) at paras 36-37.

³⁷ OHCHR, *Guidelines*, *supra* note 31 at para 77.

³⁸ *Ibid* at para 40.

³⁹ *Ibid* at para 79.

⁴⁰ *Ibid* at para 79.

⁴¹ *Ibid* at para 75; para 86.

⁴² OHCHR & WHO, *supra* note 2 at 8.

ii) 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.⁴³ 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."⁴⁴ 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."⁴⁵ The *Guidelines* emphasize the importance of disaggregating indicators to "reflect the condition of people living in poverty and of specially disadvantaged groups among them."⁴⁶ In its joint report on health and poverty reduction, the WHO and the OHCHR emphasize that indicators should also measure adherence to human rights standards and principles, including non-discrimination, participation, accountability and transparency.⁴⁷

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.⁴⁸ Kothari emphasized the importance of using 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.⁴⁹ 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

⁴³ OHCHR, *Guidelines*, *supra* note 31 at para 55.

⁴⁴ *Ibid* at para 53.

⁴⁵ *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>; 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).

⁴⁶ OHCHR, *Guidelines*, *supra* note 31 at para 12.

⁴⁷ OHCHR & WHO, *supra* note 2 at 59.

⁴⁸ *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).

⁴⁹ *Ibid*.

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.⁵⁰

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.⁵¹ Hunt agrees with Kothari that indicators should be disaggregated to reveal whether disadvantaged individuals and communities are “suffering from *de facto* discrimination.”⁵² 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 to what extent goals and targets are being met, since indicators will never provide a ‘complete picture’ of how well a certain right is being experienced.⁵³

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 and strategies from debates about how best to eliminate, to debates about how best to define and measure, poverty and homelessness.⁵⁴ 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 pointed out:

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.⁵⁵

⁵⁰ *Ibid* at paras 10-12.

⁵¹ *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).*

⁵² *Ibid* at para 26.

⁵³ *Ibid* at para 31.

⁵⁴ 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>>.

⁵⁵ 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.

Greason further warns: “[t]he 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.”⁵⁶ Salim Jahan similarly notes that there is a need to develop better methodologies for assessing legislation and policy from the standpoint of whether it enables people to claim their rights effectively.⁵⁷ In contrast to earlier approaches to indicators, Jahan argues that a rights-based approach must not only include indicators of progress in relation to standard measures of poverty, but also indicators related to human rights norms, including those related to participatory rights.⁵⁸

Critical to the ‘common understanding’ and to the new focus on monitoring, benchmarks and indicators of progress over time in reducing poverty and homelessness, is the incorporation of international human rights norms into the design, implementation and evaluation of the strategies themselves. These rights must be incorporated not simply as goals to which governments might aspire but as rights that can be claimed and enforced by rights-holders. It is therefore necessary to consider international law sources of both substantive and procedural rights protections for those who are living in poverty or who are denied adequate housing.

C. INTERNATIONAL HUMAN RIGHTS NORMS RELEVANT TO ANTI-POVERTY AND HOUSING STRATEGIES IN CANADA

i) 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 [her] family, including adequate food, clothing and housing.”⁵⁹ 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

⁵⁶ *Ibid.*

⁵⁷ Jahan, *supra* note 17.

⁵⁸ *Ibid.* Important work on incorporating indicators of human rights protections and rights-based participation in assessments of fulfillment of socio-economic rights is being done by the Center on Economic and Social Rights. See Center on Economic and Social Rights, *The OPERA Framework: Assessing compliance with the obligation to fulfill economic, social and cultural rights* (Draft), online:

<http://www.cesr.org/downloads/Draft%20CESR%20Paper_%20the%20OPERA%20framework.pdf>.

⁵⁹ *ICESCR*, *supra* note 3 at art 11.

child's physical, mental, spiritual, moral and social development.”⁶⁰ 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.⁶¹ 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 of persons with disabilities.⁶²

In addition to the articles in various human rights treaties that make explicit reference to the right to housing or to an adequate standard of living, provisions in the *ICCPR* guaranteeing rights such as the right to non-discrimination in article 26 and the right to life in article 6, also place obligations on governments to address poverty and homelessness.⁶³ 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.⁶⁴ The Committee has further noted the effects of homelessness on health and on the right to life in Canada, stating that “positive measures are required by article 6 [the right to life] to address this serious problem.”⁶⁵ In its 2006 review of Canada, the 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.”⁶⁶ An effective strategy to eliminate homelessness is thus a legal obligation not only with respect to the right to adequate housing under the *ICESCR* and of provisions guaranteeing the equal enjoyment of the right to housing and an adequate income in other human rights treaties ratified by Canada but also in relation to right to life and non-discrimination guarantees under the *ICCPR*.

⁶⁰ *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.

⁶¹ *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).

⁶² *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.

⁶³ *ICCPR*, *supra* note 4 at arts 26, 6.

⁶⁴ 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*].

⁶⁵ *Ibid* at para 12.

⁶⁶ 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.

ii) ‘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, recognizing that some rights may be realized over time rather than immediately.⁶⁷ 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 progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”⁶⁸

Where violations of the right to housing or to an adequate standard of living result from a denial of an immediate, minimal entitlement which is within the government’s means to provide, such as to an adequate welfare benefit or access to public housing in a more affluent country, 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 to address broader structural patterns of disadvantage and exclusion which cannot be immediately remedied. Housing and poverty reduction strategies must therefore include not only immediate programmatic entitlements but should also include future-oriented obligations in areas in which immediate fulfillment of rights is not realistic, either because the states’ resources are constrained or because addressing structural causes of homelessness and poverty are not things that can be accomplished immediately.

As will be seen below, given the extent of Canada’s resources in comparison to other states, the CESCR is of the view that immediate entitlements in the Canadian context should include social assistance rates that are set at a level to include the cost of housing, adequate minimum wages and adequate social housing programs. In addition, while a housing strategy may recognize that certain goals are not immediately realizable, and set realistic timetables for realizing those goals, the adoption of a strategy, including the goals and timetables, is itself an immediate obligation. Thus, as outlined below, the absence of national anti-poverty and housing strategies in Canada has been identified by human rights bodies as a critical issue of non-compliance with international human rights norms of immediate effect.

iii) 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 recognized

⁶⁷ *ICESCR*, *supra* note 3 at art 2.

⁶⁸ *Ibid.*

internationally as authoritative jurisprudence on the interpretation and application of the *Covenant*, and are frequently relied upon by domestic courts and human rights institutions for guidance as to what constitutes compliance with the *ICESCR*.

The CESCR first grappled with the issue of progressive realization in clarifying States' reporting requirements, in its *General Comment No. 1*, adopted in 1989.⁶⁹ The Committee emphasized, and has continued to stress in subsequent jurisprudence, that even if the full implementation of *ICESCR* rights cannot be achieved immediately because of resource or related constraints, this does not relieve governments of all immediate obligations.⁷⁰ There is still an overriding obligation to develop "clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant."⁷¹ 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.⁷² This is clearly implied, according to the CESCR, by the obligation in Article 2(1) "to take steps ... by all appropriate means."⁷³

The immediate obligation to develop clear strategies and plans and to monitor 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)*.⁷⁴ 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."⁷⁵ "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 attenuated by resource constraints."⁷⁶ 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."⁷⁷

⁶⁹ 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).

⁷⁰ *Ibid.*

⁷¹ *Ibid* at para 4.

⁷² *Ibid.*

⁷³ *ICESCR*, *supra* note 3 at art 2(1).

⁷⁴ 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*].

⁷⁵ *Ibid* at para 2.

⁷⁶ *Ibid* at para 11.

⁷⁷ *Ibid* at para 6.

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*).⁷⁸ In the Comment, 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 adoption of a national housing strategy."⁷⁹ 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.⁸⁰ Legal remedies must be available to groups facing evictions, inadequate housing conditions, or discrimination in access to housing.⁸¹

Adopted in 1997, *General Comment No. 7* clarified obligations with respect to evictions.⁸² Of particular relevance to Ontario 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."⁸³ 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)."⁸⁴ As the Centre for Equality Rights in Accommodation 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.⁸⁵

⁷⁸ 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*].

⁷⁹ *Ibid* at para 12.

⁸⁰ *Ibid*.

⁸¹ *Ibid* at para 17.

⁸² 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).

⁸³ *Ibid* at para 16.

⁸⁴ United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UNCESCROR, 36th Sess, UN Doc E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, (2006) at para 63 [*Concluding Observations 2006*].

⁸⁵ 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 35-36, 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>>.

The CESCR has also published General Comments relating to the right to adequate food,⁸⁶ the right to social security,⁸⁷ the right to work,⁸⁸ the right to health⁸⁹ and the right to water.⁹⁰ 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, the 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.”⁹¹ 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.”⁹²

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.”⁹³ In *General Comment No. 14*, on the right to health, CESCR outlines State parties’ core obligation to adopt and implement a national health strategies and plans of action based on a “participatory and transparent process.”⁹⁴ National health strategies must include measures of prevention and “right to health indicators and benchmarks, by which progress can be closely monitored.”⁹⁵ Strategies and plans of action must also pay “particular attention to all vulnerable or marginalized groups” and address the social determinants of health.⁹⁶ Similar obligations are enumerated with respect to the development of “comprehensive and integrated strategies and programmes” to implement the right to water.⁹⁷

⁸⁶ 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*].

⁸⁷ 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*].

⁸⁸ 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*].

⁸⁹ 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*].

⁹⁰ 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) [*General Comment 15*].

⁹¹ *Ibid* at para 31.

⁹² *General Comment 12*, *supra* note 86 at paras 4, 21.

⁹³ *General Comment 19*, *supra* note 87 at paras 41, 48, 67.

⁹⁴ *General Comment 14*, *supra* note 89 at para 43(f).

⁹⁵ *Ibid*.

⁹⁶ *Ibid*.

⁹⁷ *General Comment 15*, *supra* note 90 at para 28.

iv) 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 CESCR to apply a “broad margin of discretion” or to require a finding of ‘unreasonableness’ before a finding of a violation could be made.⁹⁸ 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.⁹⁹ 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:

When 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.¹⁰⁰

The specific wording used in this provision of the *Optional Protocol* was taken from a paragraph of the now famous *Grootboom*¹⁰¹ 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.¹⁰² 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*

⁹⁸ 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.

⁹⁹ For descriptions of the debates on the reasonableness standard 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.

¹⁰⁰ *OP-ICESCR*, *supra* note 11.

¹⁰¹ *Government of the Republic of South Africa v Grootboom*, [2000] ZACC 19, 11 BCLR 1169 (available on SAFLII), (S Afr Const Ct).

¹⁰² Porter, “Reasonableness”, *supra* note 99.

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.¹⁰³ In order for strategies directed at the implementation of *Covenant* rights, such as national or provincial housing and poverty strategies, to be deemed compliant with international standards, 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.
- Whether decision-making is transparent and participatory.¹⁰⁴

Beyond the CESCR’s commentary on the 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.”¹⁰⁵

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.¹⁰⁶ States have an immediate duty to ensure both formal and substantive equality

¹⁰³ 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.

¹⁰⁴ CESCR, “Maximum Available Resources”, *supra* note 103.

¹⁰⁵ *General Comment 3*, *supra* note 74.

¹⁰⁶ United Nations Committee on Economic, Social and Cultural Rights, *General Comment 20: Non-discrimination in Economic, Social and Cultural Rights (art 2 para 2)*, UNCESCROR, 42d Sess, UN Doc E/C.12/GC/20, (2009) at

in the implementation of policies.¹⁰⁷ Strategies must specifically address issues of systemic discrimination and the barriers faced by individuals who have suffered historic discrimination or present prejudice.¹⁰⁸ 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 fulfillment 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."¹⁰⁹ The CESCR has insisted that reasonable policies should include "efforts to overcome negative stereotyped images."¹¹⁰ Additionally, policies should rely on effective "coordination between the national ministries, regional and local authorities."¹¹¹ 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.¹¹² Other administrative agencies, as well, may provide effective recourse and remedies for those whose rights are violated. Such remedies must be accessible, affordable, timely and effective.¹¹³

In line with other international human rights jurisprudence, 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."¹¹⁴ 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

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

¹⁰⁷ 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.

¹⁰⁸ *General Comment 20*, *supra* note 106 at para 8.

¹⁰⁹ Ssenyonjo, *supra* note 107 at 976.

¹¹⁰ 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.

¹¹¹ *General Comment 15*, *supra* note 90.

¹¹² 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.

¹¹³ 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) at para 9 [*General Comment 9*].

¹¹⁴ *General Comment 4*, *supra* note 78 at para 12.

process, monitoring procedures and redress procedures.¹¹⁵ 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 sometimes be needed in order to bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others.”¹¹⁶

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.¹¹⁷ 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.¹¹⁸

Substantive elements required of a reasonable policy have sometimes been characterized by ‘Four A’s’:

- Availability (access to relevant services).
- Accessibility (physical and economic accessibility and 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).¹¹⁹

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 and purpose

¹¹⁵ *General Comment 12, supra* note 86 at paras 23, 29.

¹¹⁶ 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.

¹¹⁷ *General Comment 3, supra* note 74 at para 11.

¹¹⁸ Ssenyonjo, *supra* note 107 at 980-981. 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, where the Committee found that the State’s decreased allocation of resources to social sector development combined with increased levels of military spending resulted in a violation of its *Covenant* obligations.; Griffey, *supra* note 99 at 290.

¹¹⁹ 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, supra* note 89 at para 12; or *General Comment 15, supra* note 90 at para 11.

of the *Optional Protocol*.¹²⁰ 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.¹²¹ 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.¹²² 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 progressive realization of the economic, social and cultural rights commensurate with the maximum of available resources, which is also guaranteed to persons with disabilities in the *Convention*.¹²³

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 ‘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

¹²⁰ Griffey, *supra* note 99 at 304.

¹²¹ 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).

¹²² 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 32-33.

¹²³ *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).

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.¹²⁴

v) The Right to Effective Remedies for Rights Violations

As has been emphasized by the UN Office of the High Commissioner on Human Rights (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.¹²⁵

International human rights are not directly enforceable in Canadian courts but there are many procedures through which they can be claimed and through which remedies can be sought in international procedures. The important results of the active engagement of groups affected by homelessness and poverty in Canada with UN human rights treaty bodies; the Universal Periodic Review by the UN Human Rights Council; and missions by UN Special Rapporteurs to Canada, will be described below. Even if governments in Canada were to respect the outcomes of these processes by responding to concerns and recommendations, Canada could not rely solely on these international procedures to oversee its compliance with 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.¹²⁶

¹²⁴ 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].

¹²⁵ OHCHR, *Guidelines*, *supra* note 31 at para 24.

¹²⁶ *General Comment 9*, *supra* note 113.

Ensuring effective remedies in domestic courts is a critical component of compliance with the *ICESCR*, and has become one of the most serious issues of non-compliance with the *Covenant* in Canada. 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.¹²⁷ Both the federal and Ontario governments have taken the position that the right to housing and to an adequate standard of living should not be subject to domestic judicial enforcement under the *Canadian Charter of Rights and Freedoms*¹²⁸ by way of interpretations of rights such as the right to life, security of the person, or equality that have been accepted elsewhere and promoted by international human rights bodies as being consistent with Canada's international human rights obligations.¹²⁹ The fact that Canadian governments have taken this position before domestic courts and urged courts to deny any protection of rights that Canada has recognized by ratifying the *ICESCR* has raised serious concerns from UN human rights treaty monitoring bodies.¹³⁰

In light of the poor track record of Canadian courts in response to socio-economic rights claims, it is particularly important to recognize that rights 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 CESCR recognizes this and has clarified that the enforcement of socio-economic rights need not rely exclusively on courts.¹³¹ Where judicial remedies are not available, alternative, accessible, timely and effective remedies must be available outside of courts.¹³² Human rights commission and other administrative bodies, such as those involved in administering housing programs, tenancy laws, income assistance or social programs may provide important venues through which rights claimants can obtain a hearing and secure effective remedies.¹³³

Anti-poverty and housing strategies have a critical role to play in ensuring access to effective remedies for violations of the right to housing and an adequate standard of living. What

¹²⁷ Martha Jackman, "Constitutional Castaways: Poverty and the McLachlin Court" (2010) 50 Sup Ct L Rev 297.

¹²⁸ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [Charter].

¹²⁹ 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>>.

¹³⁰ *Concluding Observations 2006*, *supra* note 84 at para 11(b). As is explained in *The Constitutional Framework*, although lower courts have frequently gone along with these arguments from governments, it is still possible, under existing jurisprudence of the Supreme Court of Canada, to interpret and apply constitutional protections in line with international human rights norms.

¹³¹ *General Comment 9*, *supra* note 113.

¹³² *Ibid.*

¹³³ *Ibid.*; 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).

is envisioned in a rights-based approach in these strategies is not just a more effective judicial review mechanism that enforces international human rights norms in relation to social and economic rights, or which accords a dominant role to courts in the administration of housing and income assistance programs. Rather, the new approach calls for a more thorough integration of human rights, policy, legislation and program administration at multiple levels. 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, ensuring that rights to housing and to an adequate standard of living are recognized as guiding principles, overarching values and fundamental rights in the adjudication of all entitlements and in the exercise of any discretion.

vi) 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*,¹³⁴ 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.¹³⁵ 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.¹³⁶ 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 thus 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 1996,¹³⁷ amounted to the

¹³⁴ *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).

¹³⁵ *Ibid* at arts 26-27.

¹³⁶ *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40, [2001] 2 SCR 241.

¹³⁷ *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).

abandonment of the requirement that provincial income support programs provide for basic requirements, including food and 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.¹³⁸

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

Covenant 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.¹³⁹

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. Developing improved mechanisms and processes for provincial accountability to international human rights will be a critical element of a potential human rights framework for Ontario's housing and anti-poverty strategies.

¹³⁸ 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) [*Concluding Observations 1998*] at para 19.

¹³⁹ *Concluding Observations 2006*, *supra* note 84 at para 35.

D. RECOMMENDATIONS OF INTERNATIONAL TREATY MONITORING BODIES RELEVANT TO ONTARIO'S HOUSING AND ANTI-POVERTY STRATEGIES

i) Concerns and Recommendations from the CESCR

Further guidance in relation to the issues that need to be addressed in housing and anti-poverty strategies in Ontario 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 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.¹⁴⁰ 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."¹⁴¹ 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 1995 cuts to social assistance rates in Ontario, stating that: "The Committee expresses its grave concern at learning that the Government of Ontario proceeded with its announced 21.6 per cent cuts in social assistance in spite of claims that this would force large numbers of people from their homes."¹⁴² The Committee pointed to the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing.¹⁴³ 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."¹⁴⁴ It further noted that provincial social assistance rates and

¹⁴⁰ 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].

¹⁴¹ *Ibid* at para 12.

¹⁴² *Concluding Observations* 1998, *supra* note 138 at para 27.

¹⁴³ *Ibid* at para 28.

¹⁴⁴ *Ibid* at para 24.

other income assistance measures have clearly not been adequate to cover rental costs of the poor.¹⁴⁵

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.¹⁴⁶ As noted above, the Committee has expressed concern that “provincial governments have urged upon their courts in these cases an interpretation of the *Charter* which would deny any protection of Covenant rights.”¹⁴⁷ 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.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰ Instead of implementing this recommendation, however, a newly elected federal Conservative government cancelled funding to the Court Challenges Program altogether in the fall of 2006.¹⁵¹

¹⁴⁵ *Ibid* at para 25.

¹⁴⁶ *Ibid* at para 51; *Concluding Observations* 1993, *supra* note 140 at para 25.

¹⁴⁷ *Ibid* at para 14.

¹⁴⁸ *Concluding Observations* 2006, *supra* note 84 at paras 39-41.

¹⁴⁹ *Ibid* at paras 13-14.

¹⁵⁰ *Ibid* at paras 42-43.

¹⁵¹ S Laurel Weldon, *When Protest Makes Policy: How Social Movements Represent Disadvantaged Groups* (Ann Arbor: University of Michigan Press, 2011) at 164-165.

The centrepiece of the CESCR's recommendations with respect to poverty and homelessness has been a "strategy for the reduction of homelessness and poverty" that integrates economic, social and cultural rights.¹⁵² 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."¹⁵³ 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."¹⁵⁴ 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."¹⁵⁵

ii) 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 spent time in Ontario and developed specific recommendations in light of what he learned about the province's poverty and housing issues. 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."¹⁵⁶ Reiterating the recommendations of the CESCR, the Special Rapporteur stated that the strategy should include "measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms."¹⁵⁷ He also recommended that federal and provincial governments work in close collaboration and

¹⁵² *Concluding Observations* 1998, *supra* note 138 at para 46. See also *Concluding Observations* 2006, *supra* note 84 at para 60.

¹⁵³ *Ibid* at para 62.

¹⁵⁴ 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*].

¹⁵⁵ *Ibid* at para 13.

¹⁵⁶ 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*].

¹⁵⁷ *Ibid* at para 90.

coordination and “commit stable and long-term funding to a comprehensive national housing strategy.”¹⁵⁸

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.”¹⁵⁹ The Special Rapporteur recommended that current housing legislation be assessed and amended where necessary to meet the standards required by international human rights obligations.¹⁶⁰ The Special Rapporteur was consulted by the Ontario Human Rights Commission on the question of how international human rights law and the right to adequate housing could be applied in the interpretation and application of 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 2009.¹⁶¹ The Special Rapporteur also commended the Commission’s *Right at Home* report in his own mission report, suggesting that government authorities implement the detailed recommendations included in it.¹⁶²

iii) 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.¹⁶³ 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

¹⁵⁸ *Ibid* at para 92.

¹⁵⁹ *Ibid* at para 88.

¹⁶⁰ *Ibid* at paras 98-99.

¹⁶¹ Ontario Human Rights Commission, *Policy on Human Rights and Rental Housing* (Toronto: Queen’s Printer, 2009) [OHRC, *Policy*].

¹⁶² *SR Mission to Canada*, *supra* note 156 at para 93.

¹⁶³ 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 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 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.¹⁶⁴

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.¹⁶⁵ The Briefing Document highlighted poverty and homelessness as 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.¹⁶⁶

¹⁶⁴ *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>.

¹⁶⁵ *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>>.

¹⁶⁶ *Ibid.*

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 68 such recommendations. Poverty and homelessness were frequently mentioned as key areas of concern. Among the recommendations were that Canada develop “a national strategy to eliminate poverty” and “consider taking on board the recommendation of the Special Rapporteur on adequate housing, specifically to extend and enhance the national homelessness programme.”¹⁶⁷ Further to this, 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.”¹⁶⁸ 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.”¹⁶⁹ 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.”¹⁷⁰ 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 international human rights treaty obligations require it to protect rights only through legislation.”¹⁷¹ Canada did, however, commit to “considering options” for improving its monitoring and implementation of international human rights obligations in the context of federalism.¹⁷² 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*.

¹⁶⁷ *UPR* Canada, *supra* note 163 at paras 70, 45.

¹⁶⁸ *Ibid* at para 72.

¹⁶⁹ Response to *UPR*, *supra* note 12 at para 27.

¹⁷⁰ *UPR* Canada, *supra* note 163 at paras 40, 68.

¹⁷¹ Response to *UPR*, *supra* note 12 at para 17.

¹⁷² *Ibid* at para 14.

E. DOMESTIC IMPLEMENTATION OF RIGHTS-BASED HOUSING AND ANTI-POVERTY STRATEGIES

i) 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 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.¹⁷³ Calls by UN human rights bodies for Canadian governments to develop and apply rights-based approaches to poverty and homelessness within Canada were ignored by governments. 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 strategies to address poverty and homelessness.

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 2010.¹⁷⁴ The EU provided a framework for member countries to 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.

¹⁷³ See e.g. OECD, International Development, *The DAC Guidelines: Poverty Reduction* (Paris: OECD, 2001).

¹⁷⁴ 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 25-26 for 2008 statistics, which show the European Union “at-risk-of-poverty rate” remaining stable at 16% between 2005-2008. However, these numbers do not reflect the challenges faced by EU member states during the global financial crisis.

- To promote the active inclusion in society and the labour market of the most vulnerable groups.
- To ensure decent housing for everyone.¹⁷⁵
- 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.¹⁷⁶

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 expectancy.¹⁷⁷ In some cases, EU member countries chose to supplement the common list of goals and indicators to better reflect their localized concerns and issues.¹⁷⁸

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.”¹⁷⁹ 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.¹⁸⁰ The process

¹⁷⁵ While this was defined as a commonly agreed upon goal, common indicators regarding housing were not introduced until 2009. For more information on challenges associated with this goal, 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 87: “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.”

¹⁷⁶ 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>>.

¹⁷⁷ 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).

¹⁷⁸ 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).

¹⁷⁹ 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>>.

¹⁸⁰ 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>.

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.¹⁸¹

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.¹⁸² For example:

- 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.”¹⁸³ The main objective of the *Finnish Government’s Programme to Reduce Long-Term Homelessness, 2008-2011* was “to halve long-term homelessness by 2011.”¹⁸⁴ In a press release date March 23, 2011, the Finnish government claims to have exceeded this goal.¹⁸⁵
- France has adopted the *Homeless and Poorly Housed People National Strategy 2008-2012*.¹⁸⁶ 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.¹⁸⁷

¹⁸¹ *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. See e.g. “Counting the homeless – improving the basis for planning assistance”, online <<http://www.peer-review-social-inclusion.eu/peer-reviews/2009/counting-the-homeless>>, where Austria sought feedback on the topic of “How can the planning basis for the Assistance to the Homeless be improved?”

¹⁸² For an overview of homelessness strategies in Europe, 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>>.

¹⁸³ Finland, *Finnish Government’s Programme to Reduce Long-Term Homelessness 2008 - 2011* (Helsinki: Government of Finland, 2008) at 4.

¹⁸⁴ *Ibid* at 1.

¹⁸⁵ 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>>.

¹⁸⁶ 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.

¹⁸⁷ *Ibid* at 5.

- 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.¹⁸⁸
- 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.¹⁸⁹ By the end of June 2010, the UK government had exceeded this goal with 50,400 households residing in temporary accommodation.¹⁹⁰
- Scotland adopted legislation in 2001, requiring that local councils each prepare a “local housing strategy.”¹⁹¹ Further legislation adopted in 2003¹⁹² 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

¹⁸⁸ 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, 10-13.

¹⁸⁹ United Kingdom, Office of the Deputy Prime Minister, *Sustainable Communities: Settled Homes; Changing Lives* (London: Office of the Deputy Prime Minister, 2005) at 5.

¹⁹⁰ 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. Since July 2010, the number of households seeking housing assistance under the UK’s homelessness legislation has increased between 17 and 23 per cent over the previous quarters. See UK, Department of Communities and Local Government, *Statutory Homelessness Statistics*, online: <<http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/homelessnessstatistics/publicationshomelessness>>. 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*. See 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>. 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. See 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>>.

¹⁹¹ *Housing (Scotland) Act 2001*, ASP 2001, c 10, s 89.

¹⁹² *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.

entitled to a permanent home.”¹⁹³ A 2007 evaluation of Scotland’s homelessness prevention efforts showed positive progress.¹⁹⁴

- 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.¹⁹⁵

The House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities in Canada conducted an analysis of poverty reduction strategies in the United Kingdom and Ireland in 2010.¹⁹⁶ The Committee 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.¹⁹⁷ During the Committee 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.”¹⁹⁸

Similar initiatives have been implemented in countries outside of Europe as well. Australia introduced a 12-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 2020.¹⁹⁹ The United States Interagency Council on Homelessness tabled *Opening Doors*:

¹⁹³ 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.

¹⁹⁴ Hal Pawson, Emma Davidson & Gina Netto, *Evaluation of Homelessness Prevention Activities in Scotland* (Edinburgh: Scottish Executive Social Research, 2007).

¹⁹⁵ 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). 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. 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>>. 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.

¹⁹⁶ 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) (Chair: Candice Hoepfner) [HUMA Committee].

¹⁹⁷ *Ibid* at 89-90.

¹⁹⁸ *Ibid* at 90.

¹⁹⁹ 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). 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

Federal Strategic Plan to Prevent and End Homelessness in 2010.²⁰⁰ 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.²⁰¹ 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.²⁰²

Despite the laudable goals and in some cases modest success of the aforementioned programs, the strategies have lacked 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 are missing. With recent economic downturns, the absence of such mechanisms has been recognized as a critical weakness in existing strategies.²⁰³ The need to incorporate more robust, rights-based approaches into new and existing programs, in line with the principles affirmed at the international level by the OHCHR and other UN bodies, has been widely acknowledged.²⁰⁴

ii) Calls for National Rights-Based Housing and Anti-Poverty Strategies in Canada

Parallel to the development among UN agencies and human rights bodies, a consensus has gradually developed over the last fifteen years in Canada that poverty and homelessness constitute human rights crises requiring the implementation of rights-based strategies by both the federal government and provincial/territorial governments. In the same year that UN development agencies first called for a rights-based approach to poverty elimination internationally, the Chief Commissioner of the Canadian Human Rights Commission, Michelle Falardeau-Ramsay, stated in her introduction to the Commission's 1997 *Annual Report*:

Experience suggests that it is largely those who are most vulnerable in our society by virtue of the various prohibited grounds of discrimination -- for example, women, Aboriginal people or people with disabilities -- who are also more likely to be poor. In the

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.

²⁰⁰ 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).

²⁰¹ *Ibid.*

²⁰² 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.

²⁰³ Centre for Economic and Social Rights, *Human Rights and the Global Economic Crisis* (Madrid: CESCR, 2009) at 7, online: <<http://cesr.org/downloads/CESR-Human%20Rights%20and%20the%20Global%20Economic%20Crisis.pdf>>.

²⁰⁴ 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>>.

case of women, there is in fact a direct link to pay equity, since many of the working poor are women employed in low-wage, undervalued jobs. But even if that were not the case, it is difficult to argue that poverty is not a human rights issue, given the devastating impact it has on people's lives... The international community has recognized for some time that human rights are indivisible, and that economic and social rights cannot be separated from political, legal or equality rights. It is now time to recognize poverty as a human rights issue here at home as well.²⁰⁵

The Commission called for a review of the narrow scope of human rights protections under the *Canadian Human Rights Act*²⁰⁶ (CHRA), asking “whether the Canadian human rights system is based on a definition of ‘human rights’ which is too restrictive.”²⁰⁷

In 2000, the Canadian Human Rights Act Review Panel, chaired by former Supreme Court of Canada Justice Gérard LaForest, toured the country to hear from stakeholders and others about the need for changes to the CHRA. The panel reported that they “heard more about poverty than any other single issue.”²⁰⁸ Virtually all human rights organizations appearing before the panel recommended that the right to an adequate standard of living, to adequate housing, and other social and economic rights receive stronger and more explicit human rights protection.²⁰⁹

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

²⁰⁵ Canadian Human Rights Commission, *Annual Report 1997*, (Ottawa: Public Works and Government Services, 1998) at 2 [CHRC, *Annual Report*].

²⁰⁶ *Canadian Human Rights Act*, RSC 1985, c H-6.

²⁰⁷ CHRC, *Annual Report*, *supra* note 205 at 8.

²⁰⁸ Canadian Human Rights Act Review Panel, *Promoting Equality: A New Vision* (Ottawa: Department of Justice, 2000) at 114 [CHRA Review Panel].

²⁰⁹ Among the organizations supporting the inclusion of social and economic rights were the Charter Committee on Poverty Issues (CCPI), the National Anti-Poverty Organization (NAPO), Equality for Gays and Lesbians Everywhere (EGALE), The African Canadian Legal Clinic, Action travail des femmes, La table féministe de concertation provinciale de l’Ontario, the National Association of Women and the Law (NAWL), the Council of Canadians with Disabilities (CCD), Coalition of Persons with Disabilities (Newfoundland and Labrador) and Independent Living Resource Centre (St. John’s, Newfoundland), Metro Toronto Chinese & Southeast Asian Legal Clinic, Affiliation of Multicultural Societies & Service Agencies of B.C. (AMSSA) and the Canadian Council for Refugees CCR). Submissions to the Canadian Human Rights Act Review Panel, on file with the Panel.

obligations, and the importance of providing access for individuals to hold governments accountable and to claim rights in appropriate courts and tribunals.²¹⁰

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."²¹¹

The Senate Subcommittee called for a national housing and homelessness strategy to complement similar initiatives being launched at the provincial/territorial level.²¹² 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.²¹³ The Subcommittee recommended measures to enhance the ability of people living in poverty to claim their rights, including legal representation in "law reform cases with respect to their human rights."²¹⁴ 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."²¹⁵

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.²¹⁶ 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

²¹⁰ 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*].

²¹¹ *Ibid* at 71.

²¹² *Ibid* at 104.

²¹³ *Ibid* at 69-72.

²¹⁴ *Ibid* at 16.

²¹⁵ *Ibid*.

²¹⁶ HUMA Committee, *supra* note 196.

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.²¹⁷

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 OHCHR 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 approach to poverty reduction is increasingly being recognized internationally and is gradually being implemented.²¹⁸

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.²¹⁹ The Committee's Report cited the submission from Karri Munn-Venn, of Citizens for Public Justice that:

Human rights are founded on the basis of dignity. Poverty is a condition that violates these rights as laid out in the Universal Declaration of Human Rights and in the international human rights conventions. Poverty impedes people's access to the basic resources necessary for well-being, including adequate and sufficient food and clothing as well as safe and appropriate housing. Poverty is also an important social determinant of health.²²⁰

Greg deGroot-Maggetti, of the Mennonite Central Committee Canada, was also cited in the Committee's Report:

Canada's poverty reduction strategy needs to be integrally linked to the international human rights commitments that Canada has made. These international human rights commitments, particularly with respect to economic, social, and cultural rights, should provide the framework for developing and implementing a pan-Canadian poverty reduction strategy.²²¹

The HUMA 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

²¹⁷ *Ibid* at 2.

²¹⁸ *Ibid* at 92 citing OHCHR, *Conceptual*, *supra* note 30 at iii.

²¹⁹ HUMA Committee, *supra* note 196 at 53.

²²⁰ *Ibid* at 93.

²²¹ *Ibid* at 95.

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.”²²² The Committee noted specific concerns about poverty and inadequate housing in Aboriginal communities, reporting that witnesses made it clear that “the Government of Canada should also be compelled to act from a human rights perspective” when addressing Aboriginal poverty.²²³ 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.”²²⁴ 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.”²²⁵

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 governments and organizations, the public and private sector, and people living in poverty, as needed, to ensure an improvement in lives of impoverished people.²²⁶

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.²²⁷

²²² *Ibid* at 93.

²²³ *Ibid* at 163.

²²⁴ *Ibid* at 164.

²²⁵ *Ibid* at 134.

²²⁶ *Ibid* at 96.

²²⁷ *Ibid* at 102.

An important initiative to incorporate international human rights within federal legislation along the lines suggested by the HUMA Committee was found in Bill C-304, *An Act to ensure secure, adequate, accessible and affordable housing for Canadians*.²²⁸ The Bill, as amended, was referred to the House of Commons for a third reading in January, 2011 but did not come to a vote before the dissolution of Parliament when the spring 2011 federal election was called. The Bill had been 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.²²⁹ As a result of submissions from stakeholder groups, it was substantially amended after second reading, to include a more robust human rights framework, in line with recommendations from UN treaty bodies. It was reintroduced after the spring 2011 federal election as Bill C-400.²³⁰

The amendments made 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.”²³¹ 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.

²²⁸ 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].

²²⁹ 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>>.

²³⁰ Bill C-400, *An Act to ensure secure, adequate, accessible and affordable housing for Canadians*, 1st Sess, 42st Parl, 2012 (First Reading February 16, 2012) [Bill C-400].

²³¹ Bill C-304, *supra* note 228, s 3(1).

- A provision recognizing Quebec's unique commitment to the rights in the *ICESCR*.²³²

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.”²³³ With a new majority Conservative government in power, following the spring 2011 election, the support of at least some Government MPs would be required in order for the reintroduced housing strategy Bill (Bill C-400) to be adopted. Whether or not this occurs, the extent of support the Bill 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.

iii) Provincial Initiatives in Canada

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,²³⁴ Newfoundland and Labrador,²³⁵ Nova Scotia,²³⁶ Manitoba²³⁷ and

²³² *Ibid*, 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, referring to Quebec as a “party to the *International Covenant on Economic, Social and Cultural Rights*”. The error was corrected in the Bill when it was reintroduced in the subsequent Parliament. In Bill C-400, *supra* note 230, the Quebec provision is properly translated as: “Quebec may, having ratified the *International Covenant on Economic, Social and Cultural Rights*, use the benefits of this Act with respect to its own choices, its own programs and its own approach related to housing on its territory. 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 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.” (for full-text see: <http://www.socialrightscura.ca/documents/Quebec%20Order%20in%20Council.pdf>).

²³³ 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) (Chair: Scott Reid) at 16 [House of Commons, *Universal*].

²³⁴ Ontario, Minister of Children and Youth Services, *Breaking the Cycle: Ontario’s Poverty Reduction Strategy* (Toronto: Queens Printer, 2008), online: <<http://www.children.gov.on.ca/htdocs/English/breakingthecycle/index.aspx>>.

New Brunswick.²³⁸ The Government of the Yukon has committed itself to developing a “Social Inclusion and Poverty Reduction Strategy for the Yukon.”²³⁹ The Legislature of the Northwest Territories has passed a unanimous motion calling for an anti-poverty strategy.²⁴⁰ The Government of Prince Edward Island has released a discussion paper outlining options for a provincial anti-poverty strategy,²⁴¹ while advocacy groups in British Columbia, Alberta and Saskatchewan have all called for the creation and implementation of poverty reduction plans.²⁴²

As Lucie Lamarche has documented, Quebec’s anti-poverty strategy was significantly influenced by international and European initiatives.²⁴³ 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, 2002.²⁴⁴ 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*”²⁴⁵ and part of an international movement linking the fight against poverty and social

²³⁵ Newfoundland and Labrador, Minister of Human Resources, Labour and Employment, *Empowering People, Engaging Community, Enabling Success, First Progress Report on the Government of Newfoundland and Labrador’s Poverty Reduction Strategy* (2009), online:

<<http://www.aes.gov.nl.ca/publications/poverty/PRSPProgressReport.pdf>>.

²³⁶ Nova Scotia, *Preventing Poverty: Promoting prosperity. Poverty Reduction Strategy* (Halifax: Province of Nova Scotia, 2009), online: <http://www.gov.ns.ca/coms/specials/poverty/documents/poverty_report_2009.pdf>.

²³⁷ Manitoba, *All Aboard: Manitoba’s Poverty Reduction Strategy* (2009), online:

<<http://www.gov.mb.ca/fs/allaboard>>.

²³⁸ New Brunswick, *Overcoming Poverty Together: The New Brunswick Economic and Social Inclusion Plan* (2008), online: <<http://www2.gnb.ca/content/dam/gnb/Departments/esic/pdf/Plan-e.pdf>>.

²³⁹ Yukon, Office of Social Inclusion, Department of Health and Social Services, *Dimensions of Social Inclusion and Exclusion In Yukon, 2010* (2010) at 1, online:

<http://www.hss.gov.yk.ca/pdf/2010_social_inclusion_exclusion_report.pdf>.

²⁴⁰ The Honourable Sandy Lee, Minister Of Health And Social Services, Statement on Supplementary Health Benefits (March 24, 2010), online: <[http://www.assembly.gov.nt.ca/_live/documents/content/10-03-23MS16-16\(5\).pdf](http://www.assembly.gov.nt.ca/_live/documents/content/10-03-23MS16-16(5).pdf)>.

²⁴¹ Prince Edward Island, Community Services, Seniors and Labour, *Preventing and Reducing Poverty in Prince Edward Island: A Strategy for Engagement* (2011), online:

<http://www.gov.pe.ca/photos/original/cssl_povertyred.pdf>.

²⁴² See Poverty Free Saskatchewan <<http://www.povertyfreesask.ca>>; Action to End Poverty in Alberta

<<http://www.actiontoendpovertyinalberta.org>>; BC Poverty Reduction Coalition

<<http://bcpovertyreduction.ca>>. BC NDP MLA Shane Simpson recently introduced a members’ bill: Bill M 216, *Poverty Reduction Act*, 2011, 3d Sess, 39th Parl, BC, 2011 (first reading 2 June 2011).

²⁴³ Lucie Lamarche, “The ‘Made in Québec’ Act to Combat Poverty and Social Exclusion: Exploring the Complex Relationship between Poverty and Human Rights” in Margot Young et al, eds, *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver: UBC Press, 2007) 139.

²⁴⁴ 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. For critical analyses of Quebec’s strategy, see Lamarche, *supra* note 243; Lamarche & Greason, *supra* note 54.

²⁴⁵ *Charter of Human Rights and Freedoms*, RSQ c C-12 (*Québec Charter*).

exclusion with the struggle for human rights. Fighting poverty means promoting gender equality, personal development for all, and a better exercise of rights.”²⁴⁶

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.²⁴⁷ 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.”²⁴⁸ As Lamarche notes, the preamble clearly draws from the work of economist Amartya Sen, affirming “the basic elements of the capabilities theory.”²⁴⁹ 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.
- Promoting the involvement of society.
- Ensuring consistent interventions at all levels.²⁵⁰

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 *Québec 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*²⁵¹ 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*.

²⁴⁶ Quebec, *National Strategy*, *supra* note 244 at 12.

²⁴⁷ *An Act to Combat Poverty and Social Exclusion*, *supra* note 244.

²⁴⁸ *Ibid*, s 2.

²⁴⁹ Lamarche, *supra* note 243 at 139.

²⁵⁰ Quebec, *National Strategy*, *supra* note 244.

²⁵¹ *Report of the World Summit for Social Development (including Copenhagen Declaration on Social Development)*, UNGAOR, UN Doc A/CONF.166/9, (1995).

While the references to human rights in the Quebec *Act* lack mechanisms to make a human rights framework effective, all other provincial anti-poverty strategies in Canada lack any human rights framework at all. 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 universal failure to incorporate human rights in any meaningful way. As Vincent Greason has documented, no anti-poverty strategy outside of Quebec's even mentions human rights or the right to adequate housing, and certainly none provides any mechanisms or framework to ensure that those whose rights are infringed have any access to adjudication or remedy.²⁵² Greason links the absence of an effective human rights framework to the lack of any meaningful progress in alleviating poverty or addressing the inadequacy of social assistance rates, noting that the focus on social exclusion and participation without enforceable rights or entitlements in such strategies has often served to mask policies that have exacerbated economic inequality and deprivation.²⁵³

In addition to poverty reduction plans, a number of provinces in Canada have adopted strategies to address housing and homelessness. British Columbia,²⁵⁴ Alberta,²⁵⁵ Saskatchewan,²⁵⁶ Manitoba,²⁵⁷ and most recently, Ontario²⁵⁸ have all implemented housing and homelessness strategies. As with the accompanying anti-poverty strategies, however, none of these housing strategies mentions, let alone protects, the human right to housing. The absence of references to human rights or the right to housing in provincial governments' housing strategies stands in stark contrast to the proposals from provincial and territorial non-governmental organizations, which insist that the right to adequate housing be the central guiding principle in a housing strategy.²⁵⁹

²⁵² Vincent Greason, *Poverty as a Human Rights Violation** (*Except in Governmental Anti-Poverty Strategies) (forthcoming) (on file with the authors).

²⁵³ *Ibid.*

²⁵⁴ British Columbia, Ministry of Housing and Social Development, *Putting Housing First: Progress and Achievements on British Columbia's Provincial Housing Strategy 2006-2008* (2009), online: <<http://www.housingmattersbc.ca/docs/housingmatters.pdf>>.

²⁵⁵ Alberta Secretariat For Action On Homelessness, *A Plan for Alberta: Ending Homelessness in 10 years* (Edmonton: Ministry of Housing and Urban Affairs, 2009), online: <<http://alberta.ca/albertacode/images/AlbertaPlantoEndHomelessness.pdf>>.

²⁵⁶ Saskatchewan Ministry of Social Services, *A Strong Foundation - The Housing Strategy for Saskatchewan 2011-19* (2011), online: <<http://www.socialservices.gov.sk.ca/Housing-Strategy-2011-19.pdf>>.

²⁵⁷ Manitoba Ministry of Family Services and Housing, *HOMEWorks: A housing strategy and policy framework for Manitoba* (April 2007), online: <http://www.gov.mb.ca/housing/pubs/homeworks_booklet.pdf>.

²⁵⁸ Ontario, Ministry of Municipal Affairs and Housing, *Building Foundations: Building Futures: Ontario's Long-Term Affordable Housing Strategy* (Toronto: Queen's Printer, 2010), online: <<http://www.mah.gov.on.ca/AssetFactory.aspx?did=8590>> [Ontario, *Building Foundations*].

²⁵⁹ See e.g. the Newfoundland and Labrador Housing and Homelessness Network *Policy Recommendations: A Housing & Homelessness Framework for Newfoundland & Labrador* (St Johns: Newfoundland Housing and Homelessness Network, 2010), online: <http://www.nlhhn.org/PDF/NLHHN_Framework.pdf>.

iv) Rights-Based Approaches to Poverty and Homelessness in Ontario

Civil society organizations in Ontario have advocated forcefully for rights-based approaches to provincial poverty and housing strategies. During the legislative debates and committee hearings in relation to both Ontario's *Poverty Reduction Act, 2009*²⁶⁰ and its *Strong Communities through Affordable Housing Act, 2011*,²⁶¹ civil society organizations made a number of recommendations for a strengthened human rights framework. These were supported by amendments put forward by opposition members at the committee stage.

Ontario's Standing Committee on Social Policy heard testimony from 24 stakeholder groups in relation to the *Poverty Reduction Act*, many of whom spoke about the need for poverty reduction to be linked to human rights enforcement and accessibility.²⁶² Member organizations of Ontario's 25 in 5 Network for Poverty Reduction, including Ontario Campaign 2000, the Income Security Advocacy Centre, and Voices from the Street, pressed for the inclusion of an additional principle in the legislation, stating that: "[s]trengthening Ontario's human rights laws and the enforcement system is essential to the reduction of poverty."²⁶³ Community Living Ontario called for the addition of a clause that read: "[t]he enhancement of the enforcement of equality rights through the Ontario *Human Rights Code* is required to effectively reduce poverty."²⁶⁴ In its appearance before the Committee, the Registered Nurses' Association of Ontario (RNAO) stated that: "it is essential to make an explicit link with human rights legislation as a mechanism to address discrimination."²⁶⁵ The RNAO also pointed to Ontario's obligations under international human rights law, testifying that a human rights approach to poverty reduction would be consistent with Article 25 of the *UDHR*.²⁶⁶

Showcasing how a human rights approach to poverty reduction would have a significant impact on the lives of those affected by poverty, Michael Creek from Voices from the Street discussed his own experience. He explained that "[w]hen you live in poverty, your dignity, your security and your rights of equality are stripped away." He argued that it is critical for Ontario to adopt a human rights-based approach to poverty and follow through on its "legal obligation to abide by international agreements, covenants and treaties."²⁶⁷ Other witnesses appearing before the Committee also spoke of the need for active participation by rights-holders in the

²⁶⁰ SO 2009, c 10.

²⁶¹ SO 2011, c 6.

²⁶² Ontario, Legislative Assembly, Standing Committee on Social Policy, "Bill 152, Poverty Reduction Act, 2009" in *Official Report of Debates (Hansard)*, No SP-28 (20 April 2009) [Ontario, SCSP, 20 April 2009]; Ontario, Legislative Assembly, Standing Committee on Social Policy, "Bill 152, Poverty Reduction Act, 2009" in *Official Report of Debates (Hansard)*, No SP-29 (21 April 2009) [Ontario, SCSP, 21 April 2009].

²⁶³ Ontario, SCSP, 20 April 2009, *supra* note 262 at 623 (Ontario Campaign 2000); at 631 (Income Security Advocacy Centre); Ontario, SCSP, 21 April 2009, *supra* note 262 at 663 (Voices from the Street).

²⁶⁴ *Ibid* at 659 (Community Living Ontario).

²⁶⁵ *Ibid* at 669 (Registered Nurses' Association of Ontario).

²⁶⁶ *Ibid*.

²⁶⁷ *Ibid* at 663 (Voices from the Street).

implementation and monitoring of the proposed poverty reduction strategy and called for the province to institute an independent review mechanism to ensure that the government is held accountable to its commitments. Jacquie Maund from Ontario Campaign 2000 referred to the EU's approach to poverty reduction where "...independent experts conduct peer review of each country's national action plan for poverty reduction and social inclusion."²⁶⁸ The Association of Ontario Health Centres and Voices from the Street both emphasized the importance of stakeholder groups and those with a 'lived experience' having the opportunity to take part in the review process and in measuring the effectiveness of the government's actions.²⁶⁹

During the Committee's debates on proposed amendments, NDP MPP Michael Prue moved that the proposed *Poverty Reduction Act* be amended to include the commitment to improved promotion and enforcement of human rights advocated for by NGO's.²⁷⁰ MPP Prue went on to explain that "in order for poverty to be attacked successfully by the government, the enforcement of the system of human rights needs to be augmented to ensure that they go out and make sure that groups that are at risk, both of abuse and of poverty, are protected."²⁷¹ However, MPP Prue's motion was defeated. Liberal MPP Maria Van Bommel defended the government's rejection of the amendment, stating that "in terms of the human rights laws and act...matters that pertain to the code should stay within the code and not necessarily be addressed through this bill."²⁷² During committee hearings MPP Prue also proposed a motion that an independent review panel be appointed to assess the poverty reduction strategy's effectiveness and to identify areas for improvement.²⁷³ This motion was also defeated.²⁷⁴

Proposals were also put forward to strengthen the human rights framework in Ontario's *Long-Term Affordable Housing Strategy*.²⁷⁵ Bill 140, the *Strong Communities through Affordable Housing Act, 2011*,²⁷⁶ 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 30 community stakeholders regarding the *Act*.²⁷⁷ Submissions from the Centre for Equality Rights in Accommodation

²⁶⁸ Ontario, SCSP, 20 April 2009, *supra* note 262 at 623 (Ontario Campaign 2000).

²⁶⁹ *Ibid* at 627 (Association of Ontario Health Centres); Ontario, SCSP, 21 April 2009, *supra* note 262 at 663 (Voices from the Street).

²⁷⁰ Ontario, Legislative Assembly, Standing Committee on Social Policy, "Bill 152, Poverty Reduction Act, 2009" in *Official Report of Debates (Hansard)*, No SP-30 (27 April 2009) at 678 (Michael Prue) [Ontario, SCSP, 27 April 2009].

²⁷¹ *Ibid*.

²⁷² *Ibid* at 678 (Maria Van Bommel).

²⁷³ *Ibid* at 685 (Michael Prue).

²⁷⁴ *Ibid* at 686 (Maria Van Bommel).

²⁷⁵ Ontario, *Building Foundations*, *supra* note 258.

²⁷⁶ *Strong Communities through Affordable Housing Act*, *supra* note 261.

²⁷⁷ 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

(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.²⁷⁸ 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 Ms. 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;
- Include accountability mechanisms, independent monitoring and an individual complaints mechanism; and
- Be based in human rights law, including the international right to adequate housing.²⁷⁹

NDP MPP Cheri DiNovo 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.²⁸⁰

Subsequent to his mission and mandate as Special Rapporteur, Miloon Kothari 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

Communities through Affordable Housing Act, 2011" in *Official Report of Debates (Hansard)*, No JP-9 (31 March 2011) [Ontario, SCJP, 31 March 2011].

²⁷⁸ *Ibid* at 162 (Registered Nurses' Association of Ontario); at 166-169 (Social Rights Advocacy Centre); at 198 (Federation of Metro Tenants' Associations).

²⁷⁹ Ontario, SCJP, 24 March 2011, *supra* note 277 at 164 (Centre for Equality Rights in Accommodation).

²⁸⁰ 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].

effective housing strategy as recommended by the CESCR and in his Mission Report.²⁸¹ He pointed out that the strategy and legislation made no reference to the right to adequate housing; had 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. Mr. Kothari urged the Minister to consider the amendments tabled by MPP Cheri DiNovo to bring the legislation into conformity with these recommendations.²⁸² MPP DiNovo made extensive reference to Mr. Kothari's letter during the clause-by-clause debate on the Bill 140. However, all of the proposed amendments were defeated.²⁸³

F. 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.²⁸⁴

Since that time, Canadian NGOs have shown a unique commitment to making the international treaty monitoring processes work more effectively through enhanced engagements by those whose rights are at stake. 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.²⁸⁵ These NGO recommendations have been taken up by House of Commons and Senate committees but have, so far, met with no response from the

²⁸¹ Letter from Miloon Kothari to Honourable Rick Bartolucci, Minister of Municipal Affairs and Housing (6 April 2011), online: < <http://www.socialrights.ca/docs/bill%20140/Kothari%20letter%20to%20Minister.pdf>>.

²⁸² *Ibid.*

²⁸³ Ontario, SCJP, 7 April 2011, *supra* note 280.

²⁸⁴ 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.

²⁸⁵ Shelagh Day, "Minding the Gap: Human Rights Commitments and Compliance" in Margot Young et al, eds, *Poverty: Rights, Social Citizenship, and Legal Activism* (Vancouver: UBC Press, 2007) 355; 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.

federal government.²⁸⁶ 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:

What 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.²⁸⁷

Rights-based anti-poverty and housing strategies, both at the provincial and federal levels, are a clear obligation under international human right law and also a critical means for ensuring better implementation of Canada's international human rights obligations. It is evident from the Canadian experience, as in other developed countries, that the development of adequate rights-based approaches to poverty and homelessness remains a work in progress. Civil society organizations and stakeholder groups have made international human rights a central guiding principle in their recommendations for anti-poverty and housing strategies in Canada. Although their proposals have been widely endorsed by experts and, more recently, by several parliamentary committees, governments have not adopted them. A number of provinces have initiated housing and poverty reduction strategies, but none has incorporated a rights-based approach. Where rights-based strategies with accompanying legislation have been proposed, as in Bill C-400 currently before the Parliament of Canada or in amendments proposed to Ontario's poverty reduction and affordable housing legislation, these have not yet been accepted by governments.

Until human rights, including the right to adequate housing and an adequate standard of living, are incorporated into housing and anti-poverty strategies as claimable rights, such strategies will remain, at best, governmental commitments to improved programs. Such commitments may at times be valuable. At other times, they may constitute false promises, empty rhetoric or even serve as a means to disguise or distract from inadequate social programs or budgetary allocations. Without doubt, stronger governmental commitments to eliminate poverty and homelessness through improved programs are critical to any housing and anti-poverty strategy. However, addressing a fundamental human rights crisis must also include human rights as part of the solution, and enlist the critical knowledge base and capacity of rights-holders to identify systemic problems and devise solutions. Revaluing the rights of those who have been affected by

²⁸⁶ 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*, *supra* note 233.

²⁸⁷ *Ibid* at 11.

the programmatic failures in the area of housing and income security in Canada remains a critical aspect of any strategic solution.

Provincial/territorial accountability is also critical to rights such as the right to adequate housing and the right to an adequate standard of living. Recalcitrance on the part of the present federal government should not prevent the provinces, including Ontario, from implementing their own mechanisms, procedures, and strategies for ensuring meaningful accountability to and implementation of international human rights. Housing and anti-poverty strategies present an ideal opportunity to develop new forms of accountability through municipal/provincial joint strategies, with clear goals and timetables for eliminating poverty and homelessness, and providing for effective monitoring, complaints procedures, hearings and remedies. Institutions such as the Ontario Human Rights Commission, the Law Commission of Ontario, and the Ontario Ombudsman, could play important roles in making international human rights norms meaningful and relevant to rights-holders in Ontario.

There is a serious danger that, with financial restraint becoming the dominant theme of social policy in Canada, governmental commitments to housing and anti-poverty strategic goals will be ignored. It is precisely at such times that a stronger rights-based approach is required, particularly to protect the most marginalized groups in society. As François Saillant from the Front d'action populaire en réaménagement urbain stated before the HUMA Committee:

It 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 a standard of adequate 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 [Front d'action populaire en réaménagement urbain] 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.²⁸⁸

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."²⁸⁹ It is time that governments in Canada responded to the chorus of recommendations, from the UN to

²⁸⁸ HUMA Committee, *supra* note 196 at 93.

²⁸⁹ Louise Arbour & Fannie Lafontaine, "Beyond Self-Congratulations: The *Charter* at 25 in an International Perspective" (2007) 45:2 Osgoode Hall LJ 239 at 257.

community organizations and grassroots movements in Canada, to take Canada's international human rights obligations seriously, and incorporate them into housing and anti-poverty strategies. Rights-based strategies for the elimination of poverty and homelessness in Ontario and other provinces and territories may serve as the next critical frontier through which to reclaim human rights that have been too long ignored by governments in Canada.²⁹⁰

²⁹⁰ As noted in the introduction, the subsequent paper will consider in more detail what a rights-based housing and anti-poverty strategy in Ontario 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.