



Neha



International Law and the Human Right to Adequate Housing for Women, Two-Spirit, Trans, and Gender Diverse People

The Neha Review Panel

Aussi disponible en français sous le titre : *Le droit international et le droit à un logement suffisant pour les femmes, les personnes bispirituelles, transgenres et issues de la diversité de genre.*

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This is one of [three reports](#) published by the Neha review panel. Others include:

- A Final report: *“We are human. We deserve a place to live. It’s that simple”*: The final report and recommendations of the Neha review panel.
- A What We Heard Report: *“A place where we can breathe, heal, and belong”*: What women, Two Spirit, Trans, and gender-diverse people of all origins told the Neha Review Panel about their right to safe, adequate, and affordable housing.

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INTRODUCTION

The human right to adequate housing is well-established under international law, and dates back to the 1948 Universal Declaration of Human Rights.¹ The right has been described as being of “central importance for the enjoyment of all economic, social and cultural rights”.² The right to adequate housing is principally affirmed by the *International Covenant on Economic, Social and Cultural Rights* of 1966 (the “*ICESCR*”), though other international human rights treaties and declarations also inform the existence and scope of the right.

This is one of three reports published as Neha completes its mandate³. This paper, prepared for the Neha review panel, considers the right to adequate housing by (1) providing a substantive overview of the scope of the right to adequate housing under international law; (2) examining the domestic application of the right in Canada; and (3) reviewing the concerns raised by international human rights bodies over the violation of this right in Canada.

PART 1: THE RIGHT TO ADEQUATE HOUSING UNDER INTERNATIONAL LAW

a) The right to housing is principally affirmed by the International Covenant on Economic, Social and Cultural Rights

The *ICESCR* is “widely considered the central instrument for the protection of the right to adequate housing”.⁴ Article 11(1) of the *ICESCR* expressly affirms the right to housing as a component of the right to an adequate standard of living:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.⁵

¹ Office of the United Nations High Commissioner for Human Rights and UN Habitat, *The Right to Adequate Housing*, Fact Sheet No. 21 (Rev. 1), [online](#) [OHCHR Fact Sheet on Right to Adequate Housing] at p. 1.

² OHCHR General Comment No. 4 at para. 1.

³ National Housing Council. (2025). “We’re human beings. We deserve a place to live. It’s that simple.”: The final report and recommendations of the Neha review panel. & National Housing Council. (2025). A place where we can breathe, heal, and belong. The Neha Review Panel What We Heard.

⁴ International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966 by General Assembly Resolution 2200A (XXI), [online](#) [“*ICESCR*”]; see also, OHCHR Fact Sheet on Right to Adequate Housing at pp. 1, 11.

⁵ *ICESCR* at art. 11(1); see also, Office of the High Commissioner for Human Rights, CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant), Adopted at the Sixth Session of the Committee on Economic, Social, and Cultural Rights, 13 December 1991, [online](#) [“OHCHR General Comment No. 4”], at para. 1; OHCHR Fact Sheet on Right to Adequate Housing at p. 10.

i. The right to adequate housing is universal and non-discriminatory

The right to adequate housing is universal and non-discriminatory.⁶ Enjoyment of the right must “not be subject to any form of discrimination”.⁷ It applies to everyone,⁸ and all persons are entitled to adequate housing regardless of their personal characteristics such as age, economic status, or political or religious affiliations.⁹ Importantly, the right to adequate housing captures both owners and non-owners of property.¹⁰

Under the *ICESCR*, gender and racial equity underpin the right to housing.¹¹ States are expected to undertake to (i) guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind, including race, colour, sex”,¹² and (ii) ensure the “equal right of men and women to the enjoyment of all economic, social and cultural rights”.¹³ Critically, international law affirms that these rights capture 2SLGBTQQIA+ persons. The Committee on Economic, Social and Cultural Rights recognizes that the right to non-discrimination captures persons who are gender diverse and queer. For example, the General Comment on the Right to Sexual and Reproductive Health affirms the right to non-discrimination for 2SLGBTQQIA+ persons under the *ICESCR*:

Non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. Criminalization of sex between consenting adults of the same gender or the expression of one’s gender identity is a clear violation of human rights. Likewise, regulations requiring that lesbian, gay, bisexual transgender and intersex persons be treated as mental or psychiatric patients, or requiring that they be “cured” by so-called “treatment”, are a clear violation of their right to sexual and reproductive health. State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health.¹⁴

⁶ OHCHR General Comment No. 4 at para. 9; see also, UN Habitat and United Nations Office of the High Commissioner for Human Rights, “Urban Indigenous Peoples and Migration: A Review of Policies, Programmes and Practices”, United Nations Housing Rights Programme Report No. 8, 2010 [**“UN Habitat Review of Indigenous Peoples and Migration Report”**] at p. 33; OHCHR Fact Sheet on Right to Adequate Housing at p. 3.

⁷ See *ICESCR* at art. 2(2); OHCHR General Comment No. 4 at para. 6.

⁸ OHCHR General Comment No. 4 at para. 6.

⁹ OHCHR General Comment No. 4 at para. 6.

¹⁰ OHCHR Fact Sheet on Right to Adequate Housing at pp. 7-8.

¹¹ OHCHR Fact Sheet on Right to Adequate Housing at p. 10.

¹² *ICESCR* at art. 2(2). These are non-exhaustive grounds, see: OHCHR Fact Sheet on Right to Adequate Housing at p. 10.

¹³ *ICESCR* at art. 3.

¹⁴ Office of the High Commissioner for Human Rights, CESCR General Comment No. 22 on the Right to Sexual and Reproductive Health (article 12 of the *ICESCR*), 2 May 2016, [online](#), at para. 23.

There are additional requirements imposed by the *ICESCR*, including that States are to ensure that “appropriate measures are taken to ensure that no form of discrimination is involved” in evictions.¹⁵

Ultimately, the Committee on Economic, Social and Cultural Rights is mandated to provide oversight of the *ICESCR*. The Committee has repeatedly underscored that the implementation of article 11 of the *ICESCR* requires that “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so”.¹⁶

ii. The right to adequate housing must be broadly interpreted

The Committee further instructs that the right to adequate housing is not to be interpreted in a “narrow or restrictive sense”, such as meaning “merely having a roof over one’s head”.¹⁷ Instead, the right is much broader, and encompasses the right “to live somewhere in security, peace and dignity”.¹⁸ These principles must inform the scope of the right to housing. The Committee’s interpretation of the scope of the right to adequate housing is set out in greater detail in section (e) below.

b) The right to adequate housing is further informed and reinforced by other international treaties

Several other international human rights treaties reinforce the right to adequate housing. Critically, this includes the *Convention on the Elimination of All Forms of Discrimination Against Women*, which provides:

State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development, and in particular, shall ensure to such women the right.

...

¹⁵ *ICESCR* at arts. 2(2), 3; OHCHR General Comment No. 7 at para. 10.

¹⁶ Office of the High Commissioner for Human Rights, CESCR General Comment No. 16: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, 11 August 2005, [online](#) [**“OHCHR General Comment No. 16”**] at para. 4. para. 28.

¹⁷ OHCHR General Comment No. 4 at para. 7; OHCHR Fact Sheet on Right to Adequate Housing at p. 3.

¹⁸ OHCHR General Comment No. 4 at para. 7; OHCHR Fact Sheet on Right to Adequate Housing at p. 3. The General Comment explains that this is grounded in (1) the *ICESCR* prescribing that rights are about “the inherent dignity of the human person”, meaning that the right should be interpreted alongside other considerations, “most importantly that the right to housing should be ensured to all persons irrespective of income or access to resources”; and (2) art. 11(1) must be interpreted as adequate housing, meaning that it captures adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost”.

To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.¹⁹

The *Convention on the Rights of the Child* stipulates protections over housing within the context of the right to an adequate standard of living:

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.²⁰

(1) State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; (2) parents or others responsible for a child have the primary responsibility to secure, within their abilities and financial capacities the conditions of living necessary for the child's development, (3) State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.²¹

Finally, the *Convention on the Rights of Persons with Disabilities* requires States to adopt measures to ensure that persons with disabilities have access to "facilities and services open or provided to the public, both in urban and rural areas" particularly to identify and eliminate barriers to accessibility, including in relation to housing.²² Additionally, it requires that States "recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability" and take steps to safeguard and promote the right by ensuring "access by persons with disabilities to public housing programmes".²³

Canada has ratified each of these three international human rights treaties.²⁴ Additional requirements specific to Indigenous Peoples are affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples*, and detailed below.

¹⁹ *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted 18 December 1979 by United Nations General Assembly Resolution 34/180, [online](#) [***Convention on the Elimination of All Forms of Discrimination Against Women***] at art. 14(2)(h). The *Convention on the Elimination of All Forms of Discrimination Against Women* also provides for equality in property: see art. 15(2).

²⁰ *Convention on the Rights of the Child*, adopted 20 November 1989 by United Nations General Assembly resolution 44/25, [online](#) [***Convention on the Rights of the Child***] at art. 16(1).

²¹ *Convention on the Rights of the Child* at art. 27(3).

²² *Convention on the Rights of Persons with Disabilities*, adopted 12 December 2006, by Sixty-first session of the General Assembly by resolution A/RES/61/106, [online](#) [***Convention on the Rights of Persons with Disabilities***] at art. 9(1)(a).

²³ *Convention on the Right of Persons with Disabilities* at art. 28(2)(d).

²⁴ See Government of Canada "Human rights treaties", [online](#).

c) States have obligations to respect, protect, and fulfill the right to adequate housing

State obligations to uphold human rights have three core principles: the duty to respect, protect, and fulfill. Each of these principles are informed by States' responsibility to act in non-discriminatory manner.²⁵ These principles have the following meaning in relation to the right to housing:

1. *Respect* – Respect for the right to adequate housing requires States to refrain from interfering directly or indirectly with the enjoyment of the right to adequate housing.²⁶ For example, this includes implementing discriminatory practices towards a particular group of person's access or control over housing, leading to homelessness and housing insecurity.²⁷
2. *Protect* – Protection for the right to adequate housing requires States to “prevent third parties from interfering with the right to adequate housing”.²⁸ For example, this includes States adopting legislation and other measures to ensure third parties are adhering to human rights standards on the right to adequate housing; regulating housing and rental markets in a manner that protects the right to housing; and guaranteeing financial institutions provide finance for housing without discrimination.²⁹
3. *Fulfill* – Fulfillment of the right to adequate housing requires States to “adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing”.³⁰ This includes the requirement that States must adopt a national housing policy or plan that (a) defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups; (b) identifies the resources available to meet these goals; (c) specifies the most cost-effective way of using them; (d) outlines the responsibilities and timeframe for the implementation of necessary measures; and (e) monitors results and ensures adequate remedies for violations.³¹

Under this obligation, States are also required to advance implementation of the right. This includes progressively addressing and preventing homelessness, and ensuring adequate housing for persons or groups who are unable to enjoy this right for reasons outside of their control, to the extent permitted by States' available resources.

²⁵ See OHCHR General Comment No. 16 at paras. 17-21.

²⁶ OHCHR Fact Sheet on Right to Adequate Housing at p. 33.

²⁷ OHCHR Fact Sheet on Right to Adequate Housing at p. 33.

²⁸ OHCHR Fact Sheet on Right to Adequate Housing at p. 33.

²⁹ OHCHR Fact Sheet on Right to Adequate Housing at p. 33.

³⁰ OHCHR Fact Sheet on Right to Adequate Housing at p. 33.

³¹ OHCHR Fact Sheet on Right to Adequate Housing at pp. 33-34.

It also includes providing the physical infrastructure required for housing to be considered adequate, by advancing action that supports universal and non-discriminatory access to essential conditions of adequate housing (such as safe drinking water, adequate sanitation, electricity, and other essential services). State subsidies and other measures may be required to advance the fulfillment of the right.³² Ultimately, States are responsible for protecting human rights, including by ensuring that other actors are not infringing the right to adequate housing.³³

It is important to note that the right to adequate housing is not absolute, and the right “does not oblige the Government to construct a nation’s entire housing stock”.³⁴ Nor does the right prohibit development projects which may displace people, since it “imposes conditions and procedural limits” on the manner in which this is allowed.³⁵ Additionally, the right “does not impose immediate obligations on the State”.³⁶

Instead, the right is about “cover[ing] measures that are needed to prevent homelessness, prohibit forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that everyone’s housing is adequate”.³⁷

The Committee has made clear that the fulfillment of the right to adequate housing under article 11(1) of the *ICESCR* requires States to show that it has “taken whatever steps are necessary ... to ascertain the full extent of homelessness and inadequate housing within its jurisdiction”.³⁸ This is required in order to show that proportionate measures are being implemented to realize the right to adequate housing for everyone, in the “shortest possible time in accordance with the maximum of available resources”.³⁹

d) States are required to progressively advance the realization of the right to adequate housing to the maximum of their available resources

State obligations on the right to adequate housing are subject to the principle of progressive realization. The *ICESCR* states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation ... 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.⁴⁰

³² OHCHR Fact Sheet on Right to Adequate Housing at p. 34.

³³ OHCHR Fact Sheet on Right to Adequate Housing at p. 34.

³⁴ OHCHR Fact Sheet on Right to Adequate Housing at p. 6.

³⁵ OHCHR Fact Sheet on Right to Adequate Housing at p. 7.

³⁶ OHCHR Fact Sheet on Right to Adequate Housing at p. 6.

³⁷ OHCHR Fact Sheet on Right to Adequate Housing at p. 6.

³⁸ OHCHR General Comment No. 4 at para. 13.

³⁹ OHCHR General Comment No. 4 at para. 14.

⁴⁰ *ICESCR* at art. 2(1).

The *ICESCR* “acknowledges that States have resource constraints and that it may take time to ensure the right to adequate housing to everyone”.⁴¹ States were not expected to show that the right to adequate housing had been fully realized at the time of ratification of the *ICESCR*.⁴² However, under the *ICESCR*, States are obligated to “take whatever steps are necessary” to achieve the “full realization of the right to adequate housing”.⁴³ In order to achieve this right, States “must make every possible effort, within their available resources, to realize the right to adequate housing and to take steps in that direction without delay”.⁴⁴

Progressive realization of the right to adequate housing includes adopting legislative measures to promote the rights prescribed by the *ICESCR*.⁴⁵ The Committee remarks that such legislation should “provide the greatest possible security of tenure to occupiers of homes and land”, conform to the provisions of the *ICESCR*, detail the circumstances in which evictions may occur, and institute punishment for forced evictions.⁴⁶

Other forms of interventions may also be required by States, including targeted policies, spending priorities, providing direct assistance to the most vulnerable, and temporary special measures to improve the *de facto* realities of women.⁴⁷ In other instances, the government may need to refrain from certain activities that would interfere with or slow the realization of the right to adequate housing.⁴⁸

Importantly, the prohibition of discrimination is not subject to progressive realization, and must be immediately implemented.⁴⁹

e) Seven essential conditions define the scope of the right to adequate housing

Adequacy is a central concept of the right to housing, and connects fulfillment of the right to the relevant “social, economic, cultural, climatic, ecological and other factors”⁵⁰ The Committee has defined seven conditions that must be satisfied for housing to be considered adequate.⁵¹ These conditions are detailed below.

⁴¹ OHCHR Fact Sheet on Right to Adequate Housing at p. 30.

⁴² OHCHR Fact Sheet on Right to Adequate Housing at p. 30.

⁴³ OHCHR General Comment No. 4 at para. 12.

⁴⁴ OHCHR Fact Sheet on Right to Adequate Housing at p. 6.

⁴⁵ Office of the High Commissioner for Human Rights, CESCR General Comment No. 7: The Right to Adequate Housing (Art. 11(1)): Forced Evictions), Sixteenth Session, 20 May 1997, [online](#) [“**OHCHR General Comment No. 7**”] at para. 9.

⁴⁶ OHCHR General Comment No. 7 at para. 9.

⁴⁷ OHCHR Fact Sheet on Right to Adequate Housing at p. 6; OHCHR General Comment No. 4 at para. 11; OHCHR General Comment No. 16 at paras. 36-37.

⁴⁸ OHCHR Fact Sheet on Right to Adequate Housing at p. 6.

⁴⁹ See, e.g., OHCHR Fact Sheet on Right to Adequate Housing at p. 30.

⁵⁰ OHCHR General Comment No. 4 at para. 8.

⁵¹ See OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4; see also, UN Habitat Review of Indigenous Peoples and Migration Report at p. 34.

First, adequate housing requires legal security of tenure, such that all persons should have guarantees of “legal protection against forced eviction, harassment, and other threats”.⁵² States are called to take immediate measures to provide legal security of tenure for those who lack this protection, “in genuine consultation with affected persons or groups”.⁵³ Security of tenure has been described as “the cornerstone of the right to adequate housing”, and can occur in various forms, including “rental accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements”.⁵⁴ Importantly, security of tenure is “not limited to the conferral of formal legal titles”.⁵⁵

Security of tenure includes the prohibition of forced evictions, which occur when there is a “permanent or temporary removal” of a person, family, or community against their will from the homes or land that they occupy “without the provision of, and access to, appropriate forms of legal or other protection”.⁵⁶ The prohibition of forced evictions is further detailed below.

Second, adequate housing requires the availability of services, materials, facilities, and infrastructure. This is about ensuring that “certain facilities essential for health, security, comfort, and nutrition” be provided, including “sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services”.⁵⁷

Third, adequate housing requires affordability, such that the “satisfaction of other basic needs are not threatened or compromised” by the cost of housing.⁵⁸ States are called to take steps to ensure that “the percentage of housing-related costs is ... commensurate with income levels”, and create subsidies to support persons who are unable to obtain affordable housing.⁵⁹ Affordability also requires protection from “unreasonable rent levels or rent increases”.⁶⁰

Fourth, adequate housing requires habitability, where the physical safety of occupants is “guaranteed”, and inhabitants have sufficient “space and protect[ion] from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors”.⁶¹

Fifth, adequate housing requires accessibility to everyone who is entitled to it, accounting for the “specific needs of disadvantaged and marginalized groups”.⁶² This includes disadvantaged

⁵² OHCHR General Comment No. 4 at para. 8(a); OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4.

⁵³ OHCHR General Comment No. 4 at para. 8(a).

⁵⁴ OHCHR Fact Sheet on Right to Adequate Housing at p. 8.

⁵⁵ OHCHR Fact Sheet on Right to Adequate Housing at p. 8.

⁵⁶ OHCHR Fact Sheet on Right to Adequate Housing at p. 4.

⁵⁷ OHCHR General Comment No. 4 at para. 8(b); OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4.

⁵⁸ OHCHR General Comment No. 4 at para. 8(c); see also, OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4.

⁵⁹ OHCHR General Comment No. 4 at para. 8(c).

⁶⁰ OHCHR General Comment No. 4 at para. 8(c).

⁶¹ OHCHR General Comment No. 4 at para. 8(d); OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4. The OHCHR endorses the World Health Organization’s *Health Principles of Housing*, which finds that housing is an environmental factor associated with higher mortality and morbidity rates.

⁶² OHCHR General Comment No. 4 at para. 8(e); OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4.

groups, who “must be accorded full and sustainable access to adequate housing resources”.⁶³ These groups should be prioritized for housing, where their distinctive needs are considered.⁶⁴ States are particularly called to heighten access to land for groups that are “landless or impoverished”.⁶⁵

Sixth, adequate housing requires suitable location, where homes are located in areas that allow for “access to employment options, health-care services, schools, childcare centers and other social facilities” across both urban centers and rural areas.⁶⁶

Seventh, adequate housing requires cultural adequacy, where the construction of homes allow for “the expression of cultural identity and diversity of housing”, while also allowing for access to necessary technology.⁶⁷

f) The right to adequate housing contains prohibitions on forced evictions

Article 17.1 of the *ICESCR* provides the “right not to be forcefully evicted without adequate protection”, which includes the right to be protected against “arbitrary or unlawful interference with one’s home”.⁶⁸ The Committee has defined forced evictions “as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. [emphasis added.]”.⁶⁹ States are required to “refrain from forced evictions” and ensure that the “law is enforced against its agents or third parties who carry out forced evictions”.⁷⁰ The Committee notes, however, that the prohibition on forced evictions does not apply “to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights”.⁷¹

The Committee has endorsed eight procedural protections that distinguish between allowable evictions and prohibited forced evictions, which are: (a) “genuine consultation” with affected persons; (b) reasonable notice to all affected persons before the date scheduled for eviction; (c) information on the proposed eviction, including alternative uses for the property or land, where possible; (d) attendance of government representatives during the eviction, especially where the eviction involves a group of persons; (e) identification of the persons actually implementing the eviction; (f) not carrying out the eviction at night or during bad weather unless consent is given by the affected persons; (g) the provision of legal remedies; and (h) legal aid to affected persons to seek redress.⁷²

⁶³ OHCHR General Comment No. 4 at para. 8(e).

⁶⁴ OHCHR General Comment No. 4 at para. 8(e).

⁶⁵ OHCHR General Comment No. 4 at para. 8(e).

⁶⁶ OHCHR General Comment No. 4 at para. 8(f); OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4.

⁶⁷ OHCHR General Comment No. 4 at para. 8(g); OHCHR Fact Sheet on Right to Adequate Housing at pp. 3-4.

⁶⁸ OHCHR General Comment No. 7 at para. 8.

⁶⁹ OHCHR General Comment No. 7 at para. 3.

⁷⁰ OHCHR General Comment No. 7 at para. 8.

⁷¹ OHCHR General Comment No. 7 at para. 3.

⁷² OHCHR General Comment No. 7 at paras. 11, 14-15.

Critically, evictions should not result in homelessness or vulnerability to other human rights violations. States are required to explore “all feasible alternatives” in consultation with affected persons before any eviction occurs. Where an eviction is instituted, States are to ensure that affected persons are compensated for their personal and real property.⁷³ In situations where affected persons are unable to provide for themselves, States again must take all “appropriate measures”, to the maximum of its available resources, to ensure that adequate alternative housing or resettlement are secured.⁷⁴

International law recognizes that some evictions are justifiable. This may include for continued non-payment of rent or unreasonable damage to a rental property.⁷⁵ Still, any such eviction must comply with the *ICESCR* and international human rights law, and must occur in a manner that is reasonable and proportionate, with the availability of legal resource for affected persons.⁷⁶

g) Everyone has the right to equal enjoyment of the right to housing, regardless of gender

While men and women have the right to equal enjoyment of their economic, social, and cultural rights,⁷⁷ the Committee has emphasized that barriers exist to realizing this in practice.⁷⁸ The Committee calls on States to implement “temporary special measures” to “bring disadvantaged or marginalized persons or groups of persons to the same substantive level as others”.⁷⁹

The Committee conveys that international human rights treaties mandate both *de jure* (formal) equality and *de facto* (substantive) equality. Formal equality is about a law or policy treating all genders in a “neutral manner”. By contrast, substantive equality is about ensuring that “the effects of laws, policies and practices ... do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience”.⁸⁰ Substantive equality requires States to meaningfully consider their laws and policies to ensure that they alleviate gender inequality rather than perpetuate it.⁸¹ The Committee also highlighted that discrimination can be direct (differential treatment based on sex or another characteristic that cannot be justified) and indirect (a law, policy, or program that does not appear discriminatory on its face, but has a discriminatory effect in practice).⁸²

⁷³ OHCHR General Comment No. 7 at para. 13.

⁷⁴ OHCHR General Comment No. 7 at para. 16.

⁷⁵ OHCHR General Comment No. 7 at para. 11.

⁷⁶ OHCHR General Comment No. 7 at paras. 11, 14.

⁷⁷ OHCHR General Comment No. 16 at para. 40.

⁷⁸ OHCHR General Comment No. 16 at para. 4.

⁷⁹ OHCHR General Comment No. 16 at para. 15.

⁸⁰ OHCHR General Comment No. 16 at para. 7.

⁸¹ OHCHR General Comment No. 16 at para. 8.

⁸² OHCHR General Comment No. 16 at paras. 12-13.

The Committee further underscored the consequences of gender discrimination on women accessing housing:

Women are often denied equal enjoyment of their human rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. Many women experience distinct forms of discrimination due to the intersection of sex with such other factors as race ... resulting in compounded disadvantage”.⁸³

This guidance showcases the importance of a gendered-informed framework when working to realize the right to adequate housing.

h) The right to remedy for violations of the right to adequate housing

Remedies are an integral aspect of the right to adequate housing, as remedies serve to ensure that the right is meaningfully enforced and defended. Several international human rights treaties stress the importance of domestic remedies, including article 2.3 of the *ICESCR*, which expressly requires States to ensure that effective remedies are available for persons whose rights are violated.⁸⁴

The General Assembly has issued the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violation of International Humanitarian Law (the “**Basic Principles on the Right to Remedy and Reparation**”).⁸⁵ These principles underscore that effective and prompt reparation is “intended to promote justice by redressing gross violations of international human rights law”.⁸⁶ These reparations should be proportionate to the violation of harm suffered.⁸⁷

Victims should be provided with full and effective reparation, in the forms of *restitution* (restoring the victim to their original situation before the violation occurred), *compensation* (money for any economic damage and for other harms where appropriate, such as physical and mental harm and loss of opportunity), *rehabilitation* (medical and psychological care, legal services, and social services), *satisfaction* (where applicable, such as the cessation of continuing violations), and *guarantees* of non-repetition (where applicable, such as ensuring civilian and military proceedings abide by international standards of due process, fairness and impartiality,

⁸³ OHCHR General Comment No. 16 at para. 5.

⁸⁴ *ICESCR* at art. 2.3; OHCHR General Comment No. 7 at para. 13.

⁸⁵ See United Nations Office of the High Commissioner for Human Rights, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, adopted 16 December 2005, by General Assembly resolution 60/147, [online](#) [“**Basic Principles on the Right to Remedy and Reparation**”].

⁸⁶ Basic Principles on the Right to Remedy and Reparation at art. 15.

⁸⁷ Basic Principles on the Right to Remedy and Reparation at art.15

strengthening the independence of the judiciary, human rights education, and promoting prevention mechanisms).⁸⁸

Parties responsible for human rights violations should provide reparation.⁸⁹ States are further called to establish programs for reparation and assistance to victims where liable parties are unable or unwilling to do so.⁹⁰ States are additionally called to enforce domestic judgments for reparations against liable parties, to enforce foreign judgments, and ensure that effective mechanisms for enforcement are available under domestic law.⁹¹

iii. Specific considerations for upholding the human rights of Indigenous Peoples

The *United Nations Declaration on the Rights of Indigenous Peoples* (the “**UNDRIP**”),⁹² is the most comprehensive and authoritative international human rights instrument specific to the rights of Indigenous Peoples. The *UNDRIP* reinforces the right to housing, and provides further guidance on the interpretation and application of the right as it relates to Indigenous Peoples.

The *UNDRIP* affirms the right to housing in article 21(1):

Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, the areas of ... housing ... and social security.

Article 21(2) of the *UNDRIP* further elaborates on this right, and instructs States to adopt proactive measures to improve the social and economic conditions across the diversity of Indigenous Peoples:

States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

The scope of the right to housing under the *UNDRIP* is informed by its other provisions. This includes culturally appropriate housing, grounded in the rights to not be subjected to forced assimilation or destruction of their culture,⁹³ practice and revitalize cultural traditions and customs,⁹⁴ and practice and teach spiritual and religious traditions, customs, and ceremonies.⁹⁵ It is also reinforced by the right to “maintain and strengthen” the “distinctive spiritual

⁸⁸ Basic Principles on the Right to Remedy and Reparation at art. 18. For more on the scope of these remedies, see also, arts. 19-23.

⁸⁹ Basic Principles on the Right to Remedy and Reparation at art. 15.

⁹⁰ Basic Principles on the Right to Remedy and Reparation at art. 16.

⁹¹ Basic Principles on the Right to Remedy and Reparation at art. 17.

⁹² United Nations Declaration on the Rights of Indigenous Peoples, adopted 13 September 2007 by General Assembly Resolution 61/25, [online](#) [“**UNDRIP**”].

⁹³ *UNDRIP* at art. 8.

⁹⁴ *UNDRIP* at art. 11.

⁹⁵ *UNDRIP* at art. 12.

relationship with their traditionally owned or otherwise occupied and used lands, territories, water and coastal seas and other resources to uphold their responsibilities to future generations in this regard”.⁹⁶

The human rights of Indigenous Peoples include both collective rights and individual rights. Central to the *UNDRIP* is Indigenous Peoples’ collective right to self-determination, which requires that Indigenous Peoples be able to “freely pursue their economic, social and cultural development”,⁹⁷ including housing. The *UNDRIP* also affirms Indigenous Peoples’ right to maintain their distinctive economic, social, and cultural institutions while retaining their right to fully participate in those institutions of the State where they choose to do so.⁹⁸ The *UNDRIP* makes clear that Indigenous Peoples have the right to participate in decision-making in matters affecting their rights, through their chosen representatives and pursuant to their own procedures, which includes their right to develop and maintain their own decision-making institutions.⁹⁹ Notably, Indigenous Peoples have the right to “autonomy or self-government” relating to their local and international affairs.¹⁰⁰

Like the *ICESCR*, the *UNDRIP* emphasizes the importance of actualizing social and economic rights without discrimination.¹⁰¹ Article 2 of the *UNDRIP* provides that Indigenous Peoples are “free and equal” to others, and have the right to exercise their rights free from discrimination, particularly based on their Indigenous origin or identity.¹⁰²

The rights affirmed by the *UNDRIP* are to be interpreted in accordance with “equality, non-discrimination, good governance and good faith”.¹⁰³ Importantly, the *UNDRIP* defines its own provisions as constituting the “minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world”.¹⁰⁴

The *UNDRIP* emphasizes the importance of timely redress for the breach of rights to Indigenous Peoples. Article 40 of the *UNDRIP* provides:

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.¹⁰⁵

⁹⁶ *UNDRIP* at art. 25.

⁹⁷ *UNDRIP* at art. 3.

⁹⁸ *UNDRIP* at art. 5.

⁹⁹ *UNDRIP* at art. 18.

¹⁰⁰ *UNDRIP* at art. 4.

¹⁰¹ *UNDRIP* at arts. 2, 46(3).

¹⁰² *UNDRIP* at art. 2.

¹⁰³ *UNDRIP* at art. 46(3).

¹⁰⁴ *UNDRIP* at art. 43.

¹⁰⁵ *UNDRIP* at art. 40.

This article should be implemented in accordance with article 27 of the *UNDRIP* which instructs States to “establish and implement, in conjunction with Indigenous Peoples concerned, ‘a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands, territories and resources’”.¹⁰⁶

The Special Rapporteur on the Right to Adequate Housing has stated that these articles mean that Indigenous Peoples have “the right to the adjudication of their claims to the right to land and housing in a manner that respects their own laws and traditions and international human rights law”.¹⁰⁷

In 2019, the Special Rapporteur on the Right to Adequate Housing set out “key guiding principles for the realization of the right to housing for Indigenous Peoples”, which are to be implemented in conjunction with the seven conditions on the right to adequate housing as described above.¹⁰⁸ These guiding principles include the following:

- recognizing Indigenous Peoples;
- recognizing and providing redress for past wrongs;
- recognizing the rights of Indigenous Peoples to lands, territories, and resources;
- guaranteeing self-determination;
- guaranteeing free, prior, and informed consent and meaningful consultation;
- guaranteeing substantive equality and non-discrimination;
- ensuring housing adequacy is interpreted by and for Indigenous Peoples;
- providing the maximum of available resources towards the realization of the right to housing for Indigenous Peoples; and
- ensuring access to justice and effective remedies for the right to housing claims.¹⁰⁹

Additional principles grounded in international human rights obligations and norms have also been identified to inform the right to housing for Indigenous Peoples.¹¹⁰

¹⁰⁶ United Nations General Assembly, “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”, 17 July 2019, [online](#) [“**2019 Special Rapporteur Report on Adequate Housing**”] at para. 67.

¹⁰⁷ 2019 Special Rapporteur Report on Adequate Housing at para. 67.

¹⁰⁸ 2019 Special Rapporteur Report on Adequate Housing at paras. 48-66.

¹⁰⁹ See Special Rapporteur Report on Adequate Housing at paras. 49-66.

¹¹⁰ See, e.g., UN Habitat Review of Indigenous Peoples and Migration Report at p. 34.

PART II: DOMESTIC APPLICATION OF THE RIGHT TO ADEQUATE HOUSING UNDER INTERNATIONAL LAW

a) Standards for domestic implementation of human rights protected under international law

The Basic Principles on the Right to Remedy and Reparation provides that States must “ensure that their domestic law is consistent with their international legal obligations” in four ways:

1. incorporating norms of international human rights law into domestic law;
2. adopting “appropriate and effective legislative and administrative procedures” or other suitable measures that provide “fair, effective and prompt” access to justice;
3. making available “adequate, effective, prompt and appropriate remedies” including reparation; and
4. ensuring that domestic law provides “at least the same level of protection for victim as that required by their international obligations”.¹¹¹

The Basic Principles on the Right to Remedy and Reparation prescribe the obligation of States to respect and implement international human rights law through four prescribed actions:

1. *Legal protections*, which include legislative, administrative, and other measures to prevent violation;
2. *Responsive action*, which includes investigation of violations in a prompt and impartial manner, and advancing action against those responsible pursuant to domestic and international law;
3. *Access to justice* to provide victims of human rights violation with “equal and effective access to justice ... irrespective of who may ultimately be the bearer of responsibility for the violation”. This must include “fair and impartial proceedings” that reflect domestic laws. States are to provide “proper assistance” to those victims seeking access to justice, and make available “all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy”. States are called to disseminate information about the mechanisms and remedies available for violations of international human rights law, advance measures to “minimize inconvenience to victims and their representatives, protect unlawful interference with their privacy, and ensure safety from intimidation and retaliation for both the victim and their families which span before, during, and after any proceedings affecting their interests; and

¹¹¹ Basic Principles on the Right to Remedy and Reparation at art. 2.

4. *Remedies and reparations* to provide effective remedies, including “prompt reparation for harm suffered” and access to “relevant information” on violation and reparation mechanisms.¹¹² States are called to develop procedures that allow victims to present their claims for reparation as groups, and receive appropriate reparation. Remedies for violations of international human rights law are to include “all available and appropriate international processes in which a person may have legal standing”, where accessing international processes should not prejudice the availability of domestic remedies. Importantly, the Basic Remedies on the Right to Remedy and Reparation instruct States to treat victims with “humanity and respect for their dignity and human rights”, and take measures to ensure their safety, wellbeing, and privacy.¹¹³

Ultimately, international human rights standards call for domestic human rights monitoring mechanisms that are “accessible, transparent, and effective”,¹¹⁴ and where accountability measures include administrative mechanisms, policy, and political mechanisms,¹¹⁵ judicial mechanisms,¹¹⁶ and national human rights institutions.¹¹⁷

b) Domestic implications of international human rights law standards

i. Effect of international treaties and declarations

Under international law, declarations and treaties have different force and effects. Treaties are intended to be legally binding.¹¹⁸ Canada has ratified the principal international human rights treaties, including the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *Convention on the Rights of Persons with Disabilities*.¹¹⁹ Under ratification, States “undertake to put into place domestic measures and legislation compatible with their treaty obligations”.¹²⁰

In Canada’s own words, it acknowledges that it “agrees to respect and ensure the human rights of all individuals within its territory and subject to its jurisdiction” as a party to international human rights treaties.¹²¹ Canada has been more express in some instances, including describing

¹¹² Basic Principles on the Right to Remedy and Reparation at arts. 3, 11-14.

¹¹³ Basic Principles on the Right to Remedy and Reparation at art. 10.

¹¹⁴ OHCHR Fact Sheet on Right to Adequate Housing at p. 38.

¹¹⁵ See OHCHR Fact Sheet on Right to Adequate Housing at p. 38.

¹¹⁶ See OHCHR Fact Sheet on Right to Adequate Housing at pp. 39-41.

¹¹⁷ See OHCHR Fact Sheet on Right to Adequate Housing at pp. 41-42.

¹¹⁸ See, e.g., UNECE, “Types of legal instruments and related actions within the United Nations”, Presentation of 1-2 September, 2022, [online](#).

¹¹⁹ See Government of Canada, “Human rights treaties”, [online](#).

¹²⁰ OHCHR Background on Treaties

¹²¹ Government of Canada, “About Canada and the United Nations human rights system”, [online](#).

the *Convention on the Elimination of Discrimination Against Women* as a “legally binding commitment”.¹²²

While declarations do not directly impose legally binding obligations on States,¹²³ these instruments still have legal effect. States are expected to uphold declarations, which impose “political or moral commitments”.¹²⁴ Additionally, the provisions of declarations may reflect obligations already affirmed in treaties or international customary law which provides the “legal standards that have become obligatory on states through their widespread use”.¹²⁵

ii. International human rights law informs interpretation of domestic legislation and the *Charter*

The enforcement of international human rights obligations generally depend on domestic legislation and domestic courts.¹²⁶ In 1999, the Supreme Court of Canada held that international treaties and conventions are not part of Canadian law unless they have been implemented by statute.¹²⁷ Still, it has instructed that the values of international law must inform the interpretation of domestic law.¹²⁸ In *Baker v. Canada*, L’Heureux-Dube J. writing for the majority of the Court explained:

Nevertheless, the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review. As stated in R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 330:

[T]he legislature is presumed to respect the values and principles enshrined in international law, both customary and conventional. These constitute a part of the legal context in which legislation is enacted and read. In so far as possible, therefore, interpretations that reflect these values and principles are preferred.

The important role of international human rights law as an aid in interpreting domestic law has also been emphasized in other common law countries...It is also a critical influence on the interpretation of the scope of the rights included in the *Charter*.¹²⁹

But *Baker* is merely the starting point for considering the legal effect of international law in Canada. Canada is also bound by the Doctrine of the Presumption of Conformity, which holds that “Canadian domestic law should be construed to conform to Canada’s international

¹²² Government of Canada, “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)”, [online](#).

¹²³ See, e.g., United Nations Treaty Collection; Philippe Gautier, “Non-Binding Agreements”, Oxford Public International Law, May 2022, [online](#) [“**United Nations Treaty Collection**”].

¹²⁴ See, United Nations Treaty Collection at para. 1.

¹²⁵ Coalition for the Human Rights of Indigenous Peoples, “Fact Sheet on the United Nations Declaration on the Rights of Indigenous Peoples”, December 2016, [online](#), at para. 7.

¹²⁶ OHCHR Fact Sheet on Right to Adequate Housing at pp. 37-38.

¹²⁷ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [“*Baker*”], at para. 69.

¹²⁸ *Baker* at para. 70.

¹²⁹ *Baker* at para. 70 [emphasis added].

obligations”.¹³⁰ The force of the presumption of conformity has been repeatedly affirmed by the Supreme Court of Canada, including in its 2007 decision of *R. v. Hape*.¹³¹ There, Lebel J. writing for the majority of the Court observed:

It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule...that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations.¹³²

The presumption of conformity has two aspects. **First**, the legislature is “presumed to act in compliance with Canada’s obligations as a signatory of international treaties and as a member of the international community” such that courts will “avoid a construction” in its interpretation that “would place Canada in breach of those obligations”.¹³³ **Second**, the legislature is “presumed to comply with the values and principles of customary and conventional international law”, which inform the “context in which statutes are enacted, and courts will therefore prefer a construction that reflects them”.¹³⁴ This presumption is rebuttable where Parliament shows an “unequivocal legislative intent to default on an international obligation”.¹³⁵

Notably, the presumption “applies equally to customary international law and treaty obligations”.¹³⁶ Customary international law is “automatically adopted into domestic law without any need for legislative action”.¹³⁷ The Supreme Court of Canada has recently affirmed that Canada has “long followed the conventional path of automatically incorporating customary international law into domestic law via the doctrine of adoption, making it part of the common law of Canada in the absence of conflicting legislation” such that there is “no doubt ... that customary international law is also the law of Canada”.¹³⁸ In effect, “[i]nternational law is part of what comprises the common law” of a country on “any given subject”, and Courts in Canada are “supposed to treat public international law as law, not fact”.¹³⁹

Beyond informing the scope of legislation and the common law, international law also assists with interpreting the *Canadian Charter of Rights and Freedoms* (the “**Charter**”), which “guarantees” certain rights and freedoms subject only to reasonable limits that can be justified

¹³⁰ Enhancing the Implementation of Human Rights Treaties in Canadian Law at p. 37.

¹³¹ *R. v. Hape*, [2007 SCC 26](#) [“**Hape**”] at para. 54, citing *Daniels v. White*, [1968 CanLII 67 \(SCC\)](#), [1968] S.C.R. 517, at p. 541.

¹³² *Hape* at para. 53.

¹³³ *Hape* at para. 53.

¹³⁴ *Hape* at para. 53.

¹³⁵ *Hape* at para. 53.

¹³⁶ *Hape* at para. 54 [citations omitted].

¹³⁷ *Nevsun Resources Ltd. v. Araya*, [2020 SCC 5](#) [“**Nevsun**”] at para. 86 [citations omitted].

¹³⁸ *Nevsun* at paras. 90, 95.

¹³⁹ *Nevsun* at paras. 95-96, citing Rosalyn Higgins, “The Relationship Between International and Regional Human Rights Norms and Domestic Law” (1992), 18 Commonwealth L. Bull. 1268, at p. 1273 and Gib van Ert, “The Reception of International Law in Canada: Three Ways We Might Go Wrong”, in Centre for International Governance Innovation, Canada in International Law at 150 and Beyond, Paper No. 2 (2018), at p. 6.

in a free and democratic society. The *Charter* includes the right to equality (section 15) and the right to life, liberty, and security of the person (section 7).¹⁴⁰ In *R. v. Hape*, Lebel J. for the majority further explained that “[w]herever possible ... to ensure consistency between its interpretation of the *Charter*, on the one hand, and Canada’s international obligations and the relevant principles of international law, on the other”.¹⁴¹ This may mean that the *Charter* “should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified”.¹⁴²

Ultimately, the Supreme Court of Canada has provided clear instructions that international law must inform the interpretation of the *Charter*:

In interpreting the scope of application of the *Charter*, the courts should seek to ensure compliance with Canada’s binding obligations under international law where the express words are capable of supporting such a construction.¹⁴³

Against this backdrop, it is clear that international human rights treaties ratified by Canada and customary international law provide important guidance on the interpretation of domestic law and rights.¹⁴⁴

c) Domestic legislation affirms recognition of the right to adequate housing

Canada has largely not transferred international human rights instruments into national legislation, as it “may consider that Canada’s laws are already consistent with international treaty obligations”.¹⁴⁵ However, Canada has taken the active step of expressly codifying some of its international human rights obligations into domestic law. This includes key human rights obligations under the *ICESCR* and the *UNDRIP*, which have been translated into the *United Nations Declaration on the Rights of Indigenous Peoples Act* and the *National Housing Strategy Act* respectively, further underscoring the application and force of these rights in Canada.¹⁴⁶

iii. The National Housing Strategy Act

¹⁴⁰ See *Canadian Charter of Rights and Freedoms*, in *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c. 11, [online](#) at ss. 1, 7, 15.

¹⁴¹ *Hape* at para. 55.

¹⁴² *Hape* at para. 55, citing dissenting reasons by Dickson C.J. in *Reference re Public Service Employee Relations Act (Atla)*, [1987 CanLII 88 \(SCC\)](#), [1987] 1 S.C.R. 313, at p. 349.

¹⁴³ *Hape* at para. 56.

¹⁴⁴ See, e.g., Amissi M. Manirabona and Francois Crepeau, “Enhancing the Implementation of Human Rights Treaties in Canadian Law: The Need for a National Monitoring Body”, (2012) 1:1 Can J Hum Rts [“**Enhancing the Implementation of Human Rights Treaties in Canadian Law**”].

¹⁴⁵ See, e.g., Enhancing the Implementation of Human Rights Treaties in Canadian Law at p. 58; Laura Barnett, “Canada’s Approach to the Treaty-Making Process”, HillStudies, 2021, [online](#).

¹⁴⁶ See the *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313, [online](#) [“**National Housing Strategy Act**”]; *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 [“**UNDRIP Act**”], [online](#).

The *National Housing Strategy Act* is the “housing policy of the Government of Canada”.¹⁴⁷ It makes a number of express declarations on the right to housing in Canada, including:

- (a) recognition of the right to adequate housing as “a fundamental human right affirmed in international law”;
- (b) recognition that housing is “essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities”;
- (c) support for “improved housing outcomes for the people of Canada”; and
- (d) furthers the “progressive realization of the right to adequate housing” as recognized in the *ICESCR*.¹⁴⁸

Under the *National Housing Strategy Act*, the federal Minister responsible is to maintain a national housing strategy that reflects the “key principles of a human rights-based approach to housing”. The national strategy is to include, among other things, national goals on housing and homelessness which “identify related priorities, initiatives, timelines and desired outcomes”. It is also to focus on “improving housing outcomes for persons in greatest need”, and provide for “participatory processes” to allow for the “ongoing inclusion and engagement” of civil society, including vulnerable groups and persons with lived experiences of homelessness.¹⁴⁹

There is other domestic legislation on housing. This includes the *National Housing Act*, which serves to “promote housing affordability and choice” by facilitating financing for housing in a manner that is competitive, efficient, and protects the “availability of adequate funding for housing at low cost” while “contributing to the availability of the housing sector in the national economy”.¹⁵⁰

iv. The United Nations Declaration on the Rights of Indigenous Peoples Act

In 2021, Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the “**UNDRIP Act**”) which affirms the application of *UNDRIP* in Canadian law, and provides a framework for the Government of Canada to implement *UNDRIP*.¹⁵¹ The *UNDRIP Act* instructs the Government of Canada to “take all measures necessary to ensure the laws of Canada are consistent with the Declaration”, in consultation and cooperation with Indigenous Peoples.¹⁵²

¹⁴⁷ *National Housing Strategy Act*, at s. 4.

¹⁴⁸ *National Housing Strategy Act*, at s. 4.

¹⁴⁹ *National Housing Strategy Act*, at s. 5(2).

¹⁵⁰ *National Housing Act* at s. 3.

¹⁵¹ *UNDRIP Act* at s. 4.

¹⁵² *UNDRIP Act* at s. 5.

The *UNDRIP Act* also requires the federal Minister to “prepare and implement an action plan to achieve the objectives of the Declaration”, in “consultation and cooperation” with Indigenous Peoples and other federal ministers.¹⁵³ The action plan must contain:

- (a) measures to:
 - (i) address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two spirit persons, and
 - (ii) promote mutual respect and understanding as well as; good relations, including through human rights education;
- (b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration;¹⁵⁴ and
- (c) measures related to monitoring the implementation of the plan and reviewing and amending the plan.¹⁵⁵

Canada has now particularized its action plan,¹⁵⁶ and delivers annual reports on its progress under the action plan.¹⁵⁷ Under the action plan, Canada makes a number of commitments to address the state of housing for Indigenous peoples.¹⁵⁸ These actions reinforce Canada’s acknowledgement of its responsibility to adhere to the *UNDRIP*, including its provisions on housing.

Some provinces and territories have implemented their own legislation on *UNDRIP* to apply to their jurisdictions, adding additional safeguards for the rights under *UNDRIP* in some areas of Canada.¹⁵⁹

d) Jurisprudence reinforces the legitimacy of domestic application of the *UNDRIP* in child welfare

The Supreme Court of Canada recently considered the application of the *UNDRIP* in Canadian law in the *Reference re An Act respecting First Nations, Inuit and Métis children, youth and*

¹⁵³ *UNDRIP Act* at s. 6(1).

¹⁵⁴ *UNDRIP Act* at s. 6(2).

¹⁵⁵ *UNDRIP Act* at s. 6(3).

¹⁵⁶ Government of Canada, “The *United Nations Declaration on the Rights of Indigenous Peoples Act* Action Plan”, 2023, [online](#).

¹⁵⁷ See, e.g., Government of Canada, “Annual progress reports on implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act*”, [online](#).

¹⁵⁸ See, e.g., Government of Canada, “The *United Nations Declaration on the Rights of Indigenous Peoples Act* Action Plan”, 2023, [online](#) at #11, #15, #88

¹⁵⁹ See, e.g., *Declaration on the Rights of Indigenous Peoples Act*, S.B.C. 2019, c. 44, [online](#); *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*, SNWT 2023, c. 36, [online](#).

families (the “**Reference on Indigenous Children**”). There, the unanimous court upheld the constitutionality of legislation that affirmed Indigenous Peoples’ “legislative authority in relation to child and family services” and the “provision of such services on the basis of national standards”.¹⁶⁰ The purpose of the legislation included affirming Indigenous Peoples’ “inherent right of self-government” over child welfare, which includes “contribut[ing] to the implementation of the [UNDRIP].¹⁶¹

Jurisdiction is shared by both the provinces and the federal government over child welfare.¹⁶² The Court reiterated that it is “trite law that Parliament can bind the Crown in the right of the provinces”.¹⁶³ The Court found that the “provinces are validly bound by the national standards” under the legislation, given the “degree of generality with which these standards have been formulated”, which provide flexibility.¹⁶⁴ This is significant, as these standards are tied to the UNDRIP, reinforcing Parliament’s ability to extend the governance of the UNDRIP into areas of provincial jurisdiction.¹⁶⁵

Ultimately, the Court found that the legislation was “directly in keeping with Canada’s commitment to ‘implementing the [UNDRIP] as a framework for reconciliation’”.¹⁶⁶ The Court remarked on the force of the UNDRIP:

Recognized by Parliament as “a universal international human rights instrument with application in Canadian law”, the Declaration has been incorporated into the country’s positive law by the [UNDRIP Act]. This statute recognizes that the Declaration “provides a framework for reconciliation” (preamble) ... The statute’s preamble expressly provides that the implementation of the Declaration in Canada “must include concrete measures to address injustices” facing, among others, Indigenous youth and children.¹⁶⁷

Evidently, recognition of the UNDRIP has substantially increased in recent years through statute and judicial endorsement.

¹⁶⁰ *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, [2024 SCC 5](#) [“**Reference on Indigenous Children**”] at para. 6

¹⁶¹ *Reference on Indigenous Children* at paras. 6, 134-137.

¹⁶² *Reference on Indigenous Children* at paras. 98-99.

¹⁶³ *Reference on Indigenous Children* at para. 97.

¹⁶⁴ *Reference on Indigenous Children* at para. 100.

¹⁶⁵ *Reference on Indigenous Children* at paras. 19, 25, 52-53.

¹⁶⁶ *Reference on Indigenous Children* at para. 5.

¹⁶⁷ *Reference on Indigenous Children* at para. 4.

PART III: INTERNATIONAL HUMAN RIGHTS BODIES REPEATEDLY RAISE CONCERNS ABOUT THE VIOLATION OF THE RIGHT TO ADEQUATE HOUSING IN CANADA

Several international human rights monitoring bodies have considered Canada's efforts to advance the right to adequate housing. While some progress has been made in recent years, particularly with the introduction of the *National Housing Strategy Act*, these international human rights bodies repeatedly express the urgent need for Canada to do more to advance the right to adequate housing within the country.

a) Concluding Observations on the Periodic Review of Canada from 2016 urge greater action on housing

The United Nations Committee on Economic, Social, and Cultural Rights has underscored that while respect for the right to adequate housing has been “frequently reaffirmed” by the international community, there continues to be a “disturbingly large gap” between the standards prescribed by article 11(1) of the *ICESCR* and the realities around the world, including “some of the most economically developed societies”¹⁶⁸ such as Canada. In recent Concluding Observations on a Periodic Review of Canada, issued in 2016, it urged Canada to do more to protect and recognize these rights domestically.

At that time, the Committee expressed concern over the “stagnation in the levels of social spending as a share of gross domestic product”,¹⁶⁹ recommending that Canada “increase national spending to guarantee Covenant rights so as to achieve the progressive realization of economic, social and cultural rights”.¹⁷⁰ It articulated the severe consequences of this underspending on Indigenous Peoples who disproportionately experience inadequate standards of living,¹⁷¹ and Indigenous women whose experiences of violence are “further exacerbated by [their] economic insecurity”.¹⁷² The Committee further conveyed its concerns over the rates of homelessness in Canada,¹⁷³ and the transfer of persons with intellectual disabilities being put into institutions due to the absence of adequate housing.¹⁷⁴

The Committee made a number of recommendations to Canada to promote economic, social, and cultural rights in Canada, including:

¹⁶⁸ OHCHR General Comment No. 4 at para. 4.

¹⁶⁹ United Nations Economic and Social Council's Committee on Economic, Social, and Cultural Rights, Concluding observations on the sixth periodic report of Canada, 57th session, 23 March 2016, [online](#) [“**ECOSOC Sixth Periodic Report of Canada**”] at para. 9.

¹⁷⁰ ECOSOC Sixth Periodic Review of Canada at para. 10.

¹⁷¹ ECOSOC Sixth Periodic Review of Canada at paras. 19, 44.

¹⁷² ECOSOC Sixth Periodic Review of Canada at para. 33.

¹⁷³ ECOSOC Sixth Periodic Review of Canada at para. 41.

¹⁷⁴ ECOSOC Sixth Periodic Review of Canada at paras. 45-46.

- examine homelessness in the country and to implement corrective measures to these issues;¹⁷⁵
- adopt legislative measures to “give full effect to the Covenant rights in its legal order and ensure that victims have access to effective remedies”;¹⁷⁶
- review its litigation strategies “to foster the justiciability of economic, social and cultural rights” with the engagement of Indigenous Peoples, “with a view of broadening the interpretation of the *Canadian Charter of Rights and Freedoms* ... to include economic, social and cultural rights, and thus the justiciability of Covenant rights”;¹⁷⁷
- address the realities of disproportionate poverty experienced by Indigenous Peoples, including by implementing programming that improves the enjoyment of rights by Indigenous Peoples, and increasing federal and provincial funding to Indigenous peoples which is “commensurate to their needs”;¹⁷⁸
- “intensify [Canada’s] efforts to address the Indigenous Peoples’ housing crisis, in consultation with Indigenous governments and organizations”;¹⁷⁹
- take corrective measures on the disproportionate violence experienced by Indigenous women including due to housing insecurity by “ensuring the availability of a sufficient number of adequate shelters for victims of violence, as well as long-term housing solutions and adequate social assistance”;¹⁸⁰
- increase the availability of “affordable and social housing units for persons with psychosocial and intellectual disabilities, as well as community-based services”;¹⁸¹
- include “social condition” as a prohibited ground of discrimination in the *Canadian Human Rights Act*;¹⁸²
- correct deficits related to the absence of a national housing strategy at that time, along with inadequate funding for housing, by implementing corrective actions specific to the right to adequate housing and forced evictions for Canada, including:
 - increase resources at the federal and provincial levels allocated to housing, and make the housing subsidy within social assistance benefits commensurate with the costs of living;

¹⁷⁵ ECOSOC Sixth Periodic Review of Canada at para. 43.

¹⁷⁶ ECOSOC Sixth Periodic Review of Canada at para. 6.

¹⁷⁷ ECOSOC Sixth Periodic Review of Canada at para. 6.

¹⁷⁸ ECOSOC Sixth Periodic Review of Canada at para. 20.

¹⁷⁹ ECOSOC Sixth Periodic Review of Canada at para. 44.

¹⁸⁰ ECOSOC Sixth Periodic Review of Canada at para. 34.

¹⁸¹ ECOSOC Sixth Periodic Review of Canada at paras. 45-46.

¹⁸² ECOSOC Sixth Periodic Review of Canada at paras. 17-18.

- implement measures to “substantially increase” social and affordable housing units;
- regulate rent arrangements to ensure that tenants are not prone to forced evictions or homelessness; and
- ensure legislation on forced evictions is aligned with international human rights norms, including that affected persons do not become homeless or subject to other human rights violations from evictions and that compensation or other accommodations are provided.¹⁸³

The Committee further underscored the importance of improving avenues for remedies and redress in Canada:

The Committee is concerned that ...economic, social and cultural rights remain generally non-justiciable in domestic courts. The Committee is also concerned at the limited availability of legal remedies for victims in the event of a violation of Covenant rights, which may disproportionately impact disadvantaged and marginalized groups and individuals, including homeless persons, Indigenous peoples, and persons with disabilities.¹⁸⁴

As part of its concluding recommendations, the Committee further asked Canada to “take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights, in order to facilitate the assessment of progress achieved by the State party in the compliance of its obligations under the Covenant”.¹⁸⁵

b) The Universal Periodic Review reiterates the need for Canada to uphold social and economic rights, particularly relating to the housing insecurity experienced by minority groups and Indigenous women

The Universal Periodic Review is a peer review process of the United Nations Human Rights Council, where the human rights records of a country are reviewed by other member states of the United Nations. Under the Universal Periodic Review process, external parties, including Indigenous organizations and civil society organizations can submit reports to share their perspectives on the realities and challenges to realizing human rights in the country. Canada’s most recent review was in 2024. The submissions of stakeholders included concerns from the Office of the Federal Housing Advocate, who emphasized the importance of Canada working “in collaboration with Indigenous peoples, must deliver on a long-standing commitment to address, with a specific strategy, the housing need of Indigenous people in urban, rural and

¹⁸³ ECOSOC Sixth Periodic Review of Canada at para. 40.

¹⁸⁴ ECOSOC Sixth Periodic Report of Canada at para. 5.

¹⁸⁵ ECOSOC Sixth Periodic Review of Canada at para. 62.

northern areas”.¹⁸⁶ Other stakeholders similarly expressed concerns about Indigenous people disproportionately experiencing housing insecurity and homelessness.¹⁸⁷

During this process, the Working Group made a number of recommendations to Canada, including:

- strengthen efforts to protect the economic, social and cultural rights of minority communities, especially their right to adequate housing;
- take the necessary measures to facilitate access to housing for vulnerable persons;
- address homelessness through tangible goals and timelines, particularly for marginalized groups;
- fully implement the *National Housing Strategy Act* to eradicate housing insecurity faced by minority groups, especially Indigenous women, LGBTQIA+ persons, and children; and
- adopt a concrete strategy to strengthen access to adequate housing primarily for Indigenous peoples.¹⁸⁸

Canada accepted many, but not all recommendations provided to it during this process.¹⁸⁹

c) Special Rapporteur on the Rights of Indigenous Peoples underscores urgency of addressing the housing crisis in Canada

The Special Rapporteur on the Rights of Indigenous Peoples published a report on Canada following his country visit in 2023.¹⁹⁰ The report underscored the significant ongoing challenges facing Indigenous Peoples in Canada, and the need for urgent action by the federal government to restore the health, safety, and human rights of Indigenous Peoples.

The poor socio-economic realities of Indigenous Peoples were focal to these concerns, including that the “negative legacies of colonization and racial discrimination continue to creat[e]

¹⁸⁶ United Nations Human Rights Council’s Working Group on the Universal Periodic Review Forty-fourth session, “Summary of stakeholders’ submissions on Canada”, 4 September 2023, [online](#) [“**Summary of Stakeholder Submissions on Canada for Universal Periodic Review**”], at para. 59.

¹⁸⁷ See, e.g., Summary of Stakeholder Submissions on Canada for Universal Periodic Review at paras. 57-58.

¹⁸⁸ Human Rights Council, “Report of the Working Group on the Universal Periodic Review – Canada”, 19 December 2023, [online](#) [“**Report of Working Group on Universal Periodic Review of Canada**”] at recommendations 37.166 to 37.174, 37.181,

¹⁸⁹ See Human Rights Council, Report of the Working Group on the Universal Review (Canada) Addendum, 15 March 2024, [online](#).

¹⁹⁰ Report of the Special Rapporteur on the Rights of Indigenous Peoples, “Visit to Canada”, 24 July 2023, [online](#) [“**Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2023 Visit to Canada**”].

situations of homelessness”, poverty, and poor health and well-being outcomes.¹⁹¹ It observed that the “housing crisis ... is still an urgent issue”, and is a “direct consequence of the loss of lands and territories” by Indigenous peoples.¹⁹² The Special Rapporteur emphasized that Indigenous women, girls, 2SLGBTQIA+, and persons with disabilities are “overrepresented in almost all aspects of housing insecurity, homelessness and poverty, and are disproportionately affected by violence and discrimination”.¹⁹³

The Special Rapporteur observed that the challenges faced by Indigenous Peoples in Canada are “all interconnected”, and that “structural racism and intergenerational trauma” need to be addressed in order to address the overarching issues challenging Indigenous Peoples.

Among other recommendations, the Special Rapporteur urged Canada to:

- serve as an example to other countries by recognizing the historical and ongoing harms against Indigenous Peoples and advancing reconciliation, as the “most significant achievements are often acquired through court decisions or case settlements rather than implementation of government policies”;
- address “as a priority, the deep-set, systemic and structural racism affecting Indigenous Peoples”, including by implementing the Calls to Action of the Truth and Reconciliation Commission and the Calls for Justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls;
- encourage all provinces and territories to incorporate the *UNDRIP* into binding legislation;
- establish an Indigenous-led human rights mechanism to monitor implementation of the *UNDRIP* in Canada;
- adopt legal and administrative reforms to address the “root causes” of the over-representation of Indigenous children in the child welfare system, including inadequate housing;

¹⁹¹ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2023 Visit to Canada at para. 21.

¹⁹² Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2023 Visit to Canada at para. 74. The Special Rapporteur made additional comments about the housing experiences of Indigenous Peoples, including that they are more likely to live in substandard, overcrowded, and culturally inadequate housing than the rest of the population in Canada; they experience racism when navigating the housing market with little affordable options; they disproportionately experience high rates of disabilities and thus face additional barriers securing accessible housing which is limited in its availability; and a housing strategy needs to be urgently developed and adequately funded by and for Indigenous Peoples regardless of where they reside: see paras. 74-77.

¹⁹³ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2023 Visit to Canada at para. 21.

- provide “core sustainable funding” for Indigenous women’s centres, shelters, transitional housing, treatment facilities, and other safe spaces;
- provide support and adequate funding for health, housing, and social programs that are targeted to Indigenous Peoples to allow them to develop their own culturally-relevant programs;
- adopt national accessibility standards for Indigenous persons with disabilities, and ensure that there is accessible housing and social services within Indigenous communities; and
- adopt Joyce’s Principle to guarantee that Indigenous Peoples have equitable access to social and health services.¹⁹⁴

These conclusions and recommendations reinforce earlier concerns expressed by the Special Rapporteur on the Rights of Indigenous Peoples in 2013.¹⁹⁵ At that time, the Special Rapporteur remarked that the “most jarring manifestation of those human rights problems is the distressing socioeconomic conditions of Indigenous peoples in a highly developed country”.¹⁹⁶ Earlier recommendations on this issue were made to Canada in 2004, including the need to “intensify its measures to close the human development indicator gap between Indigenous and non-Indigenous Canadians in ... housing”, but there had been no reduction in that gap in the subsequent period for First Nations.¹⁹⁷

In 2013, the Special Rapporteur reported that the “housing situation in Inuit and First Nations communities has reached a crisis level, especially in the north”, as overcrowding is “endemic”, homes need major repairs, and there are severe housing shortages.¹⁹⁸ The Special Rapporteur observed that the limited federal funding provided to address these issues did not reflect the degree of housing needs, creating additional challenges for these communities.¹⁹⁹ The Special Rapporteur emphasized the connection between the housing crisis and illness, family violence, poor educational achievement, and other issues.²⁰⁰

It concluded that Canada “faces a continuing crisis when it comes to the situation of Indigenous peoples of the country”, where the well-being gap has not narrowed, legal rights claims remain

¹⁹⁴ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2023 Visit to Canada at paras. 86-97.

¹⁹⁵ Report of the Special Rapporteur on the Rights of Indigenous Peoples, “The situation of Indigenous peoples in Canada”, 4 July 2014, [online](#) [**“Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada”**].

¹⁹⁶ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at para. 15.

¹⁹⁷ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at para. 15.

¹⁹⁸ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at para. 24.

¹⁹⁹ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at paras. 25-27.

²⁰⁰ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at paras. 24, 29.

unresolved, women and girls “remain vulnerable to abuse”, and distrust of government prevails.²⁰¹

Among other recommendations, the Special Rapporteur urged Canada to:

- ensure sufficient funding for social services of Indigenous Peoples both on and off reserve to allow the services reflect the quality of services provided to other Canadians;²⁰² and
- take “urgent action to address the housing crisis in Indigenous communities both on and off reserve, especially communities in the north, and dedicate increased funding” towards this, including affordable, sustainable, and adequate housing for Inuit and the Arctic, where design and construction of homes should reflect environmental and cultural needs.²⁰³

d) The Committee on the Elimination of Discrimination Against Women vocalizes concerns about feminization of poverty and homelessness

The Committee on the Elimination of Discrimination Against Women published its Concluding Observations on Canada in 2024.²⁰⁴ The Committee conveyed concerns about the “feminization of poverty” and chronic homelessness in Canada, as “women living with intersecting identities have much higher rates of poverty” and disproportionately engage in low income work.²⁰⁵

The Committee expressed concern about the “lack of impact measurement of its many legislative initiatives” and programs aimed at improving gender equity, along with the “lack of effective involvement” of non-governmental organizations (inclusive of Indigenous women’s organizations) in the assessment and revisions of its policies.²⁰⁶ There is a related need for more disaggregated data to ensure that policies and programming are effectively evaluated and improved.²⁰⁷

Among other recommendations, the Committee on the Elimination of Discrimination Against Women urged Canada to:

- revise the definition of “chronic homelessness” to “better capture the gendered experiences and housing needs” of Indigenous women and other systemically

²⁰¹ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at para. 80.

²⁰² Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at para. 84.

²⁰³ Report of the Special Rapporteur on the Rights of Indigenous Peoples on 2013 Visit to Canada at para. 86.

²⁰⁴ Committee on the Elimination of Discrimination Against Women, Concluding observations on the tenth periodic report of Canada, 30 October 2024, [online](#) [“CEDAW Concluding Observations on Canada”].

²⁰⁵ CEDAW Concluding Observations on Canada at para. 39.

²⁰⁶ CEDAW Concluding Observations on Canada at paras. 9(a), 9(b).

²⁰⁷ CEDAW Concluding Observations on Canada at paras. 9(c), 10.

disadvantaged women, and develop an accountability mechanism with timelines, goals, and targets to eliminate housing insecurity among women in Canada;²⁰⁸

- speed up implementation of the Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls, including the implementation of guaranteed livable income;²⁰⁹
- ensure that women and girls with disabilities have adequate access to housing;²¹⁰
- ensure that all victims of trafficking have access to temporary residence permits, shelter, housing, and social supports;²¹¹
- implement measurement tools to assess the impact of its gender equality policies, improve them, and ensure that policy goals are achieved, including for Indigenous women;²¹²
- improve data collection and analysis across for Indigenous women, inclusive of demographic, sex, and geographical considerations, to inform evidence-based policy-making in collaboration with Indigenous women and their organizations across all areas of the *Convention on the Elimination of Discrimination Against Women*;²¹³
- streamline the procedures and policies of all institutions at all levels of government responsible for formulating, coordinating, and overseeing the implementation of gender-responsive laws and policies to standardize them;²¹⁴ and
- mainstream intersectionality in all temporary special measures to ensure that these actions meet the needs of all women (particularly Indigenous women, women with disabilities, women of African descent, migrant women, and 2SLGBTQIA+ persons), and establish monitoring mechanisms to assess the effectiveness of these measures.²¹⁵

e) The Committee on the Rights of Persons with Disabilities expresses concern over the institutionalization of persons with disabilities to access housing

The Committee on the Rights of Persons with Disabilities issued its Concluding Observations on the combined second and third periodic report of Canada in 2025.²¹⁶ The Committee remarked

²⁰⁸ CEDAW Concluding Observations on Canada at para. 40(a).

²⁰⁹ CEDAW Concluding Observations on Canada at para. 26(a).

²¹⁰ CEDAW Concluding Observations on Canada at para. 44(a).

²¹¹ CEDAW Concluding Observations on Canada at para. 28(c).

²¹² CEDAW Concluding Observations on Canada at paras. 10(a), 10(b).

²¹³ CEDAW Concluding Observations on Canada at para. 10(c).

²¹⁴ CEDAW Concluding Observations on Canada at para. 16.

²¹⁵ CEDAW Concluding Observations on Canada at para. 18(a).

²¹⁶ United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Canada, 21 March 2025, [online](#) [**“Committee on the Rights of Persons with Disabilities Periodic Report of Canada”**].

on the need for de-institutionalization of persons with disabilities in order to access shelter and housing, such as through nursing homes, group homes, long-term care facilities, and the displacement of Indigenous persons and children from their communities to access housing and supports.²¹⁷

The Committee further noted that women with disabilities experience “disproportionate rates of poverty, barriers to accessible housing, homelessness, and lack of access to financial resources”, which is particularly the case for Indigenous women.²¹⁸ It expressed concern about the “prevalence of gender-based violence against women and girls with disabilities”, including Indigenous women and girls with disabilities as there is a “lack of accessible women’s shelters and services” for those experiencing gender-based violence.²¹⁹

The Committee further conveyed concern about legal and institutional frameworks for children not capturing children with disabilities or incorporating their needs.²²⁰ This is particularly true for Indigenous, Black, and racialized children with disabilities, which “frequently forces ... children to be placed into residential care or long-term care institutions”.²²¹

The Committee also observed the “persistent discrimination against persons with disabilities”, including Indigenous people who “experience greater socioeconomic marginalization”.²²²

Among other recommendations, the Committee on the Rights of Persons with Disabilities urged Canada to:

- conduct a “comprehensive and intersectional study” on disability discrimination, with particular attention to Indigenous Peoples, 2SLGBTQIA+ persons, and Black and racialized persons, to identify root causes and develop plans to address these issues with “clear timelines, targets, and indicators of progress”;²²³
- implement children, gender, and disability into all laws, policies, and strategies to address homelessness, and ensure that these mechanisms address the needs of women with disabilities, children with disabilities, and Indigenous, Black, and racialized persons with disabilities;²²⁴
- amend the *Accessible Canada Act* and other domestic laws to “explicitly incorporate the duty to accommodate as a legal obligation”, along with accountability mechanisms for non-compliance, timelines, and clear indicators of progress;²²⁵

²¹⁷ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 39.

²¹⁸ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at paras. 11(a), 55(a).

²¹⁹ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 31.

²²⁰ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 13.

²²¹ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 13(c).

²²² Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 9.

²²³ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at paras. 10(a), 10(b).

²²⁴ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 12(a), 14(a), 14(b).

²²⁵ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 18(a).

- ensure that the needs of persons with disabilities, including women with disabilities, are included in the National Housing Strategy;²²⁶
 - regularly audit the accessibility of shelters to produce comprehensive measures to address gaps in “accessible and culturally appropriate shelters and services” for persons with disabilities who experience gender-based violence;²²⁷
 - end immigration detention by increasing access to community-based alternatives for holistic supports, including housing;²²⁸
 - implement a de-institutionalization strategy across all governments with timelines and targets, applying across all institutional settings (including but not limited to nursing homes, group homes, specialized long-term care facilities, and psychiatric institutions);²²⁹
 - establish policies and plans that are distinctions-based for Indigenous people to “urgently address the lack of accessible housing and community supports” within Indigenous communities and off-reserve;²³⁰
 - develop a rights-based legislative and policy framework for community-based supports and services at all levels of government, including accessible housing, home supports, and personal assistance in a manner that “respects self-direction and individual control”;²³¹ and
 - ensure that there is effective monitoring of the rights of persons with disabilities.²³²
- f) Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health highlights the connection between health and housing**

The Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health delivered a report following a visit to Canada in 2018.²³³ It endorsed a human rights based approach to health which includes the interdependence of rights (such as health and housing) to improve accountability and outcomes.²³⁴ It found that “significant disparities” on health remain in Canada. These are particularly “notably among

²²⁶ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 56(a).

²²⁷ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 32(b).

²²⁸ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 36.

²²⁹ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 40(a).

²³⁰ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 40(b).

²³¹ Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 40(c).

²³² Committee on the Rights of Persons with Disabilities Periodic Report of Canada at para. 67.

²³³ Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, “Visit to Canada”, 19 June 2019, [online](#) [“**Special Rapporteur on Standard of Health on Visit to Canada**”].

²³⁴ Special Rapporteur on Standard of Health on Visit to Canada at paras. 16-19.

Indigenous peoples and recent immigrants”, with “large differences in terms of safety, health and housing”,²³⁵ and persons with intellectual disabilities who “lack access to ... housing”.²³⁶ It attributed the poor health of Indigenous Peoples to the impacts of “colonial processes”, which have been “aggravated by high poverty rates, the geographic remoteness of many communities, overcrowded housing, high population growth rates and other issues, including family violence”.²³⁷ The poor health of Indigenous people also extends to urban centers where they “continue to face discrimination, higher rates of homelessness”, substance misuse, and poverty.²³⁸

The Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health specifically remarked on the housing needs of incarcerated women, including the need for “residential mother-child options should be guaranteed for pregnant women and mothers”, and alternatives to incarceration needing to be developed which include adequate housing.²³⁹

Among other recommendations, the Special Rapporteur urged Canada to:

- incorporate a human rights-based approach to health which includes “positive measures that improve access to justice and effective remedies”,²⁴⁰ and
- address the root causes of the opioid crisis and related detriments, including poverty and access to adequate housing.²⁴¹

g) The Committee on the Elimination of Racial Discrimination emphasizes the importance of tackling poverty and poor housing for Indigenous children to address high rates of apprehension into state care

The Committee on the Elimination of Racial Discrimination released its Concluding Observations on the twenty-first to twenty-third periodic reports of Canada in 2017.²⁴² The Committee remarked on the absence of legislation and action to combat racism.²⁴³ It also emphasized its concern about “tens of thousands of [Indigenous] children” being “needlessly removed from their families, communities and culture and placed into State care”.²⁴⁴

²³⁵ Special Rapporteur on Standard of Health on Visit to Canada at para. 8; see also: paras. 70-73.

²³⁶ Special Rapporteur on Standard of Health on Visit to Canada at para. 51.

²³⁷ Special Rapporteur on Standard of Health on Visit to Canada at paras. 70, 74, 78, 80.

²³⁸ Special Rapporteur on Standard of Health on Visit to Canada at para. 75.

²³⁹ Special Rapporteur on Standard of Health on Visit to Canada at para. 89.

²⁴⁰ Special Rapporteur on Standard of Health on Visit to Canada at para. 103(a).

²⁴¹ Special Rapporteur on Standard of Health on Visit to Canada at para. 103(i).

²⁴² Committee on the Elimination of Racial Discrimination, “Concluding observations on the combined twenty-first to twenty-third periodic reports of Canada”, 13 September 2017, [online](#) [“**Committee on the Elimination of All Forms of Racial Discrimination on Canada**”].

²⁴³ Committee on the Elimination of All Forms of Racial Discrimination on Canada at paras. 7-12.

²⁴⁴ Committee on the Elimination of All Forms of Racial Discrimination on Canada at para. 27.

Among other recommendations, the Committee urged Canada to:

- develop a national action plan against racism with corresponding legislation, dedicated resources, targets, monitoring, and reporting mechanisms;²⁴⁵
- develop a “concrete action plan” to implement all Calls to Action from the Truth and Reconciliation Commission in collaboration with Indigenous Peoples;²⁴⁶
- implement the *UNDRIP* and adopt legislation to implement it, inclusive of a national action plan, reform of laws and policies to comply with it, and annual public reporting;²⁴⁷ and
- address the “root causes of displacement” for Indigenous children, including poverty and poor housing, which disproportionately drive these children into foster care;²⁴⁸

h) Special Rapporteur on the Right to Adequate Housing urges Canada to advance a housing strategy with particular attention to the circumstances of Indigenous peoples

The Special Rapporteur on the Right to Adequate Housing delivered a report on Canada in 2007.²⁴⁹ The report addressed several factors that are “impeding the effective implementation of the right to housing for all” and underscored that “Aboriginal women face some of the most severe housing conditions and challenges in the country” regardless of where they live.²⁵⁰ It observed the specific consequences that inadequate housing has on Indigenous women, including threats of child apprehension and criminalization.²⁵¹

Among other recommendations, the Special Rapporteur urged Canada to:

- recognize the right to adequate housing by all levels of government;
- adopt or amend legislation to protect the right to adequate housing;
- commit to a comprehensive national housing strategy with stable and long-term funding;

²⁴⁵ Committee on the Elimination of All Forms of Racial Discrimination on Canada at para. 10.

²⁴⁶ Committee on the Elimination of All Forms of Racial Discrimination on Canada at para. 18(a).

²⁴⁷ Committee on the Elimination of All Forms of Racial Discrimination on Canada at para. 18(b).

²⁴⁸ Committee on the Elimination of All Forms of Racial Discrimination on Canada at para. 28(d).

²⁴⁹ 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, Addendum – Mission to Canada, 17 February 2009, [online](#) [“**Report of the Special Rapporteur on Adequate Standard of Living on Mission to Canada**”].

²⁵⁰ Report of the Special Rapporteur on Adequate Standard of Living on Mission to Canada at pp. 22-23

²⁵¹ Report of the Special Rapporteur on Adequate Standard of Living on Mission to Canada at pp. 22-23.

- adopt a comprehensive and coordinated national strategy for the reduction of homelessness and poverty;
- address the situation of Indigenous peoples on and off reserve through a comprehensive and coordinated housing strategy;
- refrain from any actions that could contravene the rights of Indigenous peoples on land under claim until a settlement has been reached; and
- ensure equitable representation of all indigenous women in modern-day treaty negotiations and agreements.²⁵²

CONCLUSION

Substantial guidance on the scope of the right to adequate housing has been provided by various Committees of the United Nations, Special Rapporteurs, and other authorities on human rights. Several United Nations bodies have described the housing situation in Canada as a crisis, with particularly profound consequences on Indigenous Peoples and persons with disabilities. While Canada has made some progress to advance access to adequate housing within the country, significant work remains to realize this right. International human rights monitoring bodies have repeatedly urged Canada to do more to actualize the right to adequate housing, including through spending priorities, coordinated action with those groups most effected, express targets and timelines to alleviate the housing shortage and homelessness, and ongoing evaluation for effectiveness.

²⁵² See Report of the Special Rapporteur on Adequate Standard of Living on Mission to Canada.