

Discussion Paper: Ending Homelessness and the Right to Housing

When it comes to preventing and ending homelessness in Canada, housing rights matter! *A position paper from the Canadian Alliance to End Homelessness*

April 18, 2018

The federal government recognizes the importance of the right to adequate housing:

1. Canada has for many years ratified international legal instruments that recognize the right to adequate housing, including the International Covenant on Economic, Social and Cultural Rights and many subsequent human rights' obligations that address the specific housing needs of persons with disabilities, women, children and many others. *The Canadian Alliance to End Homelessness agrees that this is good news!*
2. The United Nations human rights framework was developed with the leadership of Canadian legal scholar John Peters Humphrey, and Canadians have continued in international human rights leadership, up to and including the current United Nations' Special Rapporteur on the Right to Adequate Housing, Leilani Farha. The articulation of the right to housing is strong and robust¹. *The Canadian Alliance to End Homelessness agrees that this is also good news!*
3. Canada's federal government, in November of 2017, released a National Housing Strategy that promised \$40 billion in funding to build or renovate hundreds of thousands of homes and ensure affordability. The government specifically committed to: "progressively implement the right of every Canadian to access adequate housing. Our plan is grounded in the principles of inclusion, accountability, participation and non-discrimination, and will contribute to United Nations Sustainable Development Goals and affirm the International Covenant on Economic, Social and Cultural Rights"². *The Canadian Alliance to End Homelessness agrees that this is very good news!*

The right to adequate housing is key to preventing and ending homelessness:

4. A good home is fundamental to a good and healthy life, and strong and sustainable communities. Good housing – that is, housing that is adequate – is the key to preventing and ending homelessness. Emergency shelters, supports for physical and mental health needs, short-term and transitional housing, homelessness prevention strategies – these are all part of a national housing strategy and need to be firmly connected and co-ordinated with the overall housing strategy. The federal government promised in November of 2017 as part of the National Housing Strategy announcement to launch a "redesigned" community-based homelessness initiative in April of 2019. *The Canadian Alliance to End Homelessness agrees that this is good news!*
5. In Canada, a good home is usually described using a government-developed definition of "core housing need" that addresses three dimensions of housing: affordability, habitability (is the building

¹ See: <http://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx>

² See: <https://www.placetocallhome.ca>

up to proper standards), and suitability (is it over-crowded). This definition is often tied to private market ownership and rental costs, and therefore isn't truly affordable to low and moderate-income Canadians. The UN definition of adequate housing cautions: "the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity"³. In addition to the three Canadian dimensions, the UN has determined that the right to adequate housing includes: legal security of tenure, availability of services including "facilities essential for health, security, comfort and nutrition", accessibility, location, and "cultural adequacy" that seeks "to enable the expression of cultural identity and diversity of housing"⁴. Evictions, domestic violence and cultural factors (especially for Indigenous people and for racialized Canadians) are all factors in generating homelessness and need to be addressed in a comprehensive housing strategy. Canada's current definition of adequate housing falls short of international standards. *The Canadian Alliance urges the federal government to ensure that its definition of adequate housing meets the full set of international standards.*

6. Governments don't grant human rights. The responsibilities of Canada's national government, along with provinces, territories and municipal governments is two-fold: First, to recognize the internationally-accepted human right to adequate housing (which the federal government has already done by signing onto the International Covenant on Economic, Social and Cultural Rights and other legally binding instruments); and, second, to ensure the progressive realization of the right to adequate housing in legislation, budgets, policies and programs. Governments are not to do everything overnight, but they are expected to move steadily forward to prevent and end homelessness and ensure adequate housing for all. *The Canadian Alliance to End Homelessness urgently reminds governments of all orders that they have much work to do to meet their fundamental housing rights obligations.*
7. The former UN Special Rapporteur on the Right to Adequate Housing, Miloon Kothari, completed a fact-finding mission to Canada, on the invitation of the Government of Canada, in October 2007. He stated: "There has been a significant erosion of housing rights over the past two decades. Canada's successful social housing programme, which created more than half a million homes starting in 1973, has been discontinued. The three remaining national housing and homelessness initiatives will expire in the coming months."⁵ In the decade since then (up to the announcement of the National Housing Strategy in 2017), there have been bits and pieces of housing policy in the context of a continuing erosion of housing rights. *The Canadian Alliance to End Homelessness notes with sadness that Canada's governments have collectively failed to ensure the progressive realization of the right to adequate housing in funding, policies and programs up to November of 2017.*
8. The international right to adequate housing recognizes that governments must develop over-arching strategies to realize the right to housing and to eliminate homelessness; and then it must follow with specific legislation, financial allocations, policies and programs (in the case of Canada, inter-governmental initiatives as well). UN Special Rapporteur on the Right to Adequate Housing Leilani Farha prepared a detailed report for the Thirty-Seventh Session of the UN Human Rights Council

³ See General Comment #4 at: <http://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx>

⁴ See note #3 above.

⁵ See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/110/92/PDF/G0811092.pdf?OpenElement>

(February and March of 2018) that sets out 10 principles for governments to fully realize their housing rights obligations⁶, including:

- i. “The right to housing should be recognized within housing strategies as a legal right, subject to effective remedies”;
- ii. “Housing strategies must engage multiple programmes, policies and spheres of government. They must ensure coordination among a host of areas from income support and land use to social housing programmes to finance. Housing strategies must also engage multiple levels of government, from the local to the national, drawing on the strengths of each. The responsibilities of each level of government need to be delineated and clearly linked to human rights obligations.”
- iii. “Rights-based housing strategies must firmly commit to ensuring meaningful participation of affected persons at every stage, from design to implementation to monitoring. Participation is central to human rights-based housing strategies because it challenges exclusion and silencing.”
- iv. “Strategies will not be successful if governments fail to allocate reasonable budgets and resources for their implementation. Housing strategies must include both short- and long-term commitments of adequate resources.”
- v. “Rigorous human rights-based goals and timelines are required to ensure that housing strategies move as expeditiously as possible toward the goal of adequate housing for all and realize the right for every individual in the shortest possible time in accordance with the maximum of available resources.”
- vi. “Effective monitoring of the implementation and outcomes of housing strategies is a firm obligation of States.”
- vii. “Rights-based strategies must include effective claiming mechanisms that guarantee access to remedies where a violation is found.”
- viii. “In most countries, the private sector plays a predominant role in the production and provision of housing and related services. Housing strategies are therefore likely to be ineffective if they ignore the significant role of private actors. Relevant private actors range from small-scale landlords to real estate developers and construction companies to multinational corporate landlords, and AirBnB and other short-term rental providers. They also include banks and other financial institutions, international hedge funds and multibillion dollar private equity firms.”

The Canadian Alliance to End Homelessness urgently reminds Canada’s national and sub-national governments that they have a number of specific standards to meet to demonstrate they meet their housing rights obligations.

⁶ See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/65/PDF/G1800765.pdf?OpenElement>

9. A key obligation on the part of governments in the progressive realization of the right to adequate housing is to “prioritize those most in need”⁷ which, in Canadian terms, means that people who are without housing (i.e. homeless) and those who are precariously housed must be the first served. According to the UN Special Rapporteur Leilani Farha “a State is seen to be in violation of international human rights law if any significant portion of the population is deprived of basic shelter or housing. Addressing homelessness is therefore an immediate obligation”⁸. Farha also notes that “with respect to progressive realization standards found in Article 2(1) of the ICESCR, the Committee on Economic, Social and Cultural Rights has stated in its General Comment No. 4 on the right adequate housing that this means, ‘[i]n essence, the obligation is to demonstrate that, in aggregate, the measures being taken are sufficient to realize the right for every individual in the shortest possible time in accordance with the maximum of available resources’”⁹

The federal government announced its new National Housing Strategy and also promised a new national initiative aimed at reducing chronic homelessness by 50% over a decade. While this population represents many of those people in Canada in greatest need, chronic and episodic homelessness account for less than 15 percent of the total number of different people who will experience homelessness in Canada annually. This means that over the life of the National Housing Strategy, only half of 15 percent of those who are currently homeless or who enter homelessness over the next ten years, will be housed. The vast majority are condemned to homelessness by the government’s own strategy falling far short of its international housing rights obligations.

The Canadian Alliance to End Homelessness urgently notes that the federal government’s promise to “reduce chronic homelessness by 50%” over ten years is an important target but falls far short of its international human rights obligations. The resources exist within the National Housing Strategy to achieve much greater homelessness reductions.

10. The requirement that governments prioritize those most in need includes other key provisions that set additional important obligations on Canada’s national, provincial, territorial and local governments, including:
- i. “Strategies must assess which communities and populations are in most desperate need or living in the most hazardous conditions and address their circumstances in a human rights compliant manner.”
 - ii. “Strategies must prevent housing systems themselves from sustaining and increasing socioeconomic inequality and exclusion. They must recognize and address the close association between laws and government policies that position housing as a commodity, and the unaffordability of housing for those in the lowest income brackets, leading to growing homelessness and displacement and increased concentration of wealth.”
 - iii. “Housing strategies should identify groups that suffer housing disadvantages and should address the particular barriers they face. These groups include: women; persons with disabilities; people living in poverty; migrants; racial and ethnic minorities; indigenous peoples; youth; older persons; lesbian, gay, bisexual, transgender and intersex persons; and

⁷ Principle #2: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/007/65/PDF/G1800765.pdf?OpenElement>

⁸ See note #7 above.

⁹ See note #3 above.

- people who are homeless or living in informal settlements. They should ensure that legal protections from discrimination are effectively enforced in the housing sector and that housing status — including homelessness — and social and economic situation are recognized as prohibited grounds of discrimination.”
- iv. “Women’s equal right to housing must be ensured in all aspects of housing strategies. This includes addressing women’s distinct housing experiences, including discrimination with respect to land, property and inheritance, violence against women and the disproportionate impact on women of forced evictions, inadequate water and sanitation and pervasive poverty.”
 - v. “Strategies should address the legacy of colonization and the systemic housing inequality and dispossession experienced by indigenous peoples. This requires specific measures led by indigenous peoples based on their right to develop their own housing priorities and strategies.”
 - vi. “Strategies should additionally recognize and be responsive to the unique housing experiences that result from intersectional and compound discrimination. For example, women with disabilities are more susceptible to violence in the home and less likely to have access to shelters or alternative accommodation, and women with physical disabilities may suffer particular hardship when water and sanitation facilities are not nearby.”
 - vii. “Strategies should be responsive to emerging issues of marginalization, discrimination or xenophobia and address stigmatization and hatred. The increasing number of people on the move raises a particular challenge in this respect. Housing strategies must ensure the right to housing of migrants, regardless of documentation.”

The Canadian Alliance to End Homelessness urgently calls for national, provincial and municipal policies, program, and funding in support of the National Housing Strategy to be comprehensively targeted to the greatest needs with a specific focus on preventing and ending homelessness.

The three-major right to housing concerns of the Canadian Alliance to End Homelessness:

11. We welcome the announcement of the National Housing Strategy in November of 2017, along with the federal government's promise of a "meaningful re-engagement in housing". We are especially pleased that the government has committed to realize the right to adequate housing. The promise of new funding, new federal-provincial agreements and a new community-based national homelessness strategy are all important steps forward. But the announcements to date do not create a comprehensive, robust and transparent rights-based framework that is necessary to comply with international housing rights standards.

The Canadian Alliance to End Homelessness is committed to working with federal, provincial, territorial and municipal governments, along with our community colleagues, plus private sector partners, to realize a comprehensive National Housing Strategy that is accountable and compliant with international human rights standards.

12. Our first right to housing concern is the urgent need for the government to commit to the elimination of homelessness. Under international human rights law, Canada has an immediate obligation to eliminate homelessness and prioritize resources to that objective. The federal government, in its National Housing Strategy section titled "A Plan to Make Homelessness History" proposes to reduce chronic homelessness by 50% over ten years. Preventing and ending homelessness is, by definition, a top international human rights obligation – and the government's promise to make only incremental progress over a decade falls short of realizing that obligation. While the government is making long-term investments through their new national homelessness program, they are not similarly prioritizing housing investment in the National Housing Strategy.

The Canadian Alliance to End Homelessness is calling on the federal government to comply with its international human rights obligations by committing to prevent and end all homelessness.

13. Our second right to housing concern is the equally urgent need for the government to ensure that affordable housing dollars and programs benefit those most in need, including people who are homeless. Recent federal (and federal-provincial-territorial) affordable housing programs have not complied with this international human rights standard. For instance, the rental / ownership costs in the new housing was higher than the costs that could be afforded by people who needed the housing the most (people who are homeless and precariously housed). A "thin" subsidy spread over more homes allows governments to claim more people are assisted, but leaves behind those with the greatest need. In 2009, the Ontario Auditor-General, after reviewing recent housing programs, concluded: "We noted that the Program objective of achieving 80% of the CMHC's average market rent for new units would be met, and that the overall supply of affordable housing did increase. However, many people on the waiting list [for affordable housing] could not afford the rent. The CMHC definition of affordable housing stipulates that households should not have to pay more than 30% of their pre-tax income on rent. We determined that more than half of the units in this Program would still be unaffordable for households on waiting lists, or eligible to be on the lists."¹⁰ Affordable housing programs have to produce housing that is truly affordable to those who need it the most – including people who are homeless and those precariously housed.

¹⁰ See: <http://www.auditor.on.ca/en/content/annualreports/arreports/en09/312en09.pdf>

The most significant investments in Canada's National Housing Strategy (NHS) are focused on repairing up to 300,000 old social housing units and addressing the Expiry of Operating agreements that threatened the affordable housing of 385,000 households. We support these investments. The NHS promises up to 100,000 new housing units over the course of the plan, but it is unclear if or how people experiencing homelessness will benefit. The new housing will largely be delivered through the provinces or the National Housing Co-Investment Fund. There are many competing priorities for this funding meaning the money will likely get spread thinly over more than a decade. Further, the CMHC definition of 'affordability' remains at '80% of median market rents' which is unaffordable for most people experiencing homelessness in Canada. The new Canada Housing Benefit (CHB) is a federal / provincial / territorial portable housing benefit designed to provide financial support to up to 300,000 households facing housing affordability challenges. The CHB has the potential to be a powerful homelessness prevention and elimination tool, but it is unclear if or how people experiencing or at risk of homelessness will benefit.

The Canadian Alliance to End Homelessness is calling on the federal government to embed into housing dollars, and housing programs, clear and transparent requirements to ensure that the funding and the programs are targeted to people experiencing or at risk of homelessness.

14. Our third right to housing concern is to highlight the lack of a rights-based commitment in the federal-provincial-territorial housing framework agreement (which will also bind municipalities) that was announced in April of 2018. The agreement notes: "Federal initiatives under the NHS are guided by a human rights-based approach to housing"¹¹. But provinces, territories and municipalities are not bound by any requirement to comply with international housing rights standards. The provinces have significant jurisdiction under Canada's Constitution and in the housing framework agreement regarding housing dollars, including targeting the funding and programs, as well as responsibility for security of tenure for private sector tenants (a key housing rights obligation), not to mention other dimensions of housing rights (including housing for victims of domestic violence, supportive and special needs housing, off-reserve Indigenous housing, newcomer housing). Provinces, territories and municipalities should be required to comply with international housing rights obligations, including those set out in paragraphs 5,7,8,9 and 10 above.

The Canadian Alliance to End Homelessness calls on the federal, provincial and territorial governments to ensure that full compliance with international housing rights obligations are included in all bilateral housing agreements under the National Housing Strategy.

¹¹ See: <http://www.scics.ca/en/product-produit/news-release-federal-provincial-and-territorial-ministers-endorse-new-housing-partnership-framework/>