

Mandate 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

REFERENCE:
OL CAN 2/2018

22 June 2018

The Right Honorable Justin Trudeau, Prime Minister of Canada,
Honorable Minister Jean-Yves Duclos, Minister of Families, Children and Social
Development,
Honorable Minister Jodi Wilson-Raybould, Minister of Justice and Attorney General of
Canada,
Honorable Minister Chrystia Freeland, Minister of Foreign Affairs,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 34/9.

On 16 March 2017 I and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the rights of indigenous peoples, and the Special Rapporteur on extreme poverty and human rights, sent to your Excellency a letter concerning the right to housing in Canada.

The allegation letter outlined information received regarding the extent and consequences of homelessness in Canada. It noted that “Canada has failed to respond to longstanding recommendations from international human rights bodies and domestic institutions, dating back to the early 1990s, that Canada implement a national housing strategy based on the right to adequate housing, with clear goals and timelines for the elimination of homelessness and effective monitoring and accountability mechanisms.” It noted that the extent of homelessness in Canada was caused, at least in part, by the failure to recognize housing as a fundamental right.¹

The four Special Rapporteurs asked Canada, among other questions, the following:

Please clarify whether the new national housing strategy will explicitly recognize the right to adequate housing, reference Canada’s international human rights obligations and include goals and timelines for the elimination of homelessness, independent and transparent accountability mechanisms, and a complaints

¹ See AL CAN 1/2017 from 16 May 2017, available at:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23071>

mechanism to provide access to justice for violations of the right to housing. Please clarify whether the Province of British Columbia will implement a rights-based housing and homelessness strategy co-ordinated with national housing strategy.

I regret that as of today, I have not yet received an official reply to this letter. I did, however, have a number of informal discussions with representatives of the Government of Canada and Canada Mortgage and Housing Corporation (CMHC) about the National Housing Strategy (NHS) which at that time was being developed. I have greatly appreciated the opportunity to engage constructively with the Government and CMHC in this process.

On 22 November 2017 the Government of Canada released Canada's National Housing Strategy: A place to call home announcing "Canada's first ever National Housing Strategy (NHS)." The document stated that the NHS would "progressively implement the right of every Canadian to access adequate housing" and affirm the International Covenant on Economic, Social and Cultural Rights. It promised "new legislation that promotes a human rights-based approach to housing."

I issued a press release on 23 November 2017 in which I welcomed "the Government's acknowledgement that housing is a human right and its intention to recognize this through a rights-based housing strategy as well as in legislation."²

I am concerned, however, that the Government is now indicating that it may not recognize the right to housing in the implementing legislation for the National Housing Strategy, and that it will not ensure access to effective remedies through which rights holders may hold the Government accountable to the obligation to progressively realize this right. Moreover, my earlier press release welcoming the NHS has been cited to suggest that I may support such an approach, as has my thematic report.

I am writing to make very clear that my support for the new National Housing Strategy was premised on my understanding that the legislation would recognize the right to housing, and that it would ensure effective remedies and accountability for systemic violations of the right by way of a Housing Advocate, a Housing Council and Community Initiatives.

On 18 June 2018, the Parliamentary Secretary to the Minister Responsible for Housing and Urban Affairs responded to a question in the House of Commons regarding whether Canada would accept recommendations made during its recent Universal

² See my press release "Rapporteur hails Canada's "historic" decision to recognize right to housing in new national housing strategy" from 23 November 2017, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22435&LangID=E>

Periodic Review to ensure that the legislation related to the NHS fully recognizes the right to housing and provides for effective remedies.³

In response, the Parliamentary Secretary cited my press release of 23 November 2017 as evidence of my support for the NHS. He proceeded to argue, however, that the NHS need not recognize the right to housing in legislation or provide for effective remedies. He stated that “declaring it a right will get people, perhaps, into a courthouse, but it will not get them into homes. It may introduce them to lawyers, but they need landlords. ... it creates sort of a hope that they can prosecute their way into housing.”⁴ It was not made clear by the Parliamentary Secretary, though I have informed him of this, that I find the suggestion that marginalized groups simply need housing and should not also be accorded rights and access to courts or tribunals to be discriminatory and patronizing.

A week prior to the Parliamentary Secretary’s speech, the President of Canada Mortgage and Housing Corporation (CMHC), responsible for consulting with Canadians about a rights-based approach and with whom I have had discussions, cited my work to affirm that “states have a firm obligation to ensure accountability.” He proceeded to argue, however, that since countries like Finland and South Africa that have accorded legal recognition to the right to housing still have homelessness, this approach “is not a panacea” and “would offer no comfort to people who can’t hire a lawyer.” He stated that what is being considered in Canada is a different approach, a “human rights-based approach” which does not, apparently, include legal recognition of the right to housing.⁵

I must clarify in the most emphatic terms that I would never support, nor can I imagine, a “human rights-based approach” that does not reference and guarantee the right to housing and that does not provide access to justice and effective remedies. With respect to obligations to monitor accountability, I made it clear in my thematic report that these must be understood in relation to “compliance with the right to housing.”

In my report to the UN Human Rights Council, on Human Rights Based Housing Strategies, I articulate 10 principles essential for a housing strategy to be considered human rights compliant.⁶ I have shared this report and discussed it with representatives of the Government of Canada and CMHC engaged in developing the rights-based approach in the National Housing Strategy.

³ Report of the Working group (draft) A/HRC/WG.6/30/L.9 available at: https://www.upr-info.org/sites/default/files/document/canada/session_30_-_may_2018/a_hrc_wg.6_30_l.9.pdf

⁴ Canada, House of Commons, Hansard 18 June 2018, Statement by MP Adam Vaughan, available at www.infomedia.gc.ca/parl

⁵ See, “Human Rights Start at Home – Building a Stronger Foundation for Housing in Canada”, speech delivered at Canadian Knowledge Mobilization Forum, Canadian Museum of Human Rights on 12 June 2018.

⁶ UN Document [A/HRC/37/53](https://www.unhcr.org/refugees/canada/A/HRC/37/53).

The first of these principles dictates that a strategy must recognize the primacy of the right to housing as a legal right subject to effective remedies. The eighth principle states that a housing strategy must provide effective claiming mechanisms for the right to housing through courts or other means. I have consistently reiterated these requirements in many forums, through media interviews, subsequent press releases, and at consultations with CMHC.

Civil society groups and other stakeholders in Canada have adopted a number of consensus points with respect to the development of the NHS. These include:

- Explicit recognition in the legislation – and not just in preambular text – of the right to adequate housing as defined in international law and of the obligation of governments to progressively implement the right within a reasonable period of time.
- A commitment to address systemic inequality on the basis of race, gender, disability, and other grounds, the impacts of colonization, and the rights of Indigenous communities, including those in urban centres.
- Prioritization of those in most urgent housing need and a commitment to eliminate homelessness by 2030 as Canada has agreed to under the UN Sustainable Development Goals.
- An accessible process through which systemic issues are subject to public hearings, adjudication and remedies.
- Independent monitoring of progress and accountability based on human rights-based goals and timelines.

I have publically supported these consensus points. Indeed, my position is that these proposals identify elements in the proposed legislation that are necessary for compliance with Canada’s obligations under international human rights law.

I also note that proposals put forward by civil society organizations and experts would provide for hearings and remedies for systemic issues affecting the progressive realization of the right to housing, by way of a Housing Advocate and Housing Council and would not rely on individual claims before courts. I have expressed my opinion to government representatives that these innovative proposals, if implemented through legislation, could satisfy the obligation to ensure accountability and effective remedies, without relying on individual claims before courts. It is inappropriate, therefore, for the government to continue to state that recognizing the right to housing and ensuring effective remedies in the NHS legislation would require individuals to “prosecute their way into housing” using lawyers and courts.

In conclusion, I must stress, again, that it is impossible to have a human rights based housing strategy that does not recognize the primacy of the right to housing as a

legal right subject to effective remedies. As the UN Special Rapporteur on the right to housing I would never endorse any measure that suggests otherwise. I urge the Government of Canada to accept the recommendations regarding the right to housing at its recent Universal Periodic Review⁷ and re-commit to a rights-based approach based on Canada's commitment to the progressive realization of the right to housing and its obligations under the International Covenant on Economic, Social and Cultural Rights.

I kindly ask you to provide a response at your earliest convenience to this letter as well as my original communication. In order to clarify my positions in relation to these above mentioned issues, I have decided to make the letter public on the webpage of my mandate.

I continue to believe that the rights based strategy announced by the Government on 22 November 2017, and the legislation currently being drafted to implement it, offers an historic opportunity for Canada to exercise leadership in advancing the right to housing. I look forward to our continued engagement in this regard.

Please accept, Excellencies, the assurances of my highest consideration.

Leilani Farha

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

⁷ See documentation related to the Universal Period Review of Canada on 11 May 2018, available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CAIndex.aspx>