

**Mandates of 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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on extreme poverty and human rights**

REFERENCE:  
AL CAN 1/2017

16 May 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 33/9, 34/9, 33/12 and 26/3.

This request is sent in response to information received regarding systemic homelessness in Canada and regarding homeless camps facing eviction in several locations in British Columbia. Homelessness appears to continue to be an extremely serious problem across Canada and it seems to have reached crisis proportions in British Columbia, where speculation and financialization of housing is depriving increasing numbers of households of access to adequate and affordable housing. In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding governments' failures to address homelessness as a human rights issue as well as information regarding three particular communities in British Columbia. We have received information about the eviction in August 2016 of approximately 140 homeless people who lived in an informal settlement on provincial land in Victoria (Super InTent City Encampment); the eviction and displacement of approximately 777 households in Burnaby BC between 2012 and 2015 with 700 households threatened with eviction in 2017; and the discrimination and stigmatization experienced by homeless persons in Maple Ridge, evidenced by the occupants of 22 tents pitched behind the Salvation Army Shelter being forced to live in an inadequate temporary shelter which currently houses 35 individuals.

According to the information received:

***Background Information***

It is estimated that 235,000 individuals in Canada will experience homelessness each year, with over 35,000 Canadians homeless on any given night, thousands of whom will be unsheltered – living in parks and public spaces. Indigenous peoples, persons with psychosocial and physical disabilities and youth are particularly affected. Indigenous peoples make up between 27.7% and 33.5% of those relying

on homeless shelters, while they make up less than 5% of the general population.<sup>1</sup> Youth make up 20% of the homeless population. The percentage of those who are homeless and have disabilities was estimated at 45%.<sup>2</sup>

British Columbia has one of the highest poverty rates in Canada with 10.7% of the population living in poverty. It is estimated that over 50,000 people are homeless and another 65,000 are at risk of becoming homeless as a result of poverty and a lack of affordable housing.

While homelessness is not a problem that is unique to Canada, there are two aspects of this issue in Canada which give rise to particular concerns. First, Canada is a relatively affluent country which has the resources necessary to ensure that no one is homeless in so harsh a climate. And second, increasing homelessness in Canada, even during times of economic prosperity, appears to be at least in part a result of a failure to recognize housing as a fundamental right and to respond to concerns and recommendations from human rights bodies, parliamentary committees and experts to implement a national housing strategy based on human rights.

According to information received, 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. In spite of these recommendations, Canada remains one of the few countries in the world without a national housing strategy. A summary of concerns and recommendations from UN human rights as well as domestic parliamentary bodies provides an important context for the assessment of governments' responses to the plight of those who are homeless in Canada.

As early as 1993, the Committee on Economic, Social and Cultural Rights (hereafter the Committee) commented on the emergence of homelessness in Canada. The Committee noted evidence at that time of families being forced to relinquish their children to foster care because of their inability to provide adequate housing or other necessities; widespread discrimination in housing; and inadequate protection of security of tenure for low-income households.<sup>3</sup> In its 1998 review the Committee expressed alarm that "such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's 10 largest cities have now declared homelessness a national disaster."<sup>4</sup> In 2006 the Committee expressed concern that its previous recommendations had not been implemented and that

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<sup>1</sup> Stephen Gaetz, Erin Dej, Tim Richter, Melanie Redman, *The State of Homelessness in Canada 2016* (Toronto: The Homeless Hub Press, 2016) online: <http://homelesshub.ca>.

<sup>2</sup> There is overlap among these groups, of course, so that Indigenous youth or youth with psychosocial or physical disabilities fall into more than one category.

<sup>3</sup> E/C.12/1993/5

<sup>4</sup> *Ibid* at para 24.

“the estimated number of homeless persons in Canada still ranges from 100,000 to 250,000.”<sup>5</sup>

In 2007, the then UN Special Rapporteur on the right to adequate housing, Miloon Kothari, conducted a mission to Canada. His concerns and recommendations echoed those of the Committee. In particular, noting that Canada is one of the few countries without a national housing plan, he recommended “a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable.”<sup>6</sup> Reiterating the recommendations of the Committee, the Special Rapporteur stated that a national housing strategy should include “measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms.”<sup>7</sup> The Special Rapporteur urged that the “right to adequate housing be recognized in federal and provincial legislation as an inherent part of the Canadian legal system.”<sup>8</sup>

The Special Rapporteur on the right to adequate housing reiterated concerns expressed earlier by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples regarding homelessness among Indigenous persons living off-reserve.<sup>9</sup> He noted the over-representation of Indigenous peoples among the homeless in Canada and drew particular attention to the need to address the circumstances of homeless Indigenous women in cities in Canada. He noted that lack of affordable housing can lead to the criminalization of Indigenous women; that Indigenous women are at risk of exploitation and that without affordable housing they face the threat of having their children apprehended by the State into the child welfare system. He found that efforts by the Federal Government to provide funding for Indigenous women fleeing violence “seem to fall far short of what is needed to address the magnitude of the problem.”<sup>10</sup> He recommended that: “Federal and provincial governments should develop a comprehensive and coordinated housing strategy based on a human rights approach, in collaboration with Aboriginal governments and communities, to address effectively their responsibility to ensure adequate housing for on and off reserve Aboriginals.”<sup>11</sup>

At its most recent review of Canada in 2016, the Committee reiterated its longstanding concerns regarding homelessness and the continued absence of a national housing strategy based on human rights. The Committee urged the State

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<sup>5</sup> E/C.12/CAN/CO/4, E/C.12/CAN/CO/5 (2006) para 28.

<sup>6</sup> A/HRC/10/7/Add.3, (2009) at para 90.

<sup>7</sup> *Ibid* at para 90.

<sup>8</sup> *Ibid* at para 88.

<sup>9</sup> *Ibid* at para 71 referring to E/CN.4/2005/88/Add.3, at para. 36-38, 49, 79, 82, 86, 101 and 105. On-reserve housing conditions of Indigenous Peoples in Canada have also been a longstanding issue of concern among international human rights bodies but these are not the focus of the present communication.

<sup>10</sup> *Ibid* at paras 80-82.

<sup>11</sup> *Ibid* at para 105.

party “to develop and effectively implement a human-rights based national strategy on housing and ensure that all provincial and territorial housing strategies are aligned with the national strategy.” The Committee expressed concern about “the increasing number of homeless persons in the State party, the lack of adequate measures to prevent homelessness, the shortage of adequate emergency shelters, and the existence of anti-camping and other by-laws that penalize homeless persons in some jurisdictions (art. 11).”<sup>12</sup> The Committee also expressed concern that lack of access to adequate housing increased the vulnerability to violence of women and girls, particularly Indigenous women and girls.<sup>13</sup>

In its recommendations to Canada, the Committee urged the “repeal of provincial by-laws that penalize homeless persons for finding solutions necessary for their survival and well-being.” The Committee urged the State party to “ensure that its legislation on forced evictions is compatible with international norms, particularly with respect to its obligation to ensure that no persons find themselves homeless or victims of other human rights violations due to evictions and that compensation or alternative accommodation is provided to victims.”

The concerns of the Committee and the former Special Rapporteur regarding violations of human rights resulting from failures to address homelessness in Canada have been shared by other UN human rights bodies. The UN Human Rights Committee has noted the effects of homelessness on health and on the right to life in Canada, stating that “positive measures are required by article 6 [the right to life] to address this serious problem.”<sup>14</sup> The Human Rights Committee has also noted evidence of people with psychosocial disabilities being detained in institutions because of lack of supportive housing, recommending that governments in Canada “ensure that sufficient and adequate community based housing is provided to [them], and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.”<sup>15</sup>

There have also been calls for national rights-based housing and anti-poverty strategies in Canada from a range of domestic authorities which, as with recommendations from UN human rights bodies, appear to have been ignored for many years, at significant cost to those affected. From 2007 - 2009 the Senate Subcommittee on Cities held public hearings into poverty and homelessness. In its extensive report, *In from the Margins: A Call To Action On Poverty, Housing and Homelessness*, the Subcommittee noted that many witnesses described homelessness and poverty in Canada as a denial of human rights, and called for a national housing and homelessness strategy.<sup>16</sup> The Subcommittee recommended

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<sup>12</sup> E/C.12/CAN/CO/6

<sup>13</sup> *Ibid* at para 33.

<sup>14</sup> *Ibid* at para 12.

<sup>15</sup> CCPR/C/CAN/CO/5, (2006) at para 17.

<sup>16</sup> Subcommittee on Cities of the Standing Senate Committee on Social Affairs, Science and Technology *In from the Margins: A Call To Action On Poverty, Housing and Homelessness*

to the Federal Government that “in recognition of both Canadian obligations under international human rights law, and their importance in claiming access to appropriate programs and services, explicitly cite international obligations ratified by Canada in any new federal legislation or legislative amendments relevant to poverty, housing and homelessness.”<sup>17</sup>

In 2010, following up on the recommendations by the Senate Subcommittee, the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA Committee) held hearings and issued a report on a federal poverty reduction plan.<sup>18</sup> The HUMA Committee noted the importance of Canada’s international obligations, both under the *Universal Declaration of Human Rights* and in ratified human rights treaties, to ensure an adequate standard of living, including adequate housing.<sup>19</sup> The HUMA Committee called for a federal action plan for the reduction of poverty that incorporates a human rights framework and provides for engagement with provincial and territorial governments, Aboriginal governments and organizations, the public and private sector, and people living in poverty.<sup>20</sup>

In 2012 the Mental Health Commission of Canada similarly emphasized the need to follow up on the recommendations of UN treaty bodies and the Special Rapporteur by implementing a National Supportive Housing Strategy<sup>21</sup>

Individuals whose life, security and dignity have been placed at risk by homelessness and inadequate housing in Canada have also sought to ensure more effective responses by governments through courts. Both the Committee and the former Special Rapporteur on the right to adequate housing have expressed concern that individuals in these circumstances have been denied access to hearings and effective remedies and have made numerous recommendations for the enhancement of access to justice for violations of rights linked to homelessness.

The Committee has expressed particular concern in periodic reviews of Canada that when homeless people have sought remedies for violations of the rights to life, security of the person and equality under the Canadian Charter of Rights and Freedoms “provincial governments have urged upon their courts in these cases an

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(Government of Canada, 2009) at 104, online <https://sencanada.ca/Content/SEN/Committee/402/citi/rep/rep02dec09-e.pdf> at 104.

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

<sup>18</sup> House of Commons, Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, (Chair: Candice Hoepfner), *Federal Poverty Reduction Plan: Working in Partnership Towards Reducing Poverty in Canada* (November 2010), online: Parliament of Canada <http://www.parl.gc.ca> [HUMA Committee].

<sup>19</sup> HUMA Committee, above note 93 at 53.

<sup>20</sup> *Ibid* at 96.

<sup>21</sup> The Canadian Mental Health Commission, *Turning the Key Assessing Housing and Related Supports for Persons Living with Mental Health Problems and Illness*, online [http://www.mentalhealthcommission.ca/sites/default/files/PrimaryCare\\_Turning\\_the\\_Key\\_Full\\_ENG\\_0\\_1.pdf](http://www.mentalhealthcommission.ca/sites/default/files/PrimaryCare_Turning_the_Key_Full_ENG_0_1.pdf).

interpretation of the *Charter* which would deny any protection of Covenant rights.”<sup>22</sup>

According to information received, however, the Federal Government ignored these concerns and continued to advocate against effective remedies to homelessness in the case of *Tanudjaja et al v. Canada et al.*<sup>23</sup> In that case a Charter application was brought by individuals whose life and health had been placed at risk because of homelessness and inadequate housing. The applicants argued that their rights to life, security of the person and equality under the Canadian Charter had been violated by the failure of the Federal and provincial governments to implement a national housing strategy, as recommended by UN human rights bodies. The Government of Canada and the Province of Ontario brought a motion to have the claim dismissed without any consideration of the extensive evidence compiled by the applicants. They argued in support of the motion to dismiss that Canada’s obligations under international human rights law to ensure the right to adequate housing ought to be considered non-justiciable by Canadian courts and that governments have no obligation under domestic law to implement positive measures to address homeless - even where life and security of the person is at risk. The Government of Canada appears to have taken the position, upheld by the Ontario Court of Appeal, that legal claims related to government obligations to address homelessness or inadequate housing should not be granted a hearing based on the evidence, even in circumstances where life and health is affected, because these are policy matters beyond the competence of domestic courts.

A similar pattern was in evidence in the arguments advanced by the Province of British Columbia in the case of *Victoria (City) v. Adams.*<sup>24</sup> In that case, homeless people living in a park had been charged with violating a bylaw which prohibited them from erecting temporary shelter overnight. They argued that the bylaw violated their right to life and security of the person under section 7 of the Canadian Charter, interpreted in light of Canada’s obligations under international human rights law with respect to the right to adequate housing and protection from eviction. The Attorney General for British Columbia intervened in the case to argue that “international agreements which have not been implemented through domestic legislation cannot be enforced in Canadian courts and hence do not assist the Defendants.” The Court relied on Supreme Court of Canada jurisprudence to reject the arguments of the Attorney General for British Columbia, finding that, “while the various international instruments do not form part of the domestic law of Canada, they should inform the interpretation of the

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<sup>22</sup> *Ibid* at para 14.

<sup>23</sup> *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410 (CanLII), online <http://canlii.ca/t/g0jbc>; *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852 (CanLII), online <http://canlii.ca/t/gffz5>; Application for leave to appeal denied by the Supreme Court of Canada  
*Jennifer Tanudjaja, et al. v. Attorney General of Canada, et al.*, 2015 CanLII 36780 (SCC), online <http://canlii.ca/t/gjs25>.

<sup>24</sup> 2008 BCSC 1363 (CanLII), <http://canlii.ca/t/215hs>.

Charter and in this case, the scope and content of s. 7.” The Court relied on commentary from the CESCR and undertakings made by Canada before the Committee to find that the bylaw contravened section 7 of the Charter because its effect was “to impose upon those homeless persons, who are among the most vulnerable and marginalized of the City’s residents, significant and potentially severe additional health risks. In addition, sleep and shelter are necessary preconditions to any kind of security, liberty or human flourishing.”<sup>25</sup> The BC Supreme Court’s decision was upheld by the BC Court of Appeal.<sup>26</sup>

Subsequent to the dismissal of the *Tanudjaja* case, in its 2016 review of Canada, the CESCR reiterated its concern about the positions taken with respect to the justiciability of Covenant rights in Charter litigation. Taking note of the commitment of the Government of Canada to review its litigation strategies, the Committee recommended the government “engage civil society and organizations of indigenous peoples in this revision with a view to broadening the interpretation of the Canadian Charter of Rights and Freedoms, notably sections 7, 12 and 15, to include economic social and cultural rights, and thus ensure the justiciability of Covenant rights.”<sup>27</sup> The Committee also recommended human rights training programmes on the application of the Covenant, in particular among the judiciary, law enforcement and public officials.<sup>28</sup> Similar recommendations have been made in previous reviews of Canada and by domestic authorities. For example, in its 2009 report on poverty and homelessness, the Senate Subcommittee on Cities noted that “support is needed for people struggling with breaches of the Charter with respect to poverty, housing or homelessness” and recommended that funding be allocated to provide support for claimants in these kinds of cases.<sup>29</sup>

We welcome the announced intention of the Federal Government to review positions taken in litigation to ensure conformity with Canadian values.<sup>30</sup> This appears to be an important opportunity to address concerns with respect to access to justice for violations of the right to housing. In addition, the Federal Government has committed to implementing a national housing strategy. It is unclear, however whether the national housing strategy will be based on the recognition of the right to adequate housing and the need for meaningful accountability, access to justice and effective remedies.

In the context of the ongoing concerns and recommendations regarding homelessness and the right to housing from UN human rights treaty bodies, special procedures and domestic authorities, including parliamentary committees, the following information received about three cases involving homeless persons

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<sup>25</sup> *Ibid*, at para 194.

<sup>26</sup> *Victoria (City) v. Adams*, 2009 BCCA 563 (CanLII), online <http://canlii.ca/t/26zww>

<sup>27</sup> E/C.12/CAN/CO/6 at para 6.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid* at 70.

<sup>30</sup> See the “Minister of Justice and Attorney General of Canada Mandate Letter online <http://pm.gc.ca/eng/minister-justice-and-attorney-general-canada-mandate-letter>.

in British Columbia raise concerns regarding Canada's response to homelessness and compliance with its obligations under international human rights law.

### ***Case 1: Victoria: Super InTent City Encampment***

According to the last homeless count, in February 2016, 1,387 people were identified as sleeping outside or residing in temporary shelters in Greater Victoria. Among them 30 to 40 per cent were identified as Indigenous. Among those interviewed, 36.9 per cent became homeless as youth (under 18 years), 48.7 per cent reported addictions, 30.4 per cent a physical disability, 37.6 per cent a mental health issue and 18.9 per cent a brain injury. There is a 0 per cent vacancy rate for affordable units for low-income people and shelters are to capacity.

In Victoria, city bylaws make camping in parks illegal from 7 am to 7 pm. Bylaws prohibiting people from leaving belongings in public spaces and limiting the ability to panhandle prevent residents from resting in public spaces during the day. This has resulted in homeless persons sleeping in parks and then having to shift out of the parks from sunrise to sunset.

In October 2015, in response and as a refuge from daily displacement from city parks, criminalization, harassment, and discrimination, homeless people in Victoria decided to establish themselves on provincial public land, not subject to city bylaws. They erected tents, tarps, cardboard boxes and created <sup>31</sup>a home for themselves next to the Courthouse in Victoria.

This community became known as Super InTent City. Housing more than 100 homeless people from the Victoria area, it included as many as 60 tents, a cooking area, bathroom facilities and a meeting space for residents. Many residents reported that Super InTent afforded them a sense of home, community, safety and security.

On 8 January and 4 February 2016, Super InTent City residents were given notice that they had to leave the encampment. On 27 February 2016, residents were issued a fire order. On 29 February 2016, the Province of British Columbia and the Attorney General of British Columbia ("the Province") filed court proceedings seeking an interim injunction to evict more than 100 homeless people living in Super InTent City. The interim order would be in advance of a hearing scheduled for September of an application for a permanent injunction against sheltering on the lands on the basis of trespass, safety concerns and that Super InTent residents were causing a public nuisance.

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<sup>31</sup> See M. Albert, T. Penna and B. Pauly, *More Than a Number: 2016 Greater Victoria Point in Time Count Summary Report* (2016), available at: <https://www.crd.bc.ca/docs/default-source/housing-pdf/pitcount-report26apr2016.pdf>. See also Canada Mortgage and Housing Corporation Housing, Rental Market Report: Victoria CMA (2016), available at [https://www.cmhc-schl.gc.ca/odpub/esub/64471/64471\\_2016\\_A01.pdf?fr=1494846264652](https://www.cmhc-schl.gc.ca/odpub/esub/64471/64471_2016_A01.pdf?fr=1494846264652)



On 5 April 2016, the Chief Justice of the Supreme Court of British Columbia denied the Province's application for an interim injunction, finding that the evidence overwhelmingly weighed in favour of the Super InTent residents. In particular, the court found that the encampment resulted in physical and mental health improvements, better sleep, access to meals and services, improved safety and conflict resolution systems, relationship building with government authorities and other community members, and decreased harm relating to illicit drug use.<sup>32</sup>

On 3 June 2016, the Province again filed an application seeking an interim injunction to remove the residents of Super InTent City. In response to the application, the residents argued that there were not enough shelter beds or sufficient housing to meet the needs of Victoria's homeless population, that they would face greater safety risks once evicted from Super InTent and that Super InTent allowed them to create a beneficial community in which they could connect residents with local authorities and others. Furthermore, they noted that many Super InTent residents faced serious barriers to accessing housing and shelter, including mental and physical health challenges, and substance use and addictions, etc. and would require supportive housing.

On 5 July 2016, the Court awarded the interim injunction and established the eviction date on 8 August 2016.<sup>33</sup> The basis for the Court's decision was the Province's evidence of the failure of the residents to comply with fire orders, and deterioration in sanitation and safety at Super InTent. The eviction date was chosen based on evidence that a new housing facility with 140 units would open prior to 8 August 2016. The Court's decision did not consider the broader systemic issue regarding the lack of short and long-term housing options for the approximately 1400 homeless people counted in Victoria in 2016.

According to the information received, Super InTent City residents were never consulted to ensure that adequate and appropriate housing be provided to them. It appears that the government ignored written submissions from 16 non-profit groups, more than 100 academics and researchers, and the residents' lawyer asking that appropriate consultation take place with the affected population prior to their eviction. By 14 August 2016, approximately 140 Super InTent residents were relocated to Central Care Home, a former seniors care facility. It was reported that the eviction was carried out by the Victoria Police Department who compiled a list of the existing residents in Super InTent City within a 24 hour time frame. Reportedly the list was incomplete, resulting in some of the residents being displaced and rendered homeless. It is not clear where those residents now reside. Many of those who were relocated lost their personal belongings during the eviction. The eviction caused heightened health symptoms associated with social anxiety and post-traumatic stress disorder.

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<sup>32</sup> *British Columbia v Adamson*, 2016 BCSC 584.

<sup>33</sup> *British Columbia v. Adamson*, 2016 BCSC 1245

It is alleged that Central Care Home was designed as an institution for elderly and sick people and is not appropriate for housing residents evicted from Super InTent City. The former residents of Super InTent City who are still living at Central Care Home do not have running drinkable water, community kitchens, laundry facilities, secure adequate storage facilities for their belongings, doors in the washrooms or furniture. The substandard water quality, food safety and environmental quality are having an impact on their health and well-being. In addition, people living in the Central Care Home are under constant surveillance with video cameras, police around the building and they need to ask permission to enter and exit their homes.

***Case 2: Demolition of low-income housing in Metrotown neighbourhood of Burnaby***

Between 2012 and 2014, 300 housing units, were demolished affecting at least 600 people in the Metrotown neighborhood of Burnaby, B.C. (“Metrotown”), a relatively low-income neighborhood in the City of Burnaby. The number of demolitions has continued to rise each subsequent year and tenants have been displaced.

Between 2014 and 2015, two condominium development corporations bought up every apartment building in a one-block area of Metrotown. These companies are now undertaking the demolition of fifteen buildings and the displacement of nearly 200 people and families living on one block. 20 buildings have already been demolished, displacing approximately 477 low to moderate income households. Based on a conservative estimate of two people per unit, there are potentially 1,400 residents facing eviction in 2017.

The demolitions, displacement and development of luxury condominiums are part of Burnaby’s development plan to revitalize this area as a new “downtown core”. This redevelopment has been triggered and encouraged by the City of Burnaby’s zoning amendments that favour condominium towers over existing low-rise rental buildings and facilitated by demolition permits granted by the city of Burnaby. It is also the result of the lack of a municipal rental replacement policy to protect existing low-income housing or alternatively to require an effective tenant relocation plan. New condos built in this neighborhood are being sold for more than CDN \$600,000 (USD 450,000 approx.) for a two-bedroom unit. Burnaby has of provincial funding for this purpose.

According to the information received, these evictions due to demolition are affecting hundreds of low to moderate income households, including pensioners, young families, low-income residents, immigrants and refugee families.

The Tenant Assistance Policy in the City of Burnaby provides that tenants evicted for demolition purposes are given three months’ rent as compensation, rather than the one month’s rent available under the provincial Residential Tenancy Act. However, this policy does not protect tenants from becoming homeless or from

being displaced from their communities. It does not provide for any replacement housing that meets the needs of the people living in this relatively low-income housing, nor does it require any level of affordability or the inclusion of affordable units in the luxury condominiums that are being developed.

In addition, it is reported that the City of Burnaby has unilaterally deemed that any tenant moving into these buildings as of the date of the second (of four) public hearings into the rezoning process (June 2015) is not entitled to compensation under the Policy because they were aware of the risk that their tenancies would be ended for development purposes. The City has deemed them to be “replacement tenants” and is not affording them the same compensation as other tenants displaced for development purposes. Many of these tenants were not informed of the development process when they moved in. Many who were informed that a redevelopment permit was being sought were told that any redevelopment would be years in the future, not months.

A 2016 survey of 60 units, within the 206 that were being evicted or were under threat of eviction, found that 81 per cent of people surveyed said the eviction was negatively impacting their lives, including stress and anxiety, and future loss of health care access, community and social support networks. Of the households evicted in February 2016, 62 per cent of them had not found alternative housing less than a month before their eviction. No one surveyed had been contacted by the City of Burnaby to offer any housing alternative or support in any form.

It was alleged that for the few people offered alternative housing by the developers, they were offered units in a building that is also slated for demolition within the next year or two. The development company has also offered alternative housing if tenants agree to leave Burnaby and pay significantly more in rent. It would seem that the local government of Burnaby is failing to ensure that development does not result in evictions and displacement and where displacement is justified or unavoidable, failing to ensure that alternative, secure, sustainable housing solutions and ongoing support is made available.

### ***Case 3: Homelessness and Eviction in the City of Maple Ridge***

In May 2015, a group of homeless people erected a camp on a residential street behind the only permanent homeless shelter in the City of Maple Ridge, British Columbia, run by the Salvation Army. The camp was home to 32 tents and approximately 64 individuals, in a city of approximately 83,000 people. Residents of the camp notified city officials that they had received threats and various forms of intimidation by members of the public wanting them out of their community.

In response to pressure from the community, in October 2015, British Columbia Housing opened a temporary shelter in a former mattress shop with capacity for 40 cots for a period of six months (the Raincity shelter). Residents of the camp agreed to resettle to this temporary accommodation. According to reports from

residents, the facility was inadequate – lacking proper sanitation facilities and privacy for residents.

Prior to the end of the 6-month operating period, BC Housing approached staff and Council of the City to advise that those in the Raincity shelter were among the most vulnerable in the entire Metro Vancouver area and as such, would require supportive housing with access to health care supports. BC Housing proposed to convert a local hotel into supportive housing for this purpose and asked for a three month extension for the temporary RainCity shelter where the residents could be housed until the hotel had been converted. This proposal was supported by City council. Despite this, the Province decided not to move forward with purchasing the local hotel. This was reportedly related to public opposition and protests against the establishment of supportive housing for this homeless population.

The lease on the temporary Raincity shelter was extended and BC Housing provided criteria for the City to purchase land for a permanent purpose-built shelter and housing facility. The City purchased land but after public protest from people opposed to the shelter, the two sitting provincial MLAs decided that this was not the right site and that they would choose the appropriate location. The operation of the temporary shelter was again extended. Currently, there are 35 people in the Raincity shelter- with about half of them from the camp. The Salvation Army opened up 30 extra beds, and two individuals from the Raincity Shelter moved over to the Salvation Army. The 30 beds at the Salvation Army are being used currently by 22-24 people. It is the only shelter in Metro Vancouver with space. Once the temporary Raincity shelter closes, the Salvation Army will have to stop intake and only take in clients from among those remaining in the Raincity shelter.

In February 2016, the provincial authority announced a number of initiatives to address homelessness in Maple Ridge. They did not, however, include the supportive housing and health services that British Columbia Housing advised was absolutely crucial. Instead, the plan was to extend the stay of temporary shelter residents by three months and then to move them to additional shelter spaces being created at the Salvation Army shelter, without the required supportive services. The homeless people conducted a survey of those who would be affected and advised the city against this measure. Many had had negative experiences at the Salvation Army shelter. According to sources, the level of stigma and opposition to a homeless shelter was extremely high.

According to the information received, not only have the conditions in the Raincity temporary shelter been sub-standard for an extended length of stay, there have been several incidents which have risked the personal safety of the most vulnerable. Some of the physical challenges/disabilities of those residing there have gotten significantly worse - they have become harder to house than they were while residing in the homeless camp. According to information received, a committee has been struck to determine the location of new supportive housing

for the individuals living in the Salvation Army shelter. However, the Committee does not appear to represent the views of the residents of the Shelter.

### **International Human Rights Law and Obligations – Right to Housing**

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which Canada is a party since 19 May 1976, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions. This article must be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

In addition, we would like to bring to the attention of your Excellency's Government general comment No. 4 (1991) of the Committee on Economic, Social and Cultural Rights which defines seven fundamental characteristics of the right to adequate housing that the Government must ensure. By focusing the priority on social groups living in adverse conditions, these features include the guarantee of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) and cultural adequacy.

In addition, in its general comment No. 7 on forced evictions (1997), paragraph 1, the Committee recognizes that "forced evictions are prima facie incompatible with the requirements of the Covenant" and provides explicit legal advice on how the Government can find lasting solutions. The Committee says, in paragraph 15, that: appropriate procedural protection and due process are essential aspects of all human rights, especially pertinent in relation to a matter such as forced evictions. These protections on forced evictions include: "(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts". As indicated in paragraph 16, "evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

Demolitions and destruction of property are strictly forbidden under international human rights law and standards. According to these general comments, States must explore all feasible alternatives to forced evictions and demolitions in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of the evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

### **International Human Rights Law and Obligations - Homelessness and Evictions**

Homelessness lies at the extreme end of the spectrum of violations of the right to adequate housing. As such, States should treat homelessness with the highest level of urgency. Twenty-five years ago, the Committee on Economic, Social and Cultural Rights stated that a State party to the International Covenant on Economic, Social and Cultural Rights in which any significant number of individuals are deprived of basic shelter and housing is, *prima facie*, failing to discharge its obligations under the Covenant.<sup>37</sup> States are required to demonstrate that every effort has been made to use all resources that are at their disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>38</sup>

Under international human rights law, it is understood that homelessness is caused by the interplay between individual circumstances and broader systemic factors and that effective rights-based strategies and remedies must address both individual circumstances and structural causes. Homelessness may be linked to individual challenges such as psychosocial disabilities, unexpected job loss, addictions or complex choices to become street-connected. One major cause of homelessness is the failure of governments to respond to these unique individual circumstances with compassion and respect for individual dignity. Homelessness is also a product of broader systemic factors and structural causes, such as unregulated housing markets, scarcity of affordable housing and inadequate social protection or minimum wages. A human rights approach must also address these overarching structural and institutional causes of homelessness — the cumulative effect of domestic (national and subnational) policies, programmes and legislation, as well as international financial agreements that contribute to and create homelessness. An over-reliance on private market housing supply to respond to urban housing needs, for example, may result in new housing supply being targeted mostly toward the rich, creating inflated real estate values, speculation and significant deficits of affordable housing.

State obligations in relation to homelessness and evictions have been clearly articulated and can be summarized as follows:

- (a) States have an immediate obligation to adopt and implement national housing strategies and strategies to eliminate homelessness based in human rights.
- (b) These strategies must contain clear goals and timelines and must set out the responsibilities of all levels of government and of other actors for the

implementation of specific, time-bound measures, in consultation with and with participation by homeless people;<sup>39</sup>

(c) States must combat discrimination, stigma and negative stereotyping of homeless people as a matter of urgency and provide legal protection from discrimination because of social and economic situation, which includes homelessness;<sup>40</sup>

(d) Evictions should never render individuals homeless. The prohibition of evictions leading to homelessness is immediate, absolute and is not subject to available resources;<sup>41</sup>

(e) Eviction without full consultation with those affected is a clear violation of international human rights. The obligation to explore every alternative to eviction, never to evict into homelessness and to ensure that residents are adequately consulted about resettlement plans should be applied under domestic law to both private and public land or property owners.<sup>42</sup> States must take all appropriate measures, to the maximum of available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available;

(f) States have an immediate obligation to ensure that every decision or policy is consistent with the goal of the elimination of homelessness. Any decision that results in homelessness must be regarded as unacceptable and contrary to human rights. Policy and planning must apply the maximum of available resources, including unused or vacant lands and housing units, with a view to ensuring access to land and housing for marginalized groups;

(g) States have a firm legal obligation to regulate and engage with non-State actors so as to ensure that all of their actions and policies are in accordance with the right to adequate housing and the prevention and amelioration of homelessness. Regulation of private actors should include requirements on developers and investors to address homelessness and work in partnership to provide affordable housing in all developments;<sup>43</sup>

(h) Access to effective remedies to homelessness and eviction must be ensured, including enforcement of obligations linked to the progressive realization of the right to housing and the elimination of homelessness.<sup>44</sup>

In this context, we call your attention to the reports of the Special Rapporteur on adequate housing on several central issues for the situation at hand, including: 1) on the obligations of subnational and local governments in the implementation of the right to adequate housing (A/HRC/28/62); 2) on homelessness and the right to adequate housing (A/HRC/31/54); and 3) on the intimate link between the right to life and the right to adequate housing (A/71/310). We also call your attention to two instruments developed by former mandate holders on the right to housing in the mandate: the Guiding Principles on security of tenure for the urban poor (A/HRC/25/54), in particular principle 3

(Prioritizing in situ solutions); and to the Basic Principles and Guidelines on Development-based Evictions and Displacement.

It would appear that governments in Canada, particularly the Federal Government and the government of British Columbia, have failed to take reasonable measures to respond to the growing crisis of homelessness and displacement. These failures are all the more concerning when they appear to constitute deliberate decisions not to follow up on longstanding concerns and recommendations from human rights bodies, parliamentary committees, experts and civil society organizations. It is cause for additional concern that governments in Canada have actively sought to deny those who are homeless access to effective remedies to violations of their rights to life, security of the person and equality, both in the context of challenges to evictions and in the context of challenges to failures to implement a housing strategy. These concerns apply as well to the three cases of eviction/displacement against vulnerable populations that have been brought to our attention. The rights of those who find themselves homeless and living in encampments in so affluent a country as Canada must be assessed not only in relation to protections from eviction but also in the context of protect from homelessness, linked to broader failure of governments in Canada to recognize the right to housing and to address homelessness and inadequate housing in Canada within a human rights framework.

#### **International Human Rights Law and Obligations – Right to health**

Furthermore, in connection with the above concerns, we also wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by your Excellency's Government in May 1976, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. General Comment No. 14 (2000) of the Committee on Economic, Social and Cultural Rights describes the normative content of article 12 of ICESCR and the legal obligations undertaken by the States parties to the Covenant to respect, protect and fulfill the right to health. The Committee interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information. (GC 14, Para.4)

#### **International Human Rights Law and Obligations – Rights of Indigenous people**

In addition, we would like to draw the attention of your Government to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), for which Canada expressed full support in 2016. UNDRIP affirms in Article 21 that “Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of ... housing, sanitation, health and social security” and that “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.”

We wish to express our concern regarding these three cases of eviction/displacement against populations in vulnerable situations, which illustrate a dire situation lacking of adequate policies and programmes to address homelessness as a matter of priority, or to prevent that people would become homeless or inadequately housed as a result of poverty and an acute lack of affordable housing. We express our concerns about the impact this situation has on the enjoyment of several human rights including the right to adequate housing, to the highest attainable standard of physical and mental health, and also to the right to life.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. 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 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.
3. Will the proposed National Housing Strategy accord with target 11.1 of the 2030 Agenda for Sustainable Development, and commit to ensuring that everyone has access to adequate housing by all by 2030 or earlier?
4. Please explain whether the review of litigation strategy by the Federal Government will ensure that in future cases the federal government will promote interpretations of the Charter which protect the right to life, security and equality of those who are homeless and facilitate access to justice and effective remedies for violations of the right to housing. Explain whether British Columbia will be conducting a similar review of litigation strategies and if it will commit to taking positions on evictions that are consistent with General Comment 7 and international human rights norms protecting from eviction where it will result in homelessness.
5. Please indicate what plans the province has to improve the conditions at the Central Care Home facility.

6. Please indicate if all feasible alternatives to eviction and demolitions have been explored in consultation with the residents of Super InTent City and Burnaby Metrotown neighbourhood and if so, please provide details of the process and results of those consultations.
7. Please indicate what measures the provincial government has in place to ensure that the City of Burnaby and housing development corporations operating in Burnaby do not displace residents contrary to international human rights law. Please provide details of measures taken to provide alternative accommodation to the displaced families and individuals in Burnaby and please provide detailed information of relocation and compensation plans for those people whose houses have been or will be demolished.
8. Please indicate how the needs of the homeless population in Maple Ridge currently housed at the Salvation Army facility will be met, indicate what long-term supportive housing options will be provided and explain how consultations are being conducted with those affected.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

Victoria Lucia Tauli-Corpuz  
Special Rapporteur on the rights of indigenous peoples

Philip Alston  
Special Rapporteur on extreme poverty and human rights

Permanent Mission of Canada  
to the United Nations  
and the World Trade Organization



Mission permanente du Canada  
auprès des Nations Unies  
et de l'Organisation mondiale du commerce

5, avenue de l'Ariana  
1202 Geneva

September 28, 2018

To the mandates of  
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 adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context;  
The Special Rapporteur on the rights of indigenous peoples;  
The Special Rapporteur on extreme poverty and human rights.

OHCHR  
Palais des Nations  
1211 Geneva 10

Dear Special Rapporteurs,

The Government of Canada wishes to follow-up on the Joint Communication dated May 16, 2017 (AL CAN 1/2017), in which you offered comments and recommendations on topics related to systemic homelessness in Canada.

In Canada, homelessness is an area of shared federal-provincial and territorial jurisdiction and the federal government remains committed to collaborating with these orders of government and other partners on the issue of homelessness. To that effect, we are working to respond to issues raised in your letter. However, given their breadth, consultations are required with other government departments and with the province of British Columbia. Canada expects to submit its response later this autumn. Canada's work on increasing access to affordable housing and reducing chronic homelessness is ongoing. The National Housing Strategy is a bold plan that sets ambitious targets to ensure that unprecedented investments and new programming deliver results, with an emphasis on supporting Canada's most vulnerable populations. Through key initiatives under the Strategy, our Government is taking definitive steps to progressively realize the right to adequate housing. The Government also is redesigning its homelessness strategy to support communities in addressing the needs of those experiencing or at risk of homelessness. We continue to engage with community partners, Indigenous partners, national stakeholder organizations, and people with a lived experience of homelessness on how best to implement elements of the redesigned program.

**OHCHR REGISTRY**

**Canada**

- 2 OCT. 2018

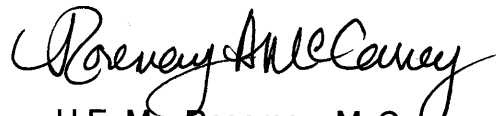
Recipients :.....**SPD**.....

Enclosure

We wish to thank you for sharing your findings and for continuing to hold governments accountable for their commitment to human rights.

Please rest assured that Canada maintains its steadfast support for the United Nations system, including the United Nations Human Rights Special Procedures mandate holders in promoting and protecting the human rights of all persons.

Sincerely,

A handwritten signature in black ink, reading "Rosemary McCauley". The signature is written in a cursive style with a large, looping initial "R".

H.E. Ms. Rosemary McCauley  
Ambassador and  
Permanent Representative