



Moving forward on the right to housing

Submission by Maytree to CMHC's
National Consultation on a Human
Rights-Based Approach to Housing

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Introduction

Maytree has been dedicated to creating solutions to poverty since 1982. We work with governments, researchers, the non-profit sector, and community organizations to build strong and vital communities. We see fulfilling the right to housing as central to achieving an inclusive and prosperous Canada. For this reason, we have made housing a priority in our work to identify policy solutions that reduce poverty and promote equity and opportunity. We believe that protecting this right means ensuring that everyone in Canada has access to quality housing that is affordable and secure.

The federal government has demonstrated leadership with the National Housing Strategy (NHS) by recognizing that housing rights are human rights. The Strategy included a commitment to “progressively implement the right of every Canadian to access adequate housing”¹ and outlined a proposed set of institutions and initiatives to support a human rights-based approach to be refined based on this consultation’s process and further policy development. These proposals have been guided by the Strategy’s principles of accountability, participation, non-discrimination, and inclusion which echo international best practice on a human rights-based approach.

This commitment reflects the strong message that Canadians and housing experts shared in the NHS consultations and beyond, that the ability to access quality, affordable, secure housing is an essential part of our social contract, inseparable from our other human rights. It also builds on Canada’s international human rights commitments to ensure adequate housing for all through the UN Sustainable Development Goals and the International Covenant on Economic, Social, and Cultural Rights.

With this important political commitment, we have an opportunity to build a plan and institutions that can help progressively realize the right to housing in Canada. We are pleased to provide comments and recommendations on the National Housing Strategy’s human rights-based approach. Our advice is focused on how the initiatives in the Strategy

¹ Government of Canada. (2017). Canada’s National Housing Strategy, A place to call home. p. 8.

can be strengthened to reinforce the four principles of accountability, participation, inclusion, and non-discrimination, with the goal of maximizing the effectiveness of the commitments in the National Housing Strategy in progressively realizing the right to housing for all people in Canada.

Recognizing the right to housing

The Let's Talk Housing consultation showed that the Strategy's vision in which "Canadians have housing that meets their needs and they can afford"² is shared across the country. This vision will take time and determination to achieve. To maintain momentum towards this, the government will introduce legislation that would, if passed, "require the federal government to maintain a National Housing Strategy that prioritizes the housing needs of the most vulnerable."³ This would help to ensure that, even with competing priorities, future federal governments commit both attention and resources and monitor progress towards Canada's shared vision.

The government has stated that the new legislation would also provide a framework for a human rights-based approach to housing. This would be the first piece of domestic legislation to acknowledge Canada's commitment under international human rights frameworks to the progressive realization of the right to housing. It is important that we get it right.

The discussion paper accompanying this consultation states that the proposed legislation will include "a long-term vision that recognizes the importance of housing in achieving other social, economic, health and environmental goals."⁴ We believe that in setting out this vision the legislation should echo the Strategy by explicitly recognizing both that "housing rights are human rights" and that the funding, policy, and program design decisions will be grounded in a human rights-based approach, guided by the four principles of accountability, participation, non-discrimination, and inclusion. Part of this commitment should be

2 Government of Canada. (2017). Canada's National Housing Strategy, A place to call home. p. 5.

3 Government of Canada. (2017.) Canada's National Housing Strategy, A place to call home. p. 9.

4 Government of Canada. (2018). Discussion Paper: A Human Rights-Based Approach to Housing. p. 6.

ensuring not only that some form of National Housing Strategy exists in the future but that future strategies are based in human rights.

The paper also says that the legislation will allow for the flexibility needed to keep pace with the changing needs of Canadian families. We agree that the legislation should strengthen the NHS rather than hinder it and that the NHS will be better able to reduce housing need if it can respond to changing situations. While allowing for flexibility in measurement, monitoring, and targets in the NHS, the legislation should acknowledge the common understanding of what “the right to adequate housing” means. The consensus from the Let’s Talk Housing discussion was clear: adequate housing offers security of tenure, quality appropriate to the needs of the occupants, and at a cost that they can realistically afford given their personal circumstances.

Monitoring progress

The discussion paper says that “[t]he bill would include a requirement for the Minister responsible for the Canada Mortgage and Housing Corporation (CMHC) to provide a detailed report to Parliament every three years on Canada’s progress in achieving the National Housing Strategy’s primary outcomes and targets, starting in 2020.”⁵ Requiring the Minister to report to Parliament gives this responsibility for the progress on the NHS to an elected official and is important for accountability.

But requiring reporting to occur only every three years limits the Strategy’s potential to deliver programs that are responsive to changing housing needs. Instead, openly reporting on an annual basis allows government and civil society to identify emerging issues, anticipate where attention is needed and devise timely policy responses. Annual reporting would be more suited to the National Housing Strategy as most housing indicators are published at least once a year. It is also standard practice for poverty reduction strategies across Canada.

This reporting should not only provide an update on progress towards NHS targets, but also explore how effectively policies and programs

⁵ Government of Canada. (2018). Discussion Paper: A Human Rights-Based Approach to Housing. p. 7.

prioritize the housing needs of the most vulnerable. The National Housing Council and CMHC should work together with civil society and members of communities directly affected by homelessness and inadequate housing to assess the impact of the NHS on different groups that disproportionately experience housing need, using tools such as Gender-Based Analysis Plus.

Accountability and oversight need to apply not only to an assessment of results to date but also to plans going forward. To ensure a human rights-based approach to the Strategy, the proposed legislation could require that alongside annual reporting of progress, the Minister responsible for the CMHC produce three-year action plans for future federal NHS programming, mirroring the three-year action plans that provinces and territories have agreed to produce as part of the Federal/Provincial/Territorial Housing Partnership Agreement.⁶ This would provide a transparent process for federal NHS plans to be updated based on learning to date. As part of a human rights-based framework, the Advocate could be tasked in legislation with identifying the expected effects the action plan may have on the right to housing in Canada, much like the Charter Statements produced by the Department of Justice to accompany government legislation.

Setting targets

Targets are crucial to uphold the Strategy's accountability principle. They provide a way to monitor if the investments made are delivering results. Targets have to be specific to allow for accurate monitoring, but to be consistent with a human rights-based approach they also have to recognize the full range of housing need in Canada.

The target of a 50 per cent reduction in the number of “chronically homeless shelter users” brings needed attention to some of the most severe incidences of housing need. This target is consistent in its aim with the principle of non-discrimination to the extent that it prioritizes the most marginalized. But in practice, “chronically homeless shelter users” represents a narrow view of severe housing need. Policies and programs

6 Federal/Provincial/Territorial Housing Partnership Framework. (2018). Retrieved from <https://www.newswire.ca/news-releases/federal-provincial-and-territorial-ministers-endorse-new-housing-partnership-framework-679193053.html>

geared towards meeting this target could inadvertently exclude vulnerable people who do not fit this specific definition (e.g., women fleeing domestic violence), compromising the Strategy’s human rights-based approach.

Similarly, there is a risk that the target of removing 530,000 households from housing need would result in resources being geared towards those who are easiest to reach rather than those in greatest need.

A human rights-based approach should ensure that programs and policies resulting from the NHS are equitable not only in intent but also in implementation. As the monitoring process for the NHS develops, the headline targets should be accompanied by additional indicators that uphold all of the four principles in the Strategy.

The targets in the NHS should also align with Canada’s existing commitments, including the Sustainable Development Goal of ensuring “access for all to adequate, safe and affordable housing” by 2030.⁷ To meet this goal, chronic homelessness will need to be halved long before the 2028 timeframe of the NHS target. The NHS should amend this target to a reduction in chronic homelessness (using an inclusive definition⁸) of 90 per cent by 2028, keeping Canada on track to achieve its pre-existing international commitment in 2030.

New institutions

The discussion paper states that the legislation will include a “series of mechanisms and processes to encourage ongoing engagement in the National Housing Strategy by all Canadians.”⁹ The Strategy announced two new institutions to fulfill this role: the Office of the Federal Housing Advocate and the National Housing Council. Explicit reference to them as independent bodies and to their mandates in the legislation can support the Strategy’s accountability principle by enhancing their authority and integrity. For these institutions to carry out their important work they also need to be appropriately resourced and be designed to include

⁷ United Nations General Assembly. (2015). A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development. p. 21.

⁸ Such as the one proposed in the Final report of the Advisory Committee on Homelessness, p. 8, <https://www.canada.ca/en/employment-social-development/programs/communities/homelessness/publications-bulletins/advisory-committee-report.html>

⁹ Government of Canada. (2018). Discussion Paper: A Human Rights-Based Approach to Housing. p. 7.

leadership from communities directly affected by homelessness and inadequate housing.

Both institutions will be tasked with engaging with the public and advising CMHC. But their advice is likely to have implications for multiple government departments so their reporting should not be confined to CMHC. While CMHC has the main responsibility for housing programs, systemic barriers to accessing quality housing might stem from a variety of policy areas. Both the Advocate and the Council should instead have their advice delivered directly to Parliament and made available to the public to support the principle of participation.

The NHS is breaking new ground for Canada by recognizing housing as a human right and taking a human rights-based approach. As the approach is implemented it is inevitable that gaps in the framework will appear that require NHS institutions and programs to expand their role or work differently, or create a new aspect to the existing framework. It is important to recognize that our understanding of what is required to fulfill a human rights-based approach will develop as the Strategy is implemented, and it should incorporate a mechanism for ongoing improvement, based on the advice and research of the Advocate and Council.

Within the existing framework this role is most suited to the National Housing Council's proposed mandate to "support CMHC with the evolution of the National Housing Strategy, including the NHS research agenda."¹⁰ To accommodate this, the Council could be mandated to supply a section on the annual NHS report that reflects on the success of the existing framework in upholding a human rights-based approach and how the framework can be strengthened. In its role in supporting the NHS research agenda, the Council could also oversee monitoring reports on how well the NHS delivery aligns with a human rights-based approach and to what degree the NHS and other policies are advancing the right to housing in Canada.

The Office of the Federal Housing Advocate will work with communities directly affected by inadequate housing to identify systemic barriers to accessing housing faced by Canadians (particularly by those in marginalized groups) and advise government on how to address or

¹⁰ Government of Canada. (2018). Discussion Paper: A Human Rights-Based Approach to Housing. p. 7.

eliminate them. To be effective, the Office needs to be properly resourced and staffed to fulfill this mandate.

The Advocate's outputs will enhance the non-discrimination aspect of the Strategy and, through engaging Canadians in its process, uphold the principles of inclusion and participation. But the Strategy does not set out any accountability mechanisms to ensure that recommendations made by the Advocate are addressed. To support the Advocate's mandate, the National Housing Strategy should also mandate responsible Ministers to advise Parliament within a given period of time on their response to the recommendations and steps being taken to address the systemic barriers identified.

Participation

For a process to be truly participatory, UN guidance calls for processes that allow for “active, free and meaningful”¹¹ participation rather than merely consultation with “stakeholders” or participation in advisory bodies. Fulfilling the principle of participation in the NHS will require time and investment. At one end, there is a need to increase the receptive capacity of government, to shift the culture of the public service to routinely include people with lived experience of housing need. At the other end, there is a need to invest in the capacity of individuals and communities to participate in this work so that lived experience organizations with minimal advocacy capacity or access are just as able to engage as better resourced stakeholder organizations.

The Community-Based Tenant Initiative in the Strategy is a welcome investment to this end; however, the focus on tenants risks excluding key groups in housing need (e.g., individuals experiencing homelessness and shelter users). As this program is designed and rolled out, CMHC should ensure it is fit to this broader need.

Culture change in government is not something that happens overnight, and embedding good processes of participation should be seen as an

¹¹ UN HRBA Portal. (2003). The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies. Retrieved from <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>

ongoing progress of learning and improvement. As a first step, CMHC and Employment and Social Development Canada (ESDC) should look to the advice of the Lived Experience Advisory Council (LEAC), which has developed a set of principles¹² for leadership and inclusion of people with lived experience of homelessness that provide some tangible steps that can be taken to improve inclusion. As the National Housing Council is established, it could take on a similar role specifically focused on the NHS.

People face a diversity of experiences and challenges in accessing safe, affordable housing. “People with lived experience” do not make up a homogeneous or monolithic group; many Canadians facing housing challenges do not necessarily identify with this label. The mechanisms built to enable participation of people with lived experience must recognize and accommodate many voices and distinct needs. The National Housing Council could be given a mandate to guide inclusive participation practices and evaluate their success in ensuring inclusion and participation in NHS implementation. To do this, the Council should be a model of good practice and include members with a range of different experiences of inadequate housing. Members, regardless of housing background, should represent diversity for example in race, gender, Indigenous identity, immigrant status, and disability and be offered the necessary training and capacity building to fulfill their role.

Addressing ongoing challenges

The primary new accountability mechanism in the NHS is the commitment to introduce legislation requiring the federal government to maintain a strategy and report to Parliament on its progress. However, legislative authority for public monitoring and reporting on government’s progress is only one component of accountability in a human rights-based approach. UN human rights bodies highlight another: that individuals have the capacity to claim their rights effectively through accessible, transparent,

12 Lived Experience Advisory Council. (2016). Nothing About Us Without Us: Seven principles for leadership and inclusion of people with lived experience of homelessness. Retrieved from <http://homelesshub.ca/NothingAboutUsWithoutUs>

and effective mechanisms.¹³ These mechanisms can include courts but also alternative adjudicative approaches such as panels and tribunals. Given that housing is an issue that is shared across jurisdictions, with delivery and regulation primarily at provincial and local levels, federal mechanisms would need to fit appropriately with federal jurisdiction and be complemented by provincial and/or local approaches.

For the NHS to be successful, agreement and participation are needed from federal, provincial/territorial, municipal, and Indigenous governments. To encourage the ongoing improvement of the NHS, the federal government should maximize the opportunities to incorporate other levels of government in the human rights-based approach. For example it could:

- Put the right to housing on the agenda in future FPT Housing Ministers meetings, to begin a dialogue on how the right to housing can become a shared objective across governments.
- Initiate a Community of Practice for housing officials to share lessons of effective human rights-based practices applied at different levels of government across Canada.
- Establish a fund to support pilot initiatives by provincial, territorial, municipal, or Indigenous governments that strengthen accountability and participation consistent with the right to housing at a local or regional level.
- Take a lead in addressing the most severe incidences of housing need by developing a Responsibility to Assist protocol as recommended by the Advisory Committee on Homelessness. This would establish a positive obligation on federal public agencies to inquire about a person's housing status and act to resolve a person's homelessness where needed. It could then work other levels of government to develop a protocol for public agencies outside of federal jurisdiction.¹⁴

13 UN HRBA Portal. (2006). Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation. p. 24. Retrieved from <http://hrbaportal.org/resources/frequently-asked-questions-on-a-human-rights-based-approach-to-development-cooperation>

14 Advisory Committee on Homelessness. (2018). Final report of the Advisory Committee on Homelessness. P. 31. Retrieved from <https://www.canada.ca/en/employment-social-development/programs/communities/homelessness/publications-bulletins/advisory-committee-report.html>

Conclusion

The federal government has demonstrated a renewed and welcome commitment to housing by producing Canada's first National Housing Strategy. Crucially, the strategy recognized that "housing rights are human rights" and announced new legislation, institutions, and programs to progressively implement the right of every Canadian to access adequate housing. We now have the opportunity to design these elements in a way that lives up to our values, obligations, and commitments.

We welcome the engagement by CMHC to share proposals and solicit ideas on the implementation of the National Housing Strategy commitment to the right to housing in Canada. Our recommendations aim to identify how the elements of the Strategy's human-rights based approach can be refined to better reflect the principles of inclusion, participation, non-discrimination, and accountability.

The NHS is an opportunity to break new ground for Canada by recognizing housing as a human right and taking a human rights-based approach. Our understanding of how we achieve this will develop as the Strategy is implemented, consultations such as these are needed to ensure success. We would encourage CMHC to treat this as the beginning, rather than the conclusion of an engagement with civil society on these complex issues. Ongoing dialogue with housing advocates, experts in human rights law, policy researchers, and representatives of communities directly affected by homelessness and inadequate housing will be critical to effective design and evaluation of success.

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