

IMPLEMENTING THE RIGHT TO HOUSING IN CANADA

A RESPONSIBILITY OF
ALL GOVERNMENTS

© Canadian Centre for Housing Rights (CCHR) and National Right to Housing Network (NRHN)

CCHR is Canada's leading organization working to advance the right to housing by serving renters to help them stay housed, providing education and training about housing rights, and advancing rights-based housing policy through research, policy development, advocacy and law reform.

NRHN is a group of over 350 key leaders, thinkers, subject matter experts and people with lived experience of housing precarity and homelessness, with a mission to fully realize the right to housing for all and eliminate homelessness in Canada.

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GOVERNMENTAL POWERS TO IMPLEMENT THE RIGHT TO HOUSING



In Canada, the federal government has powers that are different from the powers of provincial governments. This constitutional division of powers is one of the most significant barriers to the implementation of the right to housing—particularly in implementing laws, policies, and programs that progressively realize this right. However, Canada is not unique in its jurisdictional divides, and in fact the right to housing can assist with building cooperation between levels of government as they are all responsible for implementing this right.

Practically, the federal government can utilize the National Housing Strategy Act (NHSA) to urge collaboration between levels of government in various ways. For instance, they could host inter-ministerial meetings on the right to adequate housing and require all levels of government, including provinces and territories, to report on their action plans to progressively implement this right as required in their bilateral agreements. They can also collaborate with municipalities and other subnational governments who have similarly committed to implement the right to housing.

In order to explain how the different levels of government can be held accountable for implementing the right to housing, it is important to understand Canada's commitment to this right under the NHSA, and how the responsibilities and mechanisms created under the NHSA apply to all levels of government.

THE NATIONAL HOUSING STRATEGY ACT

The passage into law of the [National Housing Strategy Act \(NHSA\)](#) in July 2019, marked a historical turning point in Canada. The NHSA is the first legislation in Canada to declare that the right to housing is “a fundamental human right affirmed in international human rights law” and commit the federal government to “the progressive realization of the right to adequate housing as recognized in the *International Covenant on Economic, Social and Cultural Rights*.”

In concrete terms, this commitment means, among other things, that homelessness must be eliminated and access to adequate housing must be ensured for all within the shortest possible time, using [“all appropriate means”](#) and [the “maximum of available resources.”](#)

The NHSA establishes new mechanisms through which the right to housing can be claimed and the government held accountable. While it does not provide a mechanism for individual complaints, it creates a space for systemic complaints to be raised by affected individuals, communities and groups to the Federal Housing Advocate. They can raise issues that have acted as barriers to the realization of their right to housing. The Federal Housing Advocate is responsible for reviewing each systemic claim and either submitting findings and recommendations directly to the federal minister or referring the issue to a Review Panel for hearings. The federal government must respond to findings and recommendations from the Federal Housing Advocate or the Review Panel within 120 days.

HOW THE RIGHT TO HOUSING APPLIES TO ALL GOVERNMENTS IN CANADA

The NHSA is federal legislation and as such it does not apply directly to provinces, territories or municipalities. Only the federal government is required under the NHSA to respond to findings and recommendations from the Federal Housing Advocate or a Review Panel.

Most systemic issues brought to the Federal Housing Advocate, however, are likely to involve some level of responsibility and involvement of provinces, territories and municipalities. For example, rent regulation, affordability issues, evictions, planning and zoning, financialization of housing, homelessness or the need for supports for persons with disabilities to live in the community, all involve provincial, territorial and municipal governments as well as federal programs and funding. The Federal Housing Advocate and Review Panels cannot ignore the critical role played by other levels of government in addressing systemic issues and realizing the right to housing. The housing and homelessness crisis in Canada demands a coordinated and collaborative response from all levels of government.



The answer to this challenge lies in the NHSA's unique reliance on the right to housing under international law. All levels of government in Canada are bound by Canada's international human rights commitments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) states explicitly that its provisions "extend to all parts of federal states without any limitations or exceptions."

The obligation to ensure the right to housing under international law applies not only to the federal government but also to provincial, territorial and municipal governments, and to all public administrators, tribunals and inter-governmental bodies in Canada. The federal government's legislative commitment to the right to housing in the NHSA is linked to an existing commitment of all governments in Canada to ensure that their laws, policies, programs and decisions are consistent with the right to housing under international law.



ADDRESSING MULTI-JURISDICTIONAL RESPONSIBILITIES TO REALIZE THE RIGHT TO HOUSING

Under the NHSA, the Federal Housing Advocate has a broad mandate to monitor the progressive realization of the right to housing, based on established goals and timelines. Specifically, the Federal Housing Advocate is responsible for analyzing and conducting research into systemic housing issues, consulting with affected groups and civil society organizations, and receiving submissions on systemic housing issues. Systemic issues under the NHSA are not defined by jurisdictional divides or particular government programs but by the experiences of communities and rights holders and the measures needed to realize their right to housing. [As the UN has observed](#), systemic issues invariably involve more than one actor and require action by the state as a whole.

RECOMMENDED MEASURES

It will be important to identify responsibilities of different levels of government when seeking effective remedies to systemic issues under the NHSA. Recommended measures that fall within federal jurisdiction will be particularly important because they will be submitted directly to the responsible federal minister and the minister must respond in a timely manner. Recommendations from the Review Panel are also submitted to the House of Commons and the Senate.

RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

Recommendations in areas of federal jurisdiction may require changes to federal programs such as the Rental Construction Financing Initiative, the National Housing Co-Investment Fund, the Federal Community Housing Initiative, Reaching Home or Indigenous housing programs. They may require changes to federal taxation, such as those related to Real Estate Investment Trusts (REITs), or increased budgetary allocations to social housing. Or they may propose changes to the terms of bilateral housing programs funded by the federal government and delivered by provinces, territories or municipalities, such as the Canada Housing Benefit, the Canada Community Housing Initiative or the Rapid Housing Initiative. Recommendations submitted to the federal government under the NHSA may also address the role of the federal government in coordinating multi-jurisdictional strategies for the realization of the right to housing.

Under international law, national-level governments must exercise leadership to ensure the implementation of human rights within all jurisdictions. [According to international guidelines](#), states are not permitted to use jurisdictional divisions as a justification for failing to realize the right to housing. Therefore, where there is a need for coordinated change in provincial and territorial law or policy related to social assistance rates, minimum wage, shelter allowance, evictions or rent regulation, the federal government may be required by international law to initiate co-ordinated action by provinces and territories to effect the necessary changes. In these cases, the Federal Housing Advocate might recommend that the federal government convene federal/provincial/territorial meetings with the

engagement of affected groups, experts and civil society organizations. These meetings could address identified systemic issues or negotiate new federal/provincial/territorial agreements to ensure that provincial and territorial law and policy is brought into compliance with the right to housing as defined in international law.

BEYOND THE FEDERAL GOVERNMENT



Beyond recommendations to the federal government which require a response under the NHSA, the Federal Housing Advocate and Review Panels may also identify measures that need to be taken by other levels of government. While provincial, territorial and municipal governments are not required to respond to recommendations under the NHSA, they should take such recommendations seriously as indications of their obligations under international human rights law. It is hoped that provincial, territorial and local governments will all engage directly with the new accountability and community engagement mechanisms in the NHSA, as a means to ensure a more coherent and effective multi-jurisdictional approach to the realization of the right to housing.

INTER-GOVERNMENTAL AGREEMENTS AND THE FEDERAL SPENDING POWER

An important means to ensure national co-ordination and coherence in housing and social programs in Canada is through the exercise of the federal spending power in areas of provincial and territorial jurisdiction. Conditions attached to federal funding can ensure that provincial, territorial or municipal programs are designed and administered in accordance with obligations under international law. These conditions could include targets and timelines for the elimination of homelessness under the NHSA and national commitments to the [2030 Sustainable Development Goals](#) – which include a commitment to eliminate homelessness by 2030.

In periodic reviews of Canada's compliance with the ICESCR, the UN Committee on Economic, Social and Cultural Rights (CESCR) has recommended that the federal government ensure that transfer payments for housing and social programs be linked to compliance with the right to housing and other economic, social and cultural rights.

In 2018, federal, provincial and territorial ministers [agreed to a multilateral Housing Partnership Framework](#) which outlines “a shared vision for housing and sets the foundation for bilateral agreements on the delivery of key National Housing Strategy initiatives.”

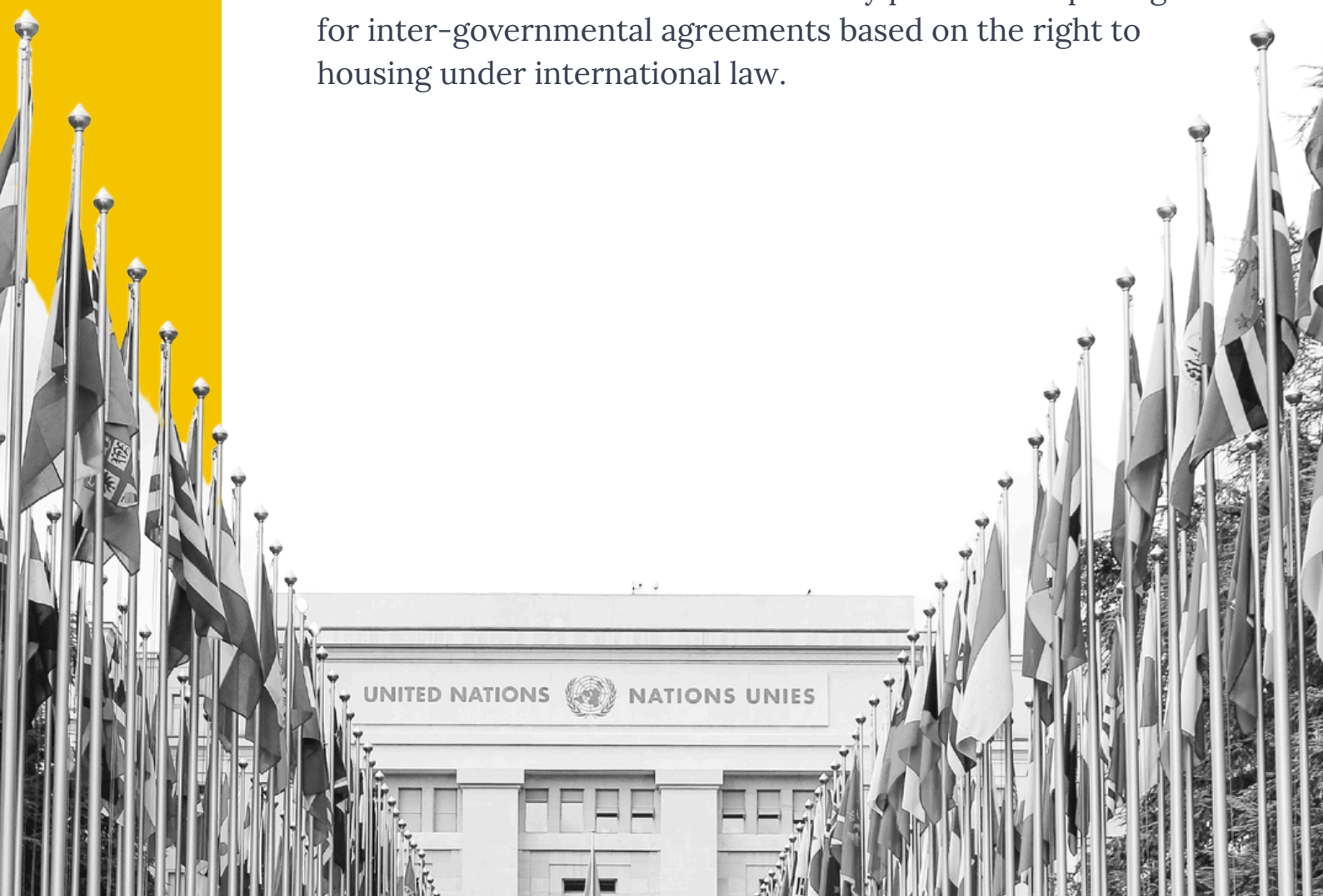
- ▶ All provinces and territories have signed bilateral agreements with the federal government.
- ▶ All provinces and territories (except Quebec) have agreed to implement [Action Plans](#) to “complement the NHTS goal of helping advance the progressive realization of Canada’s obligations in relation to housing under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).”
- ▶ The plans must support those in greatest need, ensure participation, inclusion, equality, non-discrimination and accountability and incorporate a rights-based approach to housing.
- ▶ All provinces and territories (except Quebec) have [published Action Plans](#) covering the first three years (2019-22) of their agreement.



Reviewing these plans provides an important opportunity to assess whether they align with the obligation to progressively realize the right to housing under the NHTSA, and to hold provincial and territorial governments accountable.

Provincial and territorial governments have often resisted federally-imposed national standards in housing and social programs that are in areas of provincial and territorial jurisdiction, characterizing such measures as encroachments on their jurisdiction.

The federal government's commitment to the right to housing under international law, however, may offer a way to reframe norms and standards linked to the right to housing as shared obligations and commitments to human rights rather than as conditions imposed unilaterally by the federal government. Quebec, in particular, has a distinctive commitment to the ICESCR which may provide an opening for inter-governmental agreements based on the right to housing under international law.



MULTI-JURISDICTIONAL IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS

Another important avenue for inter-governmental co-operation in the implementation of the right to housing is through engagement with UN human rights mechanisms and follow-up to concerns and recommendations from UN human rights bodies – particularly the CESCR.

Inter-governmental collaboration and cooperation in this area is overseen by the federal, provincial and territorial ministers responsible for human rights. The Continuing Committee of Officials on Human Rights (CCOHR) and the Federal, Provincial, and Territorial Senior Officials Committee Responsible for Human Rights (SOCHR) co-ordinate federal, provincial and territorial implementation of international human rights, based on a recently adopted [Protocol for Follow-up to Recommendations from International Human Rights Bodies](#).

These bodies have recently adopted an [Engagement Strategy on Canada's International Human Rights Reporting Process](#) to “strengthen dialogue with individuals and groups interested in the protection and promotion of human rights in Canada.”

MATCHING THE NHSA WITH SIMILAR INITIATIVES BY OTHER LEVELS OF GOVERNMENT

While the NHSA provides an important platform through which to promote compliance with the right to housing by all levels of government, it also provides a model for implementing the right to housing within provincial, territorial and municipal governments. All provinces, territories and municipalities should be encouraged to adopt similar measures to implement their commitment to the right to housing under international human rights law.

The City of Toronto's Housing Charter - adopted as part of the [City's 2020-2030 Action Plan](#) - is an example of such a measure. The Toronto Housing Charter commits the City to "develop and maintain a housing strategy to further the progressive realization of the right to adequate housing, through all appropriate means, including creating and maintaining affordable housing, planning, zoning, licensing, regulation, enforcement, taxation and other measures within its authority." It also commits to review the establishment of a Housing Commissioner to monitor the implementation of the right to housing. The Commissioner has not yet been appointed, but once it is, it will play a similar role to that of the Federal Housing Advocate, and will be expected to implement a human rights approach to [shelters](#), [evictions](#), and [encampments](#).

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