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CONSEJO DE DERECHOS HUMANOS  
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Tema 3 de la agenda

**PROMOCIÓN Y PROTECCIÓN DE TODOS LOS DERECHOS HUMANOS,  
CIVILES, POLÍTICOS, ECONÓMICOS, SOCIALES Y CULTURALES,  
INCLUIDO EL DERECHO AL DESARROLLO**

**Informe del Relator Especial sobre una vivienda adecuada como elemento  
integrante del derecho a un nivel de vida adecuado, y sobre el derecho  
de no discriminación a este respecto, Miloon Kothari**

**Adición**

**MISIÓN AL CANADÁ\***

**(9 a 22 de octubre de 2007)**

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\* El resumen del presente informe, que se presentó fuera de plazo para incluir en él la información más reciente, se distribuye como se recibió en todos los idiomas oficiales. El informe completo que figura en el anexo del resumen se distribuye únicamente en el idioma en que se presentó.

## Resumen

El Relator Especial realizó una misión al Canadá, del 9 al 22 de octubre de 2007, por invitación del Gobierno. La visita se centró en cuatro aspectos: las personas sin hogar; las mujeres y su derecho a una vivienda adecuada; la vivienda adecuada en lo que respecta a las poblaciones aborígenes y las posibles repercusiones de los Juegos Olímpicos de 2010 en el derecho a una vivienda adecuada en Vancouver.

En el presente informe, el Relator Especial reconoce los buenos resultados obtenidos desde siempre por los programas de viviendas sociales del Estado y encomia diversas buenas prácticas. También observa con satisfacción que la mayoría de las familias canadienses acceden a la vivienda en el mercado privado. Tal como lo exige su mandato, el Relator Especial dedica el resto del informe y sus recomendaciones a aquellas cuestiones problemáticas y sectores de la población que requieren la atención de las autoridades.

El Relator Especial enumera varios factores que impiden la aplicación efectiva del derecho a la vivienda para todos, en particular el no reconocimiento como derecho independiente del derecho a la vivienda adecuada, la ausencia de una definición de persona sin hogar, la falta de una estrategia nacional de vivienda y las cuestiones derivadas de la atribución de las competencias a diferentes niveles de administración. El Relator Especial señala las preocupaciones expresadas por el aumento del número de personas sin hogar y de personas en viviendas y condiciones de vida deficientes, el continuo aumento de los precios en el sector de la vivienda, que afecta a un número cada vez mayor de personas con variados niveles de ingresos, y la constante disminución de la oferta de vivienda oficial.

El Relator Especial, remitiéndose a varias recomendaciones formuladas por procedimientos especiales y órganos de tratados al Canadá y reafirmandolas, concluye su informe con varias recomendaciones más, entre ellas la necesidad de que: a) se reconozca a todos los niveles de Gobierno el derecho a una vivienda adecuada; b) se adopten o modifiquen leyes para proteger el derecho a una vivienda adecuada; c) el Canadá se comprometa a adoptar una estrategia nacional global, dotada de financiación estable y a largo plazo; d) adopte una estrategia nacional integral y coordinada para reducir el número de personas sin hogar y la pobreza; e) resuelva la situación de los aborígenes que viven dentro y fuera de las reservas mediante una estrategia de vivienda integral y coordinada; f) se abstenga de toda medida que pudiera infringir los derechos de los pueblos aborígenes en tierras de los aborígenes que son objeto de reclamación hasta que se haya llegado a un acuerdo; y g) vele por que todas las mujeres indígenas estén equitativamente representadas en las negociaciones y acuerdos actuales.

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A  
COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING,  
AND ON THE RIGHT TO NON-DISCRIMINATION IN THIS CONTEXT,  
MILOON KOTHARI**

**MISSION TO CANADA  
(9 to 22 October 2007)**

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## I. INTRODUCTION

1. At the invitation of the Government, the Special Rapporteur conducted a mission to Canada from 9 to 22 October 2007 to examine the status of realization of the right to adequate housing, particularly for the most vulnerable parts of the population. The visit focused particularly on four areas: homelessness, women and their right to adequate housing, Aboriginal peoples<sup>1</sup>, adequate housing and the potential impact of the 2010 Olympic Games on the right to adequate housing in Vancouver.
2. During the course of the mission, the Special Rapporteur visited urban and rural areas, including Montréal, Kahnawake territories, Edmonton, Little Buffalo and Lubicon, Vancouver, Musqueam territories, Toronto and Ottawa. The Special Rapporteur met with high-ranking federal and provincial officials as well as with representatives of Government agencies, including Mr. Michael Small, Assistant Deputy Minister of Foreign Affairs and International Trade, Mr. Hector Goudreau, Minister of Employment and Immigration of Ontario, Mr. Deepak Obhrai, Parliamentary Secretary to the Minister of Foreign Affairs and to the Minister of International Co-operation.
3. The Special Rapporteur also met with political parties' officials, including Mr. Jack Layton, leader of the New Democratic Party and with a large number of representatives of civil society organizations, community-based housing and homelessness service providers and representatives of Aboriginal peoples. He attended many public fora and received a large number of first hand testimonies.
4. The Special Rapporteur wishes to express his gratitude to the Government of Canada for the invitation, the support it provided during and after the mission, including detailed information that has been crucial for the preparation of the report, and for its commitment to the constructive and frank dialogue that has been initiated. He regrets that time and report length constraints make it impossible to fully reflect in the report all comments received and hopes his successor and the Government will continue this productive dialogue.

## II. LEGAL AND INSTITUTIONAL FRAMEWORK

### A. Status of the right to adequate housing

5. Canada is a vast nation extending over 10 million square kilometres. Therefore, the State is faced with a wide range of difficulties and issues to secure adequate housing for all on its territory. According to the 2006 census, 81.1 per cent of the 31.6 million inhabitants live in urban areas of 10,000 population or more and just over half live in the ten largest urban areas. Based on the 2006 census, Canada has 12.4 million occupied dwelling units, of which 55.3 per cent are single detached units. Most of this housing is privately owned, with about 68.5 per cent of Canadian households owning the homes they occupy.

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<sup>1</sup> In this report, the term "Aboriginal peoples" will refer to Indigenous peoples (Indians or "First Nations", Inuits and Métis) as this terminology is commonly used in Canada.

6. Canada has ratified several international human rights instruments that recognize the right to adequate housing as a component of the right to an adequate standard of living, creating obligations to take steps for the progressive realization of this right.

7. Canadian domestic law does not include any explicit recognition of the right to adequate housing - as an enforceable right or as a policy commitment. No such recognition is found in the Constitution Act of 1982, including the Canadian Charter of Rights and Freedoms, in provincial or federal human rights legislation, in national, provincial or territorial housing legislation or in federal-provincial agreements. The rights contained in international human rights treaties ratified by Canada are not directly enforceable by domestic courts unless they have been incorporated into Canadian law by parliament or provincial legislatures. As such, the right to adequate housing as codified in article 11(1) of the ICESCR cannot be claimed on its own. Nevertheless, court decisions indicate that a ratified treaty that has not been incorporated into domestic law can and should be used to interpret domestic law. Courts have recognized that the broadly framed rights to equality and to “life, liberty and security of the person” in sections 15 and 7 of the Canadian Charter respectively provide considerable scope for courts to provide effective remedies to violations of the right to adequate housing in Canada.<sup>2</sup>

8. Federal and provincial/territorial human rights legislation, protects against discrimination in accommodation, and legislation which governs landlord-tenant relations provides procedural and substantive protections of security of tenure and other housing rights. Concerns have been raised both by treaty monitoring bodies and civil society about the need for enhanced protections in both of these areas. Accommodations that are not self-contained, or in which facilities are shared with the owner, are not covered by either type of legislation in most jurisdictions. In some provinces, security of tenure protection is almost non-existent. Moreover, there is no reference to the right to adequate housing as a guiding principle in any of this legislation. Private members’ bills have been introduced in both the national Parliament (Bill C-382 - An Act to Provide for Secure, Adequate, Accessible and Affordable Housing for Canadians) and the Ontario Legislature (Bill 47 - Right to Housing Act, 2008) to explicitly incorporate the right to housing into domestic law.

9. In its 2006 review of the report submitted by Canada, the Committee on Economic, Social and Cultural Rights, noted that most of its 1993 and 1998 recommendations have not been implemented, including “State’s restrictive interpretation of its obligations under ICESCR, in particular its position that it may implement legal obligations set forth in ICESCR by adopting specific measures and policies rather than by enacting legislation specifically recognizing economic, social and cultural rights, and consequent lack of awareness, in provinces and territories, of State’s legal obligations under ICESCR” as well as “lack of legal redress available to individuals when governments fail to implement ICESCR, resulting from insufficient coverage in domestic legislation of economic, social and cultural rights, as spelled out in

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<sup>2</sup> Porter, Bruce, “Homelessness, Human Rights, Litigation and Law Reform: A View from Canada” Australian Journal of Human Rights, vol. 10, 2004.

ICESCR; lack of effective enforcement mechanisms for these rights; practice of governments of urging upon their courts interpretation of Canadian Charter of Rights and Freedoms denying protection of ICESCR rights, and inadequate availability of civil legal aid, particularly for economic, social and cultural rights”.<sup>3</sup>

### **B. Decentralized competencies and housing**

10. Canada has a complex system of power sharing between three levels of government - federal (national), provincial/territorial, and local or municipal - with varying degrees of responsibility for environmental, financial, social and economic issues associated with housing and human settlements. For example, the federal government has taxation and monetary powers; plays an important role in relation to the financial services sector that funds most housing development, and in coordinating national standards related to housing and settlement activity; and is involved in income support and other aspects of social development.

11. Provincial and territorial governments are responsible for management of most of the resources within their boundaries, and they play a significant role in the provision of shelter and development of human settlements. They are responsible for the regulation of urban and rural development in most areas through planning legislation, and the regulation of building and housing standards through building and health codes. Most jurisdictions have laws and regulations in place which govern property transactions and landlord-tenant relationships. Provinces also administer land title and registration systems. Provinces and territories have primary responsibility for social housing, similar to other areas of social policy such as health, social services and education, and indeed, administer directly or indirectly most existing social housing programmes.

12. Municipal governments are established by, and are under the jurisdiction of, the provinces and territories. Municipalities have significant responsibilities relating to zoning, land and housing development, transportation, land use, and local infrastructure. In some larger metropolitan areas, two tiers of municipal government have been established (regional and local).

13. Most lands set aside for Aboriginals in Canada are subject to federal jurisdiction. Pursuant to the Indian Act, band councils have many local government powers. Other First Nation communities that are established through self-government agreements may enjoy wider powers. While Aboriginal people have a historic and treaty relationship with the federal government, an estimated 70 per cent of Aboriginal people live off reserve in urban, rural, remote and Northern communities. The Canadian Parliament recognized the special housing needs of Aboriginal people off-reserve in its 2005 budgetary legislation to create a series of affordable housing trust funds. One of the housing trust funds authorized by the 2005 legislation was a one-time payment

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<sup>3</sup> CESCR, Concluding observations, 22 May 2006, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5, para. 11.

of \$300 million for off-reserve Aboriginal housing.<sup>4</sup> There has been no public accounting of the disposition of this funding, and at least \$60 million allocated for off-reserve Aboriginal housing in the Province of Ontario remained unspent as of January 2009.

14. Canada has a history of cost-sharing social programmes for its non-aboriginal population which have provided an important framework for ensuring compliance with Canada's obligations under international human rights law. For example, the Canada Assistance Act, in place for almost thirty years, required that provincial/territorial social assistance programmes provide assistance to those in need adequate to cover basic requirements including housing. This Act was revoked in 1996, however, and the adequacy requirement that was previously enforceable by courts has been lost.

15. In the area of housing, Canadian social programmes focus on providing subsidies for those who cannot afford adequate and suitable housing on their own. Cost-sharing arrangements involve federal, provincial, territorial and municipal governments as well as the private and non-profit sectors. In its 1996 federal budget, the Canadian government announced a plan to transfer administration of most of its housing programmes to the provinces and territories. The federal government, in the transfer agreements, agreed to continue to fund existing commitments, but included a "step-out" provision in federal funding.

16. Municipal authorities are often on the forefront of requests related to adequate housing and have to deal with concrete situations. In his discussions with many of these authorities, the Special Rapporteur noted a perception that higher authorities have discharged their share of responsibility for providing adequate housing for the population to them, yet without providing them with adequate resources.

17. Provincial and territorial ministers responsible for housing have a tradition of regular, often annual meetings. Starting in the year 2000, the federal government joined with the provinces and territories for these national housing meetings. At their meeting in September of 2005, the provincial and territorial ministers issued guiding principles for future housing initiatives, and the federal government indicated its general support. Reportedly, since then little provincial/territorial ministers' joint work has been achieved.<sup>5</sup>

18. Canada is one of the few countries in the world without a national housing strategy. The federal, provincial, territorial and municipal governments, along with civil society organizations (including the charitable sector) have introduced a series of one-time, short-term funding

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<sup>4</sup> Department of Finance Canada, "Details on Transfer Payment Programs for the Department of Finance Canada", [http://www.fin.gc.ca/dpr/SupDoc/dtpp\\_e.html](http://www.fin.gc.ca/dpr/SupDoc/dtpp_e.html).

<sup>5</sup> The provincial/territorial ministers did not meet again until February of 2008. The provincial and territorial ministers issued a communiqué expressing their disappointment at the federal minister for not attending the meeting, News Release, 2 April 2008, [http://www.scics.gc.ca/cinfo08/860550004\\_e.html](http://www.scics.gc.ca/cinfo08/860550004_e.html).

initiatives that have been described by housing experts in Canada as a “fraying patchwork”. This issue has been raised in various occasions including in the recent report by the Ontario Human Rights Commission (OHRC).<sup>6</sup>

### III. GOOD PRACTICES

19. Adequate housing is increasingly recognized in Canada as a critical social determinant of health. Canada’s Chief Public Health Officer noted that the lack of adequate housing leads to a series of health concerns.<sup>7</sup> Public health authorities at the provincial and local levels across Canada have noted similar concerns. The Province of Ontario, through its health ministry, has committed to a “health equity” approach to health funding, and has identified housing - including supportive housing for those with special physical and mental health needs - as a key component.

20. In addition, adequate housing is increasingly recognized as a critical factor in a strong and competitive economy. A variety of Canadian business organizations (starting with the major chartered bank, TD Bank Financial Group)<sup>8</sup> have identified the economic importance of adequate housing in providing a good home for Canada’s diverse working population.

#### A. State programmes and initiatives

21. Funding for low-income and social housing goes back to initiatives in the late 1940s. Canada’s successful social housing programme was launched with amendments to the National Housing Act in 1973 and provided funding and financial backing through a variety of mechanisms to community-based non-profit, municipal non-profit, and resident-owned non-profit co-operatives. It produced more than half a million homes for low income people.<sup>9</sup> The programme provided capital subsidies to get the housing built and operating subsidies to ensure that a varying number of the units would be affordable to low and moderate-income households. The programme also provided financial guarantees to financial institutions so that non-profit developers could also access conventional financing.<sup>10</sup>

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<sup>6</sup> Ontario Human Rights Commission (OHRC), *Right at Home: Report on the consultation on human rights and rental housing in Ontario*, May 2008, <http://www.ohrc.on.ca/>.

<sup>7</sup> Minister of Health, “The Chief Public Health Officer’s Report on the State of Public Health in Canada”, June 2008.

<sup>8</sup> TD Economics, “Affordable Housing in Canada: in search of a new paradigm”, Special Report, 17 June, 2003, <http://www.td.com/economics/special/house03.pdf>.

<sup>9</sup> J. David Hulchanski, *Housing Policy for Tomorrow’s Cities*, Ottawa: Canadian Policy Research Networks, Discussion Paper F27, 2002, p. 15 (<http://www.urbancentre.utoronto.ca/>).

<sup>10</sup> See for instance CMHC, “Affordable Housing in Canada’s Urban Communities: A Literature Review”, Research Report, p. 8, <ftp://ftp.cmhc-schl.gc.ca/chic-ccdhd>.



22. Canada has a significant number of programmes relating to housing that are funded by the authorities at federal, provincial and municipal levels. Due to funding, programme and legislative differences in various parts of the country, the overall effect seems uneven and disorganized. Similarly, it has also been argued that lack of a national and coordinated national strategy on affordable housing or homelessness has led to high costs with little concrete impact on the situation. These concerns have also been expressed by local authorities.<sup>11</sup>

23. During his mission, the Special Rapporteur had the opportunity to visit a number of centers and shelters accommodating homeless people, women fleeing from violence, Aboriginal women, persons living with HIV-AIDS, children with disabilities, and those suffering from drug addictions that were fully or partially funded by State programmes.

24. Starting in the mid 1980s, the federal government initiated a series of cuts in funding for the national housing programmes. In 1993, the federal government cancelled funding for new affordable housing under the 1973 initiative. In 1996, the federal government announced plans to transfer administration of most existing federal housing programmes to the provinces and territories and in 1999, the federal government amended the National Housing Act with the stated goal of giving Canada Mortgage and Housing Corporation more flexibility. It seems nevertheless that CMHC's role in supporting new and existing affordable housing has continued to diminish. In recent years, CMHC has been engaged in providing mortgage insurance to property owners and has generated annual profits in the hundreds of millions of dollars.<sup>12</sup>

25. In 1999, the federal government created the National Homelessness Initiative (NHI) to fund transitional housing and a range of services for homeless people in more than 60 communities across the country. At the same time, the federal government increased the funding for Canada's national housing rehabilitation programme. The funding for both these important housing initiatives was renewed three times, most recently for two years starting in December of 2006. In 2001, the federal government funded a one-time-only payment to a new affordable housing initiative (cost-shared with the provinces and territories and others) for a total federal commitment of \$1 billion over eight years. In 2005, the federal Parliament authorized a one-time only payment of \$1.6 billion in affordable housing funding, and \$1.4 billion of this amount was allocated by the federal government starting in 2006. There seems to be a lack of information on these expenditures, including on the number of houses produced and the shelter costs the new housing. The Special Rapporteur commends the recent decision to earmark funding for housing and homelessness for five years and hopes that federal investments in housing will increase and be maintained.

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<sup>11</sup> See for instance, FCM calls for national action plan to end homelessness and deliver affordable housing (<http://www.fcm.ca/english/media/press/jan232008.html>) or statement by FCM president Gord Steeves on report on declining government investment in affordable housing by the Canadian Housing and Renewal Association (<http://www.fcm.ca/english/media/press/sept272007.html>).

<sup>12</sup> See Peter Shawn Taylor, "Mortgage Insurance: Homebuyer Beware", Canadian Business Magazine, July 2005.

26. Some Provincial authorities have tried to find innovative solution to address inadequate housing and homelessness. For instance, the city of Montreal supported the creation of a legal clinic and a special prosecutor at Municipal Court in charge of problems linked to homelessness.

27. The Special Rapporteur also noted with interest Canada's housing system's concept of "housing continuum", while noting the complexity that can result from the role played by multiple agencies.<sup>13</sup> This approach responds to different housing needs and preferences with a range of options, from temporary housing to permanent forms of accommodation, including homeownership. The "continuum" starts with those who face housing emergencies and the most severe situations, including the homeless and people who have lost their homes due to factors such as domestic violence. The "housing continuum" approach calls for them to be assisted to move on to more dignified and permanent forms of housing. The subsidized housing part of the housing continuum deals mainly with people who cannot afford to pay market rates for their housing. Human Resources and Skills Development Canada has primary responsibility for homelessness while CMHC provides most of the funding to subsidize housing.

### **B. Constitutional and human rights protections**

28. Human rights in housing have been significantly advanced by the adoption of the Charter of Rights and by expansive protections from discrimination in federal and provincial/territorial human rights acts. Nevertheless, only Quebec and Newfoundland and Labrador human rights legislation refer to social and economic rights. While it does not explicitly mention the right to adequate housing, Quebec's Charter of Human Rights and Freedoms guarantees to every person in need "the right for himself and his family to measures of financial assistance and to social measures provided for by law, susceptible of ensuring such person an acceptable standard of living." (article 45). In 2006, Newfoundland and Labrador amended its Human Rights Code to include "source of income" as a specified prohibited ground upon which a person should not be denied occupancy of a commercial unit or a self-contained dwelling unit.

29. Given the absence of explicit provisions in Canadian law guaranteeing the right to adequate housing, the interpretation of the open-ended provisions of the Canadian Charter of Rights and Freedoms is critical for giving domestic effect to this right in Canada. Denial of the right to adequate housing to marginalized, disadvantaged groups in Canada clearly assaults fundamental rights in the Canadian Charter of Rights and Freedoms, even if the Charter does not explicitly refer to the right to adequate housing.

30. In a recent decision, Justice Ross recognizes that a significant number of people in the City of Victoria have no choice but to sleep outside in the City's parks or streets. She states that the City's Bylaw prohibition on erecting shelter is in effect at all times, in all public places in the City, and imposes upon those homeless persons, who are among the most vulnerable and marginalized of the City's residents, significant and potentially severe additional health risks.

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<sup>13</sup> Information and response to questionnaires provided by the authorities during and after the visit.

She also states that “sleep and shelter are necessary preconditions to any kind of security, liberty or human flourishing” thus “that the prohibition on taking a temporary abode contained in the Bylaws and operational policy constitutes an interference with the life, liberty and security of the person of these homeless people.”<sup>14</sup>

31. Human rights legislation in Canada affirms that equality for disadvantaged groups often requires governments or private actors to adopt positive measures to address the needs of disadvantaged groups. This principle offers important potential for providing effective remedies with respect to the right to adequate housing in Canada. Jurisprudence under human rights legislation in Canada has also broken new ground internationally in its recognition and prohibition of discrimination on the basis of poverty or income level in housing. Discrimination on the basis of poverty has been found to deny women, single mothers, social assistance recipients and other disadvantaged groups access to the most affordable rental housing or to affordable credit for homeownership.

32. The Special Rapporteur welcomes the current review in Quebec of the effectiveness and enforceability of social and economic rights in its human rights legislation and also the work of the Ontario Human Rights Commission in relation to the right to adequate housing.<sup>15</sup> It is hoped that all human rights bodies in Canada will devote increasing attention to the crisis of homelessness and inadequate housing and seek effective remedies.

33. It appears that no action has been taken in response to the repeated recommendations of the CESCR to include economic, social and cultural rights in the Canadian Human Rights Act and in provincial/territorial human rights legislation. The exclusion of rights such as the right to adequate housing from the statutory mandate of national human rights institutions is of particular concern in view of the Paris Principles.

34. The Special Rapporteur welcomes the initiative of the City of Montreal leading to the adoption of the Montreal Charter of Human Rights and Responsibilities. It contains commitments to ensure access to affordable and appropriate housing and recognizes the need for effective remedies by including a complaints mechanism to an ombudsperson. The Special Rapporteur hopes this practice will be replicated elsewhere.

### **C. Civil society**

35. The Special Rapporteur was particularly impressed by the amount and quality of the work that is carried out by civil society organizations, service providers and academics on adequate housing using a human rights perspective.

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<sup>14</sup> Supreme Court of British Columbia, *Victoria (City) v. Adams*, 2008 BCSC 1363, 16-19 June 2008, <http://www.courts.gov.bc.ca/jdb-txt/sc/08/13/2008bcsc1363.htm>.

<sup>15</sup> See OHRC, *op. cit.*

36. He also noted that civil society organizations and service providers are overwhelmed and facing great stress in their work and often heavily relying on voluntary contributions. Given the very high quality of research and academic work on housing, there is room for authorities in charge of programmes and policies to further use these elements in their work.

#### **IV. CONCERNS RELATED TO ADEQUATE HOUSING**

37. The Special Rapporteur welcomes the information received from the Government that 80 per cent of Canadian households are able to house themselves in the private market. The Special Rapporteur will focus his comments on the most vulnerable people and groups, those whose rights are allegedly denied, and on issues that may become problematic in the future for other parts of the population.

##### **A. Affordability and core housing need**

38. Canada Mortgage and Housing Corporation (CMHC) has established a definition of people living in “core housing need”. A household is said to be in core housing need if its housing falls below at least one of the adequacy, affordability or suitability, standards and it would have to spend 30 per cent or more of its total before-tax income to pay the median rent of alternative local housing that is acceptable (meets all three standards).<sup>16</sup>

39. A household is not in core housing need if its housing meets all of the adequacy, suitability and affordability standards or if its housing does not meet one or more of these standards, but it has sufficient income to obtain alternative local housing that is acceptable (meets all three standards). In 2001, nationally there were an estimated 1.5 million households in core housing need, representing about 13.7 per cent of all households in Canada.

40. Statistics Canada reports that three million Canadian households - 24.9 per cent of the overall - are paying 30 per cent or more of their income on shelter. Spending 30 per cent or more of household income on shelter can potentially jeopardize the amount of money available for food, medicine, energy, transportation, childcare and other necessities, particularly for low income households. Income and shelter cost data from Canada’s 2006 Census released in May and June of 2008 seem to confirm the testimonies that the Special Rapporteur received during his fact-finding mission.<sup>17</sup>

41. The high number of households paying 30 per cent or more of income on shelter is due to the fact that shelter costs have increased 18.5 per cent from 2001 to 2006, which is substantially

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<sup>16</sup> Adequate dwellings are those reported by their residents as not requiring any major repairs. - Affordable dwellings cost less than 30 per cent of total before-tax household income. Suitable dwellings have enough bedrooms for the size and make-up of resident households, according to National Occupancy Standard (NOS) requirements.

<sup>17</sup> Statistics Canada, “Changing Patterns in Canadian Homeownership and Shelter Costs”, 2006 Census, p. 22, <http://www12.statcan.ca/english/census06/analysis/shelter/pdf/97-554-XIE2006001.pdf>.

higher than the inflation rate of 11.26 per cent over those same years.<sup>18</sup> Meanwhile, Statistics Canada reports that over that same time period, median earnings for the bottom 20 per cent of working Canadians fell by 3.1 per cent. Statistics Canada also reported that over the past quarter century, median earnings for the bottom 20 per cent of working Canadians fell by 20.6 per cent - in the face of large increases in the costs of shelter, energy, medicine, transportation, clothing, food and other necessities. At the same time, social assistance rates across the country are decreasing. Between 1989 and 2005, when the cost of living rose by 43 per cent, social assistance benefit rates declined in both absolute and relative terms in all provinces, except Quebec and Newfoundland and Labrador. As a result of cuts to benefits, welfare incomes stand at their lowest level since the mid-1980s. None of the provinces have welfare incomes that match Statistic Canada's Low Income Cut Offs.<sup>19</sup> Indeed, in 2006, welfare incomes of single women averaged 40 per cent of this poverty line.

42. This situation puts additional pressure on households, especially on those already facing payment problems.<sup>20</sup> In Ontario, 66,746 renter households received applications for eviction in 2006, an increase of 21 per cent since 1998, the year the tenant protection and rent regulation laws were substantially eroded. No official statistics on the number of person evicted is released.<sup>21</sup>

43. Erosion of housing affordability is strong amongst tenant households, whose incomes are, on average, less than half of the household incomes of owner households in Canada. Despite increases in homeownership, recent private sector surveys have also pointed to growing affordability problems for this category.<sup>22</sup>

44. As the definition of core housing need is more restrictive than the human rights definition of adequate housing, the number of people living in inadequate housing may be higher than the available figures. For instance, General Comment 4 on the right to adequate housing in the International Covenant on Economic, Social and Cultural Rights, lists seven important aspects to this right.<sup>23</sup> In addition to affordability and habitability (which are contained in the core housing

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<sup>18</sup> *Idem*, p. 21.

<sup>19</sup> Statistics Canada does not measure poverty but defines a set of income cut-offs below which people may be said to live in straitened circumstances, commonly seen as poverty lines (The Canadian Fact Book on Poverty 2000, by David P. Ross, Katherine J. Scott and Peter J. Smith, Canadian Council on Social Development, 2000, Chapter 2).

<sup>20</sup> See for instance the Wellesley Institute National Housing Report Card, 1 February 2008, <http://www.wellesleyinstitute.com/>. See also "Rethinking the Housing Affordability Challenge", Discussion paper commissioned for the Government of Canada's "Canadian Housing Framework Initiative," January 2005, 14 pages, <http://www.urbancentre.utoronto.ca>.

<sup>21</sup> Wellesley Institute, Submission to the Universal Periodic Review, August 2008.

<sup>22</sup> RBC Economics, "Housing Affordability", March and December 2008, <http://www.rbc.com>.

<sup>23</sup> The Special Rapporteur identified other specific and additional factors affecting the right to adequate housing (see A/HRC/7/16, para. 5).

need definition), the key aspects include legal security of tenure, access to services, accessibility, location and cultural adequacy. There are no national statistics on this more complete definition of adequate housing. Therefore the number of households in inadequate housing may be much larger than the core housing need numbers indicate.

## **B. Public housing**

45. The Special Rapporteur observed a shortage of social housing stock across the country, despite significant construction during the period from 1973 to 1993. While 40 per cent of all housing in the Netherlands is social housing, 22 per cent in the United Kingdom and Sweden, 14 per cent in Germany, France and Ireland, and 10 per cent in Finland, Canada has only 5 per cent of its overall housing stock as social housing.<sup>24</sup>

46. The low level of new rental housing starts has been a consistent pattern for almost three decades, according to research studies. Since most low and moderate-income households cannot afford to enter the home ownership market, the small number of new rental construction has been identified as a cause for concern. According to rental market surveys from CMHC, the new rental housing tends to have rents higher than those of existing rental housing. Rent regulation legislation to protect rental housing affordability is under the jurisdiction of provincial governments, but there is an uneven system of rent regulation. In 1998, Ontario moved from rent regulation to “vacancy decontrol”, which places no control on the rent for a vacant unit. A relatively high mobility in the tenant population moving from one rental unit to another, as well as tenant evictions applications that have reached more than 60,000 annually,<sup>25</sup> means that a significant number of rental units become vacant annually and fall outside the rental regulation legislation. Other legislation to protect the legal security of tenure - including eviction legislation and legislation to control the demolition and conversion of rental properties - varies considerably from province to province and, in many parts of the country, is non-existent.

47. Metropolitan Toronto’s non-profit co-operative housing was recognized as a “global best practice” at the time of Habitat II. Most of the country’s co-op housing was built with the support of the national housing programme from 1973 to 1993, although some co-ops were built before this period and a number have been built in British Columbia, Ontario and Quebec under provincial programmes. Specific issues facing housing co-operatives include repair issues for so-called “leaky” co-ops in British Columbia that were built to low standards; financing issues for co-ops funded under specific federal programme; and ongoing concerns about preserving and enhancing affordability through additional housing subsidies for lower income households living in co-ops. The federal government has recognized the positive experience of housing co-operatives by agreeing to transfer administration of co-op housing programmes to an independent third sector agency that draws on the significant expertise of the Canadian co-operative housing movement. There has been relatively little new co-op housing built in Canada in recent years with the loss of federal and provincial housing funding.

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<sup>24</sup> Hulchanski, *op. cit.*, pp. 8-9.

<sup>25</sup> Centre for Human Rights in Accommodation (CERA), “Challenging Homelessness and Poverty as Human Rights Violations”, p. 1, [www.equalityrights.org/](http://www.equalityrights.org/).

48. The latest figures from Statistics Canada's Survey of Government Revenue and Expenditures (based on the fiscal year ending in March of 2008) reveals a 43 per cent cut in federal housing spending over the previous year, dropping from \$3.5 billion in 2007 to \$2.01 billion in 2008. Federal housing spending in 2008 is at its lowest level since 2003. Combined provincial and territorial housing spending increased from \$2.4 billion to \$2.7 billion, mainly due to an increase of \$260 million in housing spending recorded in the Province of Alberta from 2007 to 2008. Most other provinces and territories did not add new housing dollars, despite the evidence of growing housing need across the country.

49. According to the Federation of Canadian Municipalities, "CMHC estimates Canada will need 45,000 new rental units each year for the next 10 years just to keep up with current demand; at least half of these will have to be affordable units. At the same time, construction of new rental units has plummeted from 25,000 to fewer than 15,400 per year in the last decade. Demolition and conversion eats away at the affordable rental stock, while many affordable houses crumble."<sup>26</sup> Some government officials expressed their concerns about the progressive "ghettoization" of public housing to the Special Rapporteur.

### **C. Discrimination**

50. Despite the legal prohibition of discrimination with respect to housing, investigations into social and private housing in Canada reveal the persistence of discrimination against some groups, including on the basis of race, country of origin, sex, age, marital status, family status, sexual orientation, disability and social condition (including poverty and reliance on social assistance).<sup>27</sup>

51. Many landlords operating in the private market continue to engage in discriminatory practices such as: screening-out tenants based on their social condition, source of income or because they receive social assistance; refusing to rent to single mothers, families with children; precluding young people and new immigrants from accessing accommodation because of their inability to provide landlord references, credit history, and substantial work history; refusing to accommodate persons with disabilities; and denying accommodation to 16 and 17 year olds living independently of parents.

52. Figures indicate that some sectors of the population are disproportionately affected by inadequate housing conditions. Statistics Canada reports that immigrants face higher shelter costs (and lower incomes) than the Canadian-born population.<sup>28</sup>

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<sup>26</sup> FCM, A National Affordable Housing Strategy, <http://www.fcm.ca/english/documents/afford.html>.

<sup>27</sup> CMHC, State of Knowledge on Housing Discrimination, Socio-economic Series 104, May 2002, <http://www.cmhc-schl.gc.ca/odpub/pdf/62781.pdf>.

<sup>28</sup> *Idem.*, footnote 21 at p. 27.

## V. HOMELESSNESS

53. The Special Rapporteur remains concerned about the significant number of homeless in all parts of the country and by the fact that the Government could not provide reliable statistics on the number of homeless. During the mission, he came across particularly severe situations such as in Downtown Eastside in Vancouver.

54. It has been stated that the widespread and rapid growth of homelessness in Canada since the mid-1990s is unprecedented since World War II.<sup>29</sup> While the Homelessness Partnering Secretariat has estimated that there might be 150,000 homeless people across Canada, other experts have suggested that the actual number may be twice as large.<sup>30</sup>

55. While the issue has been under discussion for a long time, Canada still doesn't have an official definition of homelessness.<sup>31</sup> The Special Rapporteur is of the view that reaching an agreed definition of homelessness that includes a deep understanding of the systemic causes of homelessness is the first step to address the issue and is of crucial importance to draw efficient and cost-effective programmes.

56. The heavy impact of inadequate housing and homelessness on health and life has been documented.<sup>32</sup> As early as 1999, the Human Rights Committee expressed concern that homelessness had led to serious health problems and even to death in Canada. It recommended "that the State party take positive measures required by article 6 to address this serious problem."<sup>33</sup> The federal government has committed a one-time-only allocation of \$22 million per year for five years for a pilot project that will address mental health and homelessness.

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<sup>29</sup> Gordon Laird, *Homelessness in a growth economy: Canada's 21st century paradox*, Sheldon Chumir Foundation for Ethics in Leadership, 2007, p. 27, <http://www.chumirethicsfoundation.ca>. For an overview of youth homelessness see: [www.raisingtheroof.org](http://www.raisingtheroof.org).

<sup>30</sup> *Idem*.

<sup>31</sup> See for instance, Parliamentary Research Branch, *Homelessness*, January 1999, PRB 99-1E (<http://dsp-psd.pwgsc.gc.ca>). The parliamentary study makes a distinction between two categories of homeless persons: (a) visibly homeless: sleep on the streets and in places not designed for habitation and (b) invisibly homeless: live in substandard housing or people double up with others, sometimes even illegally, to escape living on the street. It also characterizes different types of homelessness: chronically homeless group; cyclically homeless group; temporarily homeless group and at risk of homelessness.

<sup>32</sup> See for instance, Stephen W. Hwang, *Homelessness and Health*, *Canadian Medical Association Journal*, 23 January 2001; 164 (2), or Sharon Chisholm, *Affordable Housing in Canada's Urban Communities: A Literature Review* prepared for Canada Mortgage and Housing Corporation, July 2003.

<sup>33</sup> CCPR/C/SR.1747, 6 April 1999.



57. While there are no reliable national numbers on homelessness, local surveys in communities like Calgary,<sup>34</sup> Vancouver, Edmonton and Ottawa all report that homelessness continues to be on the rise.<sup>35</sup> The city of Victoria states that “pressures on the streets of Victoria are reaching a breaking point. Victoria needs a community-owned solution to end homelessness for its residents.”<sup>36</sup> So-called “tent cities” are another manifestation of homelessness in various locations throughout the country.

58. Nunavut is the only Canadian jurisdiction with a minister for homelessness. The federal government named a cabinet minister with responsibility for homelessness in 1999, but in 2008, that responsibility is one of several assigned to the federal Human Resources and Skills Development Canada. In some provinces, the responsibility for homeless services is scattered among a variety of departments, including health, social services, housing, corrections, education and policing. This situation, it is argued, can result in a lack of coordination of services and uneven service levels for different populations in different parts of the country.

59. In its most recent review of Canada’s periodic report, the Committee on Economic, Social and Cultural Rights called upon “federal, provincial and territorial governments to address homelessness and inadequate housing as national emergency by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities”.<sup>37</sup>

60. The CESCR has also called on Canada to “implement a national strategy for reduction of homelessness that includes measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with ICESCR standards”.<sup>38</sup>

61. Several Canadian provinces have announced a commitment to implement a comprehensive poverty reduction strategy, including specific plans to target homelessness and housing insecurity. Newfoundland and Labrador, and Quebec, both have plans in place; and Ontario has announced in December the outline of its poverty reduction plan restricted to children.

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<sup>34</sup> For an in depth look at the impact on children and families in Calgary see the documentary by Laura Sky “Home Safe Calgary” at [www.skyworksfoundation.org](http://www.skyworksfoundation.org).

<sup>35</sup> See for instance the Wellesley Institute National Housing Report Card, 1 February 2008 and Gordon Laird, op. cit, p. 12.

<sup>36</sup> [http://www.victoria.ca/cityhall/tskfrc\\_brcycl.shtml](http://www.victoria.ca/cityhall/tskfrc_brcycl.shtml).

<sup>37</sup> CESCR, Concluding observations, 22 May 2006, E/C.12/CAN/CO/4 - E/C.12/CAN/CO/5, para. 62. Additional information on homelessness can be found at: <http://intraspec.ca/homelessCanada.php>.

<sup>38</sup> Idem.

62. The lack of action to address homelessness has a high cost for society not only in moral but also in financial terms. Studies have also attempted to quantify the financial impact of homelessness and housing insecurity. For instance, it is estimated that it costs taxpayers more than \$50,000 per year to support each homeless resident in British Columbia<sup>39</sup> and \$4.5 and \$6 billion annually for an estimated 150,000 homeless in Canada.<sup>40</sup>

## VI. WOMEN'S RIGHT TO ADEQUATE HOUSING

63. The lack of adequate and secure housing particularly impacts women who are disproportionately affected by poverty, homelessness, housing affordability problems, violence and discrimination in the private rental market.<sup>41</sup> During his visit, the Special Rapporteur heard many testimonies from women concerning their inadequate living conditions including derelict and overcrowded houses, and insufficient social assistance entitlements to meet the cost of housing and other living expenses, the lack of shelter spaces for homeless women and women fleeing violence.<sup>42</sup> Sexual abuse is a major cause and consequence of homelessness among young women. A recent study found that 1 in 5 homeless women interviewed reported having been sexually assaulted while on the streets or homeless.<sup>43</sup>

64. In some places across the country women attempting to leave abusive situations are either not given priority status for subsidized or government assisted housing or priority status is difficult to attain due to bureaucratic requirements that are hard to meet. With few housing options, women are given little choice but to return to abusive households, move from place to place ("couch surf") among family and friends, or take a chance at the streets - all while running the risk of apprehension of their children by child protection agencies. Once a woman loses her children, it is very difficult for her to get them back. Her welfare entitlement is reduced making adequate accommodation (essential to get her children back) inaccessible.<sup>44</sup> The Ontario Human Rights Commission stated that it was "extremely troubled to hear that children in Ontario continue to be relinquished or apprehended by children's aid societies because of inadequate

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<sup>39</sup> City of Victoria, Mayor's Task Force on Breaking the Cycle of Mental Illness, Addictions and Homelessness, 19 October 2007, [http://www.victoria.ca/cityhall/tskfrc\\_breycl.shtml](http://www.victoria.ca/cityhall/tskfrc_breycl.shtml).

<sup>40</sup> Gordon Laird, *op. cit.*

<sup>41</sup> Women's Housing Equality Network, Submission for the Universal Periodic Review of Canada, September 2008.

<sup>42</sup> For instance in October 2005, when the Special Rapporteur co-organized the North American Regional Consultation on Women and the Right to Adequate Housing in Washington D.C., USA. A number of the testimonies received were made by women from Canada. See also The National Anti-Poverty Organization, "Rusty Neal, Voices: Women, Poverty and Homelessness in Canada", May 2004, <http://intraspec.ca/>.

<sup>43</sup> The Street Health Report 2007, Toronto: September 2007, <http://www.streethealth.ca/Downloads/SHReport2007.pdf>.

<sup>44</sup> *Ibid.*

housing - concerns that were previously noted by the CESCR.”<sup>45</sup> Despite efforts in this field, shelters are inexistent in some parts of Canada and shelter operators report that they cannot cope with the demand.

65. A 2006 CMHC-funded research report entitled “Housing Discrimination against Victims of Domestic Violence” found that discrimination against battered women by landlords exists. This builds on earlier research which found that women may face discrimination based on factors such as gender, ethnicity, and marital and social status. For example, landlords or property managers might refuse to rent to teenage mothers or low-income or visibly minority women. As in many places, women’s housing conditions and homelessness are related to poverty.<sup>46</sup> Statistics indicate that female-headed single parent families have the lowest incomes compared to other types of families. Women earn on average 30 per cent less than men for similar work.<sup>47</sup> Aboriginal lone-parent mothers have a poverty rate of 73 per cent. Lone parent families headed by women earned less than 60 per cent of the income of male-headed lone parent families in 2003.<sup>48</sup>

66. Women’s poverty has combined with the escalating costs of housing. In 2003, 72 per cent of unattached women aged 65 and over who rented were considered to have housing affordability problems, as did 42 per cent of renter families headed by lone mothers and 38 per cent of unattached female renters under the age of 65.

67. Because the majority of low-income women are tenants, access to affordable rental housing is central to addressing women’s homelessness. The federal government responsibility transfer for social housing programmes to the provinces/territories seems to have been made without ensuring equal benefit of federal spending in this area for women. Women are more likely than men to meet income qualifications for social housing and therefore more adversely affected by cuts to assisted housing.

68. The inadequacy of supply of subsidized housing in relation to needs has generated waiting lists in largest cities exceeding 5 years, or even 10 years in Toronto. This prevents section of the population, including migrants, from accessing subsidized housing. Because of the shortage in subsidized housing, women have to rely on the private rental market, where they are often confronted with discriminatory practices mentioned above.

## VII. ABORIGINAL PEOPLES’ RIGHT TO ADEQUATE HOUSING

69. The Aboriginal peoples (Indians or “First Nations”, Inuits and Métis) of Canada make up approximately four per cent of the national population. Approximately half of the Aboriginal

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<sup>45</sup> OHRC, *op. cit.*

<sup>46</sup> CERA, *Women and Housing in Canada: Barriers to Equality*, March 2002.

<sup>47</sup> Statistics Canada, “Measuring Violence Against Women: Statistical Trends 2006”, 2006, pp. 85-86.

<sup>48</sup> Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, 2006, pp. 133-135.

population lives in urban areas; the rest live in communities on or near what remains of their traditional lands across the entire country. First Nations' remaining lands - where collective title is clearly recognized - are called "reserves" and administered under the federal Indian Act. Inuits and Métis, as well as some Indians, do not live on reserves.<sup>49</sup> This system can lead to concerns in relation to ownership, possession, transfers, and management of lands on reserve.<sup>50</sup>

70. The federal government has accepted responsibility under the Indian Act and other legislation and programmes for Aboriginal people living on federal recognized reserves, including housing programmes. The 2009 federal budget contains a one-time-only allocation of \$400 million for on-reserve Aboriginal housing. The federal government provides an annual subsidy of \$272 million for on-reserve Aboriginal housing. However, the Special Rapporteur was informed about the significant on-reserve housing problems in every part of the country. In addition, with a majority of Aboriginal people living in urban areas or in areas where their claim to land is not yet recognized, neither the federal government, nor the provinces or territories, accepts responsibility for funding Aboriginal housing initiatives. Aboriginal people are told that they have to compete with non-Aboriginal groups for any available housing or other funding. As already noted, since funding cuts of the 1990s and the transfer of administration of most federal housing programmes to the provinces and territories starting in 1996, there has only been a limited number of short-term, one-time funding initiatives for Aboriginal people living off reserve (except for the one-time allocation of \$300 million in 2005). The practical effect is that very little new Aboriginal housing off-reserve has been funded in recent years, even though local studies in cities as diverse as Toronto and Edmonton show that a very significant number of people who are homeless are of Aboriginal ancestry.<sup>51</sup>

71. In his mission report to Canada, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples expressed concerns about the housing situation of Aboriginal peoples.<sup>52</sup> The Special Rapporteur recommended to the Government that it intensify measures to close the human development indicator gap between Aboriginal and non-Aboriginal Canadians, including on housing, that adequate housing in a large number of Aboriginal communities be declared a priority objective and that adequate credits, investment and other resources be appropriated to solve this urgent problem within the shortest possible time frame.

72. Overcrowded and inadequate housing conditions, as well as difficulties accessing basic services, including water and sanitation, are major problems for Aboriginal peoples. These

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<sup>49</sup> OHCHR/UN-HABITAT, "Indigenous people's right to adequate housing", United Nations Housing Rights Programme, 2005.

<sup>50</sup> *Idem.*

<sup>51</sup> *Ibid.*

<sup>52</sup> See E/CN.4/2005/88/Add.3, at para. 36-38, 49, 79, 82, 86, 101 and 105.

challenges have been identified for many years<sup>53</sup> but progress has been very slow leaving entire communities in poor living conditions for decades.

73. Current figures on access to clean water are difficult to find, but the 2001 Aboriginal Peoples' Survey reported that 16 per cent of Aboriginal people in urban areas said that there were times of the year when their water was contaminated, and the number grew to 19 per cent among Aboriginal people in rural areas.<sup>54</sup> In Canada's North, 34 per cent of Inuit people reported that there were times of the year when their water was contaminated.<sup>55</sup> In April 2008, Indian and Northern Affairs Canada (INAC) announced one-time funding of \$165 million annually over two years to improve access to safe drinking water and sanitation in First Nations communities.

74. The Special Rapporteur visited the Lubicon Lake territory to assess the situation in an area on which the Human Rights Committee (HRC) took a decision back in 1990.<sup>56</sup> In 2006, both the HRC and CESCR recommended that the Canadian authorities resume negotiations with Lubicon Lake Band and consult with Band before granting licences for economic exploitation of disputed land.<sup>57</sup>

75. During his field visit, the Special Rapporteur witnessed the poor living and housing conditions in this area. The community does not receive adequate basic services or access to water. Because of the non-resolved status of these lands, federal and provincial authorities do not agree on their competencies and responsibilities.

76. Moreover, various extractive industries - such as TransCanada Pipeline - continue to work and to develop their activities on the territory under claim. These activities, which seem in contradiction with treaty bodies' recommendations and the right to self-determination and control over natural resources of this community, they have a direct impact on the human rights, including adequate housing of these communities because of the water and air pollution they generate and critical land area taken away from the communities.

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<sup>53</sup> See for instance the Royal Commission on Aboriginal Peoples (RCAP) final report of November 1996. The five-volume, 4,000-page report covered a vast range of issues and included 440 recommendations (<http://www.parl.gc.ca>).

<sup>54</sup> Statistics Canada, "Aboriginal People's Survey 2001 - initial findings: Well-being of the non-reserved Aboriginal Population", 2001, p. 26, <http://dsp-psd.tpsgc.gc.ca>.

<sup>55</sup> *Idem*.

<sup>56</sup> *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990). Document related to this case are available at: <http://www.nisto.com/cree/Lubicon/>.

<sup>57</sup> Human Rights Committee, Concluding observations, CCPR/C/CAN/CO/5, paragraph 9 and CESCR, Concluding observations, E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, para. 38.

## VIII. ABORIGINAL WOMEN'S RIGHT TO ADEQUATE HOUSING

77. During his mission, the Special Rapporteur met with many aboriginal women and associations. Aboriginal women face some of the most severe housing conditions and challenges in the country - whether they live off or on reserve or in rural, urban, northern or remote communities. Aboriginal women are often forced to relocate to urban areas as a result of circumstances beyond their control. Major issues affecting Aboriginal women include family and matrimonial real property laws on reserves, overcrowding, violence and homelessness. Aboriginal women with disabilities suffer from further barriers to affordable housing, both on and off reserve.

78. Studies show that Aboriginal women face a much higher rate of gender violence than non-Aboriginal women.<sup>58</sup> This includes violence in the family as well as racially motivated attacks carried out often with impunity in the larger society. The lack of protective legislation for women living on reserves, similar to that available to those living off reserve, constitutes an important barrier to the enjoyment of the right to housing and to a life free of violence. There are also concerns about the absence of emergency and transitional shelter on most reserves, which are even more pronounced in northern communities where geographic isolation is also a factor.

79. On reserve, housing concerns for Aboriginal women include gender discrimination as a consequence of the operation of the *Indian Act*, including the lack of matrimonial property protection. In all provinces and territories, legislation governing marital breakdown provides for equal sharing of assets between spouses; often, the main family asset being the house. Due to the constitutional division of powers, the Supreme Court of Canada has held that provincial legislation does not apply in cases where real property on reserve is affected by such breakdown. Some First Nations have adopted rules in regard to matrimonial property division. Yet, neither the *Indian Act* nor any federal legislation provides for a division of property on reserve upon marital breakdown. Such a legislative void results in dramatic results. In some cases, women - and their children - are forced to choose between staying in a bad and/or violent situation or leaving the matrimonial home. Often, the choice to leave results in the woman and her children being forced to leave their community and/or become homeless.<sup>59</sup> While this has been discussed on many occasions,<sup>60</sup> debates are still on-going and little progress has been made the *Indian Act* has not yet been amended.<sup>61</sup>

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<sup>58</sup> See for example Douglas A. Brownridge, "Male partner violence against aboriginal women in Canada, an empirical analysis", *Journal of Interpersonal violence*, Vol. 13, No. 1, January 2003.

<sup>59</sup> OHCHR/UN-HABITAT, "Indigenous people's right to adequate housing", *op. cit.*

<sup>60</sup> See for instance Senate Standing Committee on Human Rights, "A Hard Bed to Lie In: Matrimonial Real Property on Reserve", 37th Parliament, 2nd Session, November 2003 <http://www.parl.gc.ca/>.

<sup>61</sup> Bill C-47 which would have established a federal regime for matrimonial real property on reserves, was tabled on in March 2008 but died on the order paper when Parliament was dissolved in September.

80. In urban areas, the key housing concerns include discrimination in access to safe, quality, affordable, appropriate housing and insufficient emergency and transitional housing designed to meet the distinct needs of Aboriginal women.

81. Lack of affordable housing is impacted by and can lead to the criminalization of Aboriginal women. In their attempts to find and secure affordable housing with limited incomes, Indigenous women are at risk of exploitation by some landlords and gangs. Additionally, without affordable housing Aboriginal women face the threat of having their children apprehended by the state into the child welfare system.

82. The Federal Government has recognized the urgent need to provide for shelter for First Nations Women and their children on reserves fleeing from violence.<sup>62</sup> In 2007, the federal government announced one-time funding of approximately \$5 million per year for five years for 35 shelters. However, these efforts seem to fall far short of what is needed to address the magnitude of the problem.

### **IX. PREPARATION FOR THE OLYMPICS IN VANCOUVER**

83. Mega-events, such as the Olympics, the FIFA World Cup or the Commonwealth Games, have been seen to impact enjoyment of the right to adequate housing. Although these events have many positive aspects for the host country, studies also show that they can trigger speculation and rapid increase in housing prices, lead to forced evictions to make way for the construction of infrastructure, city beautification or even criminalization of the homeless in areas near the events.<sup>63</sup>

84. In the context of efforts to work with the International Olympic Committee to prevent any negative impact on the right to adequate housing the Special Rapporteur took the opportunity of his mission to look on the preparations taking place in Vancouver for the 2010 Olympic Games.

85. Vancouver has been an innovative city, incorporating in its bid the Inner-City Inclusive Commitment Statement, developed by inner-city community organizations and Government agencies, which seeks to address issues related to housing, civil liberties and public safety, health and social services, environment and transportation, to ensure accessible and affordable Games. The Special Rapporteur met with the CEO of Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games (VANOC) who expressed his commitment to ensure that the Games would contribute to improve the housing conditions of the poor as a positive legacy.

86. While the Special Rapporteur welcomes the VANOC commitment, he remains concerned by information he received on the impact that the preparation for the Olympics could have on

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<sup>62</sup> Government of Canada Announces Five New Women's Shelters for First Nations Communities, 4 March 2008, <http://www.cmhc-schl.gc.ca/en/>.

<sup>63</sup> See for instance COHRE's report, Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights, 2007, <http://www.cohre.org/>.

low-income housing residents, and particularly on low-income single resident hotel units situated in the Downtown Eastside neighborhood. Non-Governmental organizations estimated that since July 2003, Vancouver has lost more than 1400 low-income housing units which have been renovated or converted. Although the Olympics cannot be considered as the unique cause, the real estate speculation generated by the Olympics would appear to be a contributing cause.

87. The Special Rapporteur is also concerned about information he has received that the City of Vancouver is funding private security guards whose duties include moving the street homeless and those panhandling out of commercial areas. The Special Rapporteur is also concerned about reports concerning ticketing homeless individuals for bylaw violations and seizure of their property in the lead up to the Games.

## X. RECOMMENDATIONS

88. **The Special Rapporteur believes that the legal recognition of the right to adequate housing is an essential first step for any State to implement the human rights to adequate housing of the people under its protection. Therefore, the Special Rapporteur strongly recommends that the right to adequate housing be recognized in federal and provincial legislations as an inherent part of the Canadian legal system.**

89. **In line with previous recommendations made by the CESCR, the Special Rapporteur recommends that human rights legislation in all Canadian jurisdictions be amended to fully include economic, social and cultural rights and that they be included in the mandates of all human rights bodies.**

90. **The Special Rapporteur calls for Canada to adopt a comprehensive and coordinated national housing policy based on indivisibility of human rights and the protection of the most vulnerable. This national strategy should include measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms.**

91. **The Special Rapporteur also supports the recommendation of the CESCR that homelessness and inadequate housing in Canada be addressed by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities”.**<sup>64</sup>

92. **In order to design efficient policies and programmes, federal, provincial and territorial authorities should work in close collaboration and coordination and they should commit stable and long-term funding to a comprehensive national housing strategy. Federal, provincial and territorial authorities should also collaborate with authorities that**

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<sup>64</sup> CESCR, Concluding observations, 22 May 2006, E/C.12/CAN/CO/4 - E/C.12/CAN/CO/5, Paragraph 62. Many information on homelessness and poverty can be found at: <http://intraspec.ca/homelessCanada.php>.



are the closest to the need of the population such as municipal authorities, service providers and civil society organizations.

93. The authorities should take advantage of the outstanding level of academic analysis of right to housing issues available in Canada to implement the detailed recommendations contained in the Ontario Human Rights Commission report.

94. The definition of “core housing need” should be revised to include all the elements of the right to adequate housing and the federal government should collect reliable statistical data on all such dimensions.

95. The federal government, along with the provinces and territories, should commit the necessary funding and resources to ensure access to potable water and proper sanitation. This is a particularly acute issue for Aboriginal people, both on-reserve and off-reserve, and Aboriginal people should be directly involved in the design, development and operation of appropriate water systems.

96. Canada should adopt a national strategy on affordable housing that engages all levels of government including Aboriginal governments, Aboriginal people, civil society and the private sector. The strategy will require permanent and adequate funding and legislation set within a rights-based framework.

97. Canada may need to embark again on large scale building of social housing. It should also consider providing subsidies including housing allowances or access to other cost-effective ways in order for low-income households to meet their housing needs.

98. The Federal Government should work with the provinces and territories to ensure there is a consistent framework of tenant protection law that meets the standards required by human rights obligations.

99. Discriminatory practices in housing should be addressed by ensuring that victims have access to legal representation and, where a quick settlement is not reached, prompt access to hearings and remedies. Systemic and widespread discrimination should be investigated by human rights commissions and legal and practical solution implemented. Specific funding should be directed to groups particularly vulnerable to discrimination including women, Aboriginal people, the elderly, people with mental or physical disabilities, youth and migrants, to ensure they can challenge housing discrimination effectively.

100. The Special Rapporteur urges the federal authorities to adopt an official definition of homelessness and to gather reliable statistics in order to develop a coherent and concerted approach to this issue.<sup>65</sup> This should be fully inclusive of women’s, youth and children’s experiences of and responses to homelessness.

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<sup>65</sup> Mission to Australia, A/HRC/4/18/Add.2, para. 38-40.

- 101. Canada should adopt a coordinated national strategy for reduction of homelessness that links the short-term measures (such as supports and temporary shelter for the homeless) with longer-term measures (to ensure the availability of permanent, affordable housing, along with income and employment supports).**
- 102. Reducing homelessness and the number of people living in inadequate housing requires Canada to adopt a comprehensive and coordinated national poverty reduction strategy. Whilst three provinces have already taken important steps in this direction, the federal government should also be active in this area. This must include a review of the income available through social assistance and minimum wage in light of actual housing costs and a timetable for ensuring an adequate income to cover housing costs.**
- 103. In view of the issues faced by women in regard to discrimination and inadequate living conditions as well as income disparity between men and women, the Special Rapporteur recommends that the mandate and funding of the Status of Women Canada (SWC) be fully reinstated including funding for advocacy for women's equality.**
- 104. Sufficient income and housing assistance should be ensured to allow mothers to secure adequate housing and maintain custody of their children.**
- 105. 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.**
- 106. In reserves, there is a need to commit funding and resources to a targeted Aboriginal housing strategy that ensures Aboriginal housing and services under Aboriginal control.**
- 107. Authorities should genuinely engage with Aboriginal communities to resolve as soon as possible land claims such as in the Lubicon region so that housing problems can be resolved on a longer-term basis. In the mean-time urgent steps should be taken to improve housing and living conditions regardless of the status of the land claims. Until a settlement is reached no actions that could contravene the rights of Aboriginal peoples over these territories should be taken. In that regard, a moratorium should be placed on all oil and extractive activities in the Lubicon region until a settlement. Moreover, activities of private companies on Aboriginal lands - regardless of the status of the claim - should be carried out only with consultation and approval of all Aboriginal and concerned communities. The Special Rapporteur reaffirms the importance of accountability of private actors and calls for respect for human rights in their activities, policies and projects.**
- 108. Federal, Provincial, Aboriginal and municipal governments should undertake gender-based analysis of Aboriginal housing concerns that is culturally relevant and developed with the participation of Aboriginal women.**
- 109. Aboriginal women must have effective participation in decision-making - at all levels, and Aboriginal women with disabilities. For example, equitable representation of all Aboriginal women in modern day treaty negotiations and agreements could ensure that shelter and housing needs of Aboriginal women are adequately considered.**

**110. Implementation of matrimonial real property legislation aimed at addressing current inequalities faced by Aboriginal women living on reserves should be complemented by effective concomitant non-legislative changes such as access to justice initiatives.**

**111. Vancouver Olympic officials, and other authorities, need to implement specific strategies on housing and homelessness that do not rely on criminalization of poverty, and to commit funding and resources to support their targets, including the construction of 3,200 affordable homes as set out by the City of Vancouver as its minimum requirement for social sustainability and echoed in community Olympic consultation processes. The social development plan should be designed and implemented with public participation, and progress should be independently monitored.**

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