

Memorandum

Legal Information on Rights-Based Legal Frameworks for Climate-Resilient Housing in Canada

INTRODUCTION

This legal memorandum examines any international human rights obligations that relate to ensuring climate-resilient housing, particularly in the context of rental housing, and a right to a healthy environment.

ANALYSIS

Right to Adequate Housing

The following international and domestic legal instruments provide a foundation for advancing a rights-based framework for advocacy on climate resilient rental housing, particularly. It is important to note that the international conventions and treaties are only those that Canada has ratified, meaning that Canada is bound by international law to uphold their obligations. However, these international legal instruments have not been fully adopted in domestic legislation.

1. *International Covenant on Economic, Social and Cultural Rights*

At the international level, the *International Covenant on Economic, Social and Cultural Rights* (“ICESCR”) is integral to establishing a rights-based argument for climate-resilient housing in the Canadian context. Canada has been a State party to the *ICESCR* since May 19, 1976.¹ By ratifying this treaty, Canada accepts and is bound by the obligation to implement the rights frameworks within domestic legislation.

The following provision is of Article 11.1 from the *ICESCR* which imposes an obligation onto State Parties to ensure everyone has the right to adequate housing, and continuous improvement of living conditions:

Article 11

1. The **States Parties to the present Covenant recognize the right of everyone** to an adequate standard of living for himself and his family, **including adequate food, clothing and housing, and to the continuous improvement of living conditions.** The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.²

¹ Government of Canada, [“Canada’s appearance at the United Nations committee on Economic, Social and Cultural Rights”](#) 2017.

² United Nations General Assembly, [International Covenant on Economic, Social and Cultural Rights](#), 1976. [*ICESCR*]

The *ICESCR* ensures that all individuals, regardless of income, status, race, or any other form of discrimination are guaranteed the right to adequate housing, and continuous improvement of living conditions.³ Thus, Article 11.1 of the *ICESCR* creates this progressive obligation on Canada to take clear steps toward continuously improving housing conditions over time. This progressive obligation creates a continuous duty on State Parties to take appropriate measures and adapt to any changes overtime, which can include the effects of climate change.⁴

This obligation is not limited to the federal government as it also extends to the provincial and municipal governments.⁵ The federal government can coordinate this mandate to provincial and municipal governments to implement this framework through land use planning, zoning, and local policy. Therefore, the right to adequate housing binds all levels of government by allowing them to mobilize on a national, provincial, and local scale. These rights cannot be realized meaningfully without the assistance and participation of all levels of government.

Additionally, the United Nations adopted Resolution 43/14 (“RES 43/14”) on June 19, 2020.⁶ The UN expanded on Article 11.1 of the *ICESCR* using RES 43/14 to further elaborate that the right to adequate housing also includes the adverse direct and indirect effects of climate change.⁷

In RES 43/14, the UN’s Committee on Economic, Social and Cultural Rights calls upon State Parties to do the following:

1. Calls upon States:

- d) To take the **right to adequate housing** into account in **strategies for adaptation to and mitigation of climate change**.
- e) To work with affected communities and individuals to **develop and promote environmentally sustainable and sound housing design, construction and maintenance to address the effects of climate change while ensuring the right to adequate housing**,⁸

The UN also released “[Guidelines for the Implementation of the Right to Adequate Housing](#)” (“Guidelines”) in 2020, prior to the release of RES 43/14. These Guidelines provide an additional detailed set of measures that can be used to address climate change concerns in the context of the right to adequate housing.⁹ These Guidelines are important to help State Parties turn obligations into actionable plans. Guideline No.13 provides the measures to ensure that climate change considerations can be adapted into the right to adequate housing:¹⁰

³ *Ibid.*

⁴ Government of Canada, “[Canada’s appearance at the United Nations committee on Economic, Social and Cultural Rights](#)” 2017.

⁵ *Ibid.*

⁶ United Nations General Assembly, “[Resolution adopted by the Human Rights Council on 19 June 2020](#)” 2020. [A/HRC/RES/43/14]

⁷ *Ibid.*

⁸ *Ibid* at page 2.

⁹ United Nations General Assembly, “[Guidelines for the Implementation of the Right to Adequate Housing](#)”, 2020. [Guidelines]

¹⁰ Guidelines at page 18.

Guideline No. 13. Ensure that the right to housing informs and is responsive to climate change and address the effects of the climate crisis on the right to housing

70. Natural disasters and the climate crisis have enormous impacts on the enjoyment of the right to housing, with exponential increases in these effects anticipated in decades to come. Climate-fuelled disasters were the primary driver of internal displacement during the past decade, forcing an estimated 20 million people a year from their homes. Those living in homelessness or lacking access to resilient or secure housing are the most adversely affected, as they often live in areas that are vulnerable to floods, hurricanes and cyclones, storm surges, mudslides, earthquakes and tsunamis. Moreover, States taking disaster risk management measures often fail to consider their effects on vulnerable communities and their right to housing.

71. The manner in which the right to housing is to be realized also has implications for climate change. It has been estimated that the building and construction sector accounts for 39 per cent of global energy-related carbon dioxide emissions, most of which is concentrated in middle- and high-income countries. It is in low-income countries, however, that the greatest amount of construction will be required if target 11.1 of the Sustainable Development Goals are to be achieved. States individually and the international community as a whole must respond urgently to the climate crisis while also ensuring access to sustainable housing, prioritizing those most in need.

72. Implementation measures:

- (a) The right to adequate housing should be integrated into strategies for the adaptation to and mitigation of climate change**, as well as in planning, preparing and implementing strategies for addressing climate change displacement. States should ensure that these strategies do not undermine or impede the realization of the right to adequate housing;
- (b)** In situations where communities are particularly vulnerable to the effects of climate change and climate change-related disasters, such as those living on or near waterways and shorelines, priority should be given to adaptation measures to preserve existing communities. In that regard, States must consult with residents to identify the measures needed for their protection. Such measures may include ensuring that communities are able to retain technical experts, installing protective infrastructure, moving some households to safer sites within the community and ensuring that adequate resources are available for the implementation of such measures;
- (c)** While making every effort to mitigate climate change, States should conduct thorough analyses of anticipated climate displacement, determine likely time frames and identify communities at risk and possible relocation sites. Where relocation is deemed necessary or chosen by the community, it should be implemented in a manner consistent with the basic principles and guidelines on development-based evictions and displacement and with guidelines No. 6 and No. 7 above;
- (d) States must work with affected communities to develop and promote environmentally sound housing construction and maintenance to address the effects of climate change**

while ensuring the right to housing. The particular vulnerability of indigenous peoples to climate change must be recognized and all necessary support should be provided to enable indigenous peoples to develop their own responses. Forests and conservation areas must be protected in a manner that fully respects the rights of indigenous peoples to their lands and resources and to their traditional and environmentally sustainable practices in housing.¹¹ [emphasis added]

The *ICESCR* also requires Canada to ensure non-discriminatory access to adequate housing for everyone.¹² This is significant because those often precluded from adequate housing and conditions are from disadvantaged and vulnerable populations such as low-income, disabled, seniors, racialized, and Indigenous groups.

Also, it is important that these Guidelines do not equate adequate housing with mere shelter, it requires the State Parties to ensure that particular conditions must be granted to be considered “adequate” housing.¹³ For example, adequate conditions can include degree of security from evictions or harassment, access to drinking water, availability of sanitation equipment, disposal sites, food storage, indoor heating, and lighting.¹⁴ It also ensures protection from housing located in polluted regions, and protection from cold, heat, rain, and other natural hazards that pose a threat to health or the structural conditions of the housing.¹⁵ It also reinforces that housing is not merely a market commodity or four walls and a roof, it is a protected human right that ensures people have access to adequate housing that also adapts to the effects of climate change.

Therefore, the *ICESCR* is a vital foundation for putting forward a human-rights based argument in the Canadian context for adequate and climate-resilient housing. It can be used to argue that government decisions that affect access to quality housing are failing to uphold their obligation under international human rights, and that the lack thereof undermines their commitment to the progressive realization of these rights at international law.

2. National Housing Strategy Act

In November 2017, the Canadian federal government launched Canada's National Housing Strategy (“NHS”), followed by the *National Housing Strategy Act* (“*NHSA*”) in 2019.¹⁶ The goal of the NHS program is to ensure everyone in Canada has the right to adequate housing. The program’s core principles and purpose stem from Article 11.1 of the *ICESCR* which grants the right to adequate housing and improved housing conditions.¹⁷

The *NHSA* establishes the Government of Canada’s housing policy with the goal of ensuring that everyone in Canada has access to housing. It also officially recognizes that the right to adequate housing as a fundamental human right affirmed in international law, and now within domestic law.

Under section 4 of the *NHSA*, the Government of Canada reaffirms their obligations under international human rights law:

¹¹ *Ibid* at page 17-18.

¹² *Ibid* at page 10.

¹³ Office of the United Nations High Commissioner for Human Rights, “[The human right to adequate housing: Special Rapporteur on the right to adequate housing](#)”.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ Government of Canada, “[Housing, Infrastructure and Communities Canada - Human rights-based approach to housing](#)” 2025.

¹⁷ *Ibid*.

Housing Policy Declaration

Declaration

It is declared to be the housing policy of the Government of Canada to

- (a) recognize that the right to adequate housing is a fundamental human right affirmed in international law;
- (b) recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- (c) support improved housing outcomes for the people of Canada; and
- (e) further the progressive realization of the right to adequate housing as recognized in the *International Covenant on Economic, Social and Cultural Rights*.¹⁸

This reflects a clear commitment by the Canadian government, not only to recognize the right to adequate housing for all people, but also to uphold the obligation of progressive realization of the right. The term “progressive realization” is important because it impacts how any right will be interpreted by the Courts in Canada.

In this context, progressive realization may be a way to put forward interpretations that the “adequacy” of housing must include worsening threats from climate change.¹⁹ As climate change-related risks such as extreme heat, flooding, and mould increasingly affect housing conditions, this legislation can be cited as a reason why the federal government must incorporate climate change mitigation and adaptation strategies into their housing obligations. It also reinforces the need to prioritize measures to reduce disproportionate impacts on populations that are most susceptible to the effects of climate change.

The *NHSA* does not explicitly include any reference to “climate-resilient housing”, however, the guidance and interpretations of article 11.1 of the *ICESCR* at the international level provide some basis for climate resiliency to be included in any analysis of housing conditions under this legislation.²⁰

The *NHSA* requires the Canadian government to develop and maintain a national housing strategy grounded in this human rights-based approach. It may be advisable to ensure that climate justice concerns are raised as part of any review of this strategy.

The *ICESCR* and *NHSA* form a foundation for advocates to consider a more explicit rights-based analysis of adequate housing in a changing and worsening climate.

¹⁸ [National Housing Strategy Act](#), S.C. 2019, c. 29, s. 313 at section 4. [*NHSA*]

¹⁹ *Ibid* at section 13.

²⁰ Guidelines.

3. Other International Treaties

The following list are international treaties that have been ratified by Canada and include the right to adequate housing. These treaties can be used as additional material to reinforce Canada's duty to ensure the right to adequate housing is upheld domestically.

- Article 25 of the *Universal Declaration of Human Rights*
- Article 27(3) of the *Convention on the Rights of the Child*
- Article 5(e)(iii) of the *Convention on the Elimination of All Forms of Racial Discrimination*
- Article 14(2)(h) of the *Convention on the Elimination of Discrimination Against Women*
- Article 9(1)(a), 28(1)(d) of the *Convention on the Rights of Persons with Disabilities*

4. Ontario Human Rights Commission

The right to adequate housing has also been reaffirmed by the Ontario Human Rights Commission ("OHRC").²¹ The OHRC has stated that international human rights laws are to be used as an aid and direct source of human rights when interpreting the *Ontario Human Rights Code* in the context of equal treatment in housing.²² The OHRC also made a statement on human rights, extreme heat waves and air conditioning in 2022 and stated that:

Access to cooling during extreme heat waves is a human rights issue. As temperatures rise due to climate change, extreme heat waves have and will continue to disproportionately impact groups protected under Ontario's *Human Rights Code* (Code).²³

Right to a Healthy Environment

1. [A/RES/76/300](#))

The United Nations General Assembly officially recognized the right to living in a clean, healthy, and sustainable environment in 2022.²⁴ This resolution was voted in favour by 161 Member States, including Canada.²⁵ This is a big achievement and marks a significant shift in international human rights law as it the first step in recognizing the right to a healthy environment in association with public health. However, since this particular resolution is not a part of a treaty or international legislation, it is not binding for Member States. Nonetheless, this resolution points to growing international consensus, reinforces existing obligations

²¹ Ontario Human Rights Commission, "[Housing as an International Human Right](#)", 2007.

²² *Ibid.*

²³ Ontario Human Rights Commission, "OHRC Statement on Human Rights, Extreme Heat Waves and Air [Conditioning](#)", August 19, 2022.

²⁴ United Nations General Assembly, "[The human right to a clean, healthy and sustainable environment](#)" 2022. [A/RES/76/300]

²⁵ Robert Mason, "[Climate Change and the Right to a Healthy Environment: International and Canadian Developments](#)" 2024.

under *ICESCR*, and has the potential to become binding international law in the future.

The resolution emphasizes the disproportionate impacts of climate change on lesser developed countries, and vulnerable populations, including low-income people, women, children, Indigenous people, seniors, and people with disabilities.²⁶ The resolution also recognizes that environmental degradation is one of the largest threats we are currently facing, and that international cooperation is necessary to achieve a clean, healthy, sustainable environment for the promotion of public health and equity.²⁷

2. Canadian Environmental Protection Act

The *Canadian Environmental Protection Act* (“*CEPA*”) was amended in 2023 and includes a limit right to a healthy environment:

2 (1) In the administration of this Act, the Government of Canada shall, having regard to the Constitution and laws of Canada and subject to subsection (1.1),

(a.2) protect the right of every individual in Canada to a healthy environment as provided under this Act, subject to any reasonable limits.²⁸

The Government of Canada has published an implementation framework for the right to a health environment.²⁹

CONCLUSION

In the context of the right to adequate housing, climate resiliency in rental housing is discussed at the international level. The right has also been incorporated into Canadian law in the *NHSA*. There is support for advancing an argument that the climate resiliency issues affecting low-income rental housing are human rights issues.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33 at section 2(1)(a.2). [*CEPA*]

²⁹ Government of Canada, “Implementation Framework for the Right to a Healthy Environment under the *Canadian Environmental Protection Act, 1999*”, 2025. <[Implementation framework for the right to a healthy environment under the Canadian Environmental Protection Act, 1999 - Canada.ca](#)>

