



International Jurisprudence: Security of Tenure in Canada

Canadian Centre for Housing Rights

April 22, 2022

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This report is part of a series of reports on security of tenure commissioned by the Office of the Federal Housing Advocate (OFHA). The other reports in the series can be found on the OFHA website and on the Homeless Hub at homelesshub.ca/OFHA.

The opinions, findings, and conclusions or recommendations expressed in this document are those of the author and do not necessarily reflect the views of the Canadian Human Rights Commission or the Federal Housing Advocate.

Le présent document existe également en version française sous le titre, Jurisprudence internationale : La sécurité d'occupation au Canada. Elle est disponible sur le site du Bureau de la défenseure fédérale du logement et sur le Rond-point de l'itinérance.

How to cite this report:

Canadian Centre for Housing Rights. 2022. *International Jurisprudence: Security of Tenure in Canada*. The Office of the Federal Housing Advocate.

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Catalogue number: HR34-13/2023E-PDF

ISBN: 978-0-660-48000-8

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List of Abbreviations

CEDAW — Convention on the Elimination of All Forms of Discrimination Against Women

CESCR — Committee on Economic, Social, and Cultural Rights

CRPD — Convention on the Rights of Persons with Disabilities

ICCPR — International Covenant on Civil and Political Rights

ICESCR — International Covenant on Economic, Social, and Cultural Rights

NHSA — National Housing Strategy Act

OP-CEDAW — Optional Protocol of the Convention on the Elimination of Discrimination Against Women

OP-CRPD — Optional Protocol of the Convention on the Rights of Persons with Disabilities

OP-ICCPR — Optional Protocols of the International Convention on Civil and Political Rights

OP-ICESCR — Optional Protocol of the International Covenant on Economic, Social, and Cultural Rights

UNDRIP — United Nations Declaration on the Rights of Indigenous Peoples

Summary:

- Canada made commitments under international law to implement the right to housing by ratifying various treaties, including the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR). The obligations under the ICESCR have been enshrined in domestic law through the *National Housing Strategy Act* (NHSA) that was passed in 2019.
- Canada's implementation of the ICESCR is monitored by the Committee of Economic, Social, and Cultural Rights (CESCR), while other treaties are monitored by other committees.
- The CESCR has a tool called the Optional Protocol that allows people to bring claims to the CESCR directly if they believe their rights have been violated. The Committee makes decisions on these claims.
- Canada can learn a great deal from decisions made under the Optional Protocol. Five such cases are discussed in this report.
- Security of tenure is an integral part of the right to housing, and there are standards for security of tenure in international law which this report goes through in detail.
- For tenants in Canada, there is no minimum standard for the protection of security of tenure because each province has its own laws. To provide an example, this report compares the levels of protection in Ontario and British Columbia.
- Canada can learn from the policies that other countries have implemented to protect security of tenure and what they have done to implement the right to housing. In this paper, we discuss Scotland, the Netherlands, New Zealand, and Germany.
- The paper concludes with recommendations to the Federal Housing Advocate on how they can refer to international jurisprudence and to policies from other jurisdictions to work towards strengthening security of tenure protections in Canada. The recommendations are:
 1. To monitor the progress of the implementation of the right to housing through the lens of international human rights law.
 2. To monitor the implementation of housing policy by all levels of government with reference to international law requirements.
 3. To conduct research on rental protection legislation across Canada and identify gaps in protections that do not meet the international standards for security of tenure.
 4. To advise the Minister on policies that were successful at improving security of tenure protections in other international jurisdictions.

Please note that the analysis and recommendations presented in this report are based on the following principles:

1. The right to security of tenure and freedom from forced evictions are integral parts of the right to adequate housing which is guaranteed in Article 11 of the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR). Security of tenure is necessary for the enjoyment of other civil, cultural, economic, political, and social rights.
2. The *National Housing Strategy Act* (NHTSA), which was passed by Canada in 2019, recognizes the right to housing as it is expressed in the ICESCR.
3. Protection of security of tenure is also a requirement in other international treaties, such as the *International Covenant on Civil and Political Rights* (ICCPR).
4. Security of tenure must be understood in light of treaties that protect the rights of marginalized groups, such as the *Convention on the Rights of Persons with Disabilities* (CRPD) and the *Convention on the Rights of the Child* (CRC), and the security of tenure of the most vulnerable and marginalized groups must be a priority.
5. Access to justice for the right to security of tenure must be understood as encompassing all dimensions of the right to housing. States must take steps to implement programs that protect security of tenure and address any threat to the security and dignity of one's home or the preservation of one's community.
6. Security of tenure for people in their homes should be ensured unless there are exceptional circumstances that justify eviction consistent with international human rights law. Health, safety, and environmental risks should not be used as an excuse to undermine security of tenure.¹

This report will briefly discuss the definitions and standards of security of tenure in international human rights law and provide an overview of the international human rights mechanisms that can help monitor states' implementation of policies that protect security of tenure. It will discuss international jurisprudence on security of tenure that can be instructive for the Federal Housing Advocate.

This report presents a brief overview of the current state of security of tenure protections in Canada alongside examples to demonstrate existing gaps. Case studies of other countries with a similar history, political system, or governance structure to Canada are provided to show laws and policies that these countries have put in place to protect security of tenure. Also discussed is the response of these countries to various international recommendations relevant to the security of tenure. Finally, lessons will be drawn from international jurisprudence and case studies in the form of recommendations for

¹ 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, Raquel Rolnik, A /HRC/25/54 at 5 para. 3.

<https://undocs.org/A/HRC/25/54>

how the Federal Housing Advocate can encourage Canada to implement policies to better protect security of tenure.

Introduction

Security of tenure forms one of the critical elements of the right to adequate housing in international human rights law. It is understood “as a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one’s home in security, peace, and dignity.”² It is referred to as “an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights.”³ Protections for security of tenure are vital because they ensure people can access and enjoy their homes without fear of forced evictions, which enables them to improve their housing and living conditions. Security of tenure also lays the foundation for the enjoyment of all other elements of the right to adequate housing, such as affordability, access to services, and habitability, as well as many other human rights. When government protection and support for security of tenure is lacking, communities face forced eviction and homelessness, which leads to their human rights to dignity and life being violated and denied. As such, states have an obligation to ensure that all tenants have a degree of security of tenure that guarantees legal protection from forced evictions, harassment, and other threats to their tenancies.⁴

Although various international human rights instruments address dimensions of the right to adequate housing, section 11(1) of the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) is the most comprehensive provision.⁵ By ratifying the ICESCR and other international covenants, Canada committed to implementing the right to adequate housing. The *International Covenant on Civil and Political Rights* (ICCPR) recognizes the right to housing as a component of the right to life, the right to protection of the home from arbitrary interference, the right to non-discrimination, the right to protection of the family, and the right to enjoy one’s culture. Canada ratified the *Convention on the Rights of Persons with Disabilities* (CRPD), which guarantees persons with disabilities the right to access housing with dignity in the community, access to necessary support services, and reasonable accommodation.⁶ Canada also ratified the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) which protects women’s equal access to adequate housing and living conditions.⁷ These agreements underline Canada’s obligation to implement the right to housing and

² *Ibid* at 3 para 5.

³ *Ibid* at 7 para 6-7.

⁴ 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, Raquel Rolnik, A /HRC/25/54, p. 7, para. 6-7. <https://undocs.org/A/HRC/25/54>

⁵ CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 [1] of the Covenant), at para. 3, <https://www.refworld.org/pdfid/47a7079a1.pdf>.

⁶ Convention on the Rights of Persons with Disabilities (24 January 2007), Articles 5, 13, 19. <http://un-documents.net/a61r106.htm>

⁷ Convention on the Elimination of All Forms of Discrimination Against Women (18 December 1979), Article 14. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

protect security of tenure for the most marginalized groups. Canada further recognized the right to housing domestically by passing the *National Housing Strategy Act* (NHTSA) in 2019. Critically, the NHTSA recognizes the right to housing as it is expressed in the ICESCR. This commitment entails an obligation to ensure that all tenants enjoy a set of critical protections for their security of tenure that align with the protections in the ICESCR and international law standards on security of tenure. The implementation of the ICESCR is monitored by the United Nations Committee on Economic, Social, and Cultural Rights (CESCR), which is made up of 18 independent experts from around the world. Every five years, states undergo a review⁸ that addresses the right to adequate housing, as well as other economic, social, and cultural rights in signatory countries, resulting in recommendations (concluding observations) for better implementation of those rights.⁹

An important tool used to ensure the implementation of the ICESCR is the Optional Protocol (OP-ICESCR). The Optional Protocol is an instrument that allows individuals whose economic, social, and cultural rights have been violated to present individual complaints to the CESCR through a communications (complaints) procedure. The Optional Protocol also allows for inquiries into systemic violations of rights. It is important to note that for individuals' complaints to be brought forward, their country must have ratified the Optional Protocol. Signatories to the ICESCR have an obligation to respect, protect, and fulfill economic, social, and cultural rights; and the ratification of the Optional Protocol would provide an additional avenue for the advancement of the right to housing in Canada.¹⁰ However, Canada has not ratified the OP-ICESCR and was one of the few countries to indicate a lack of support when it was adopted by the UN General Assembly. In the absence of ratification of the OP-ICESCR by Canada, the Federal Housing Advocate, review panels, and National Housing Council can explore the application of the ICESCR to Canadian housing policy through the jurisdiction conveyed by the NHTSA. The jurisprudence of complaints received by the CESCR is highly instructive regarding the interpretation of the NHTSA and ICESCR, particularly on the themes of appropriate hearings and adjudication, the duty to provide alternative housing to ensure eviction does not result in homelessness, and the obligation to enact comprehensive security of tenure legislation. It should be noted that Canada has ratified the Optional Protocols of the International Convention on Civil and Political Rights (OP-ICCPR), the Convention on the Rights of Persons with Disabilities (OP-CRPD), and the Convention on the Elimination of Discrimination Against Women (OP-CEDAW) which establish an individual complaints mechanism for these international instruments, all of which address or protect elements of the right to housing, as mentioned above. Each of these instruments has a committee that monitors its implementation and hears the complaints, including the Human Rights Committee which monitors the implementation of the ICCPR.

⁸ In practice, reviews happen less frequently than every five years.

⁹ Committee on Economic, Social and Cultural Rights. United Nations Human Rights Office of the High Commissioner. <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx>

¹⁰ ESCR-Net. *What is the OP-ICESCR?* <https://www.escr-net.org/ngo-coalition-op-icescr/what-op-icescr>

International Standards on Security of Tenure

There are a number of aspects of security of tenure protections in international law. First, forced evictions are prohibited, and victims of forced evictions should receive compensation for any real or personal losses of property or other goods. This is because forced evictions constitute a violation of human rights, and Article 2.3 of the ICCPR requires state parties to ensure an effective remedy for persons whose rights are violated.¹¹ Second, under international law, national eviction laws should comply with human rights norms, including ensuring tenants can access justice throughout the eviction process, exploring all the possible alternatives to eviction, and ensuring that evictions should not result in people becoming homeless. While laws setting eviction standards and protections for tenants are a provincial matter in Canada, the federal government can play a strong role to ensure Canadians can exercise their right to housing as it relates to security of tenure. For instance, this can be achieved by creating a set of standards and criteria by which compliance can be assessed to determine if protections for security of tenure are in line with the principles of the right to housing. Gaps in protections can be identified using these standards and criteria, and recommendations can be made to strengthen protections for tenants. Third, in cases where evictions could result from rent arrears, they should only occur as a last resort after exploring all the means by which the outstanding debt can be resolved. Finally, states are expected to implement measures to prevent evictions, including implementing rent regulations, providing rental assistance, enacting measures to eliminate the causes of evictions, curbing speculation in real estate and housing, and ensuring no relocation of Indigenous people from their lands without their free, prior, and informed consent.¹²

Having these international standards in place can help Canada bring its justice system up to a standard of protection that complies with international human rights norms, which are often ignored when evictions are ordered in Canada. Appropriate procedural protection and due process are essential in relation to forced evictions because they invoke many other rights protected in both the ICESCR and ICCPR.¹³ Access to justice—which is a key component of the right to housing, especially regarding security of tenure—must be ensured in Canada. Tenants and those who do not own their homes should feel secure in their homes and have legal rights to remain there without arbitrarily facing eviction. In addition, these individuals should have access to mechanisms that allow them to exercise their legal rights. Access to justice is vital—without it, those who experience evictions or live in homelessness are deprived of their ability to bring violations of their right to housing forward, address the causes that

¹¹ The right to adequate housing (Art. 11.1): forced evictions: 20/05/97. CESCR General comment 7. (General Comments), para. 13. <https://www.refworld.org/docid/47a70799d.html>

¹² Guidelines for the Implementation of the Right to Adequate Housing: 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, at p. 9, para. 38(d), distributed on December 26, 2019, available at: <https://undocs.org/A/HRC/43/43>

¹³ The right to adequate housing (Art. 11.1): forced evictions: 20/05/97. CESCR General comment 7. (General Comments), para. 15. <https://www.refworld.org/docid/47a70799d.html>

have led to the state's failure to provide adequate security of tenure protections, and demand a response to remedy those failures.¹⁴

International Jurisprudence on Security of Tenure

International jurisprudence on security of tenure can be highly instructive for the interpretation of the NHTA and ICESCR. For example, Canada can look to the cases of [Hakima El Goumari and Ahmed Tildi](#) (E/C.12/69/D/85/2018) and [Rosario Gómez-Limón Pardo](#) (E/C.12/67/D/52/2018). The case of Hakima El Goumari and Ahmed Tildi involves a family with four children, two of whom had disabilities. The father lost his employment and became reliant on government assistance, which did not provide enough for the family to be able to pay their rent. The family was eventually evicted due to non-payment of rent and were subsequently forced to stay in inadequate temporary accommodations, including a shelter and hostel that were in very poor condition. For some time, the family was in a constant state of stress and uncertainty, which impacted their right to health and education. The mother had a miscarriage at seven months, and the children's schooling was negatively impacted due to the constant uncertainty and their distance from their school. One of the family's main complaints in their communication to the OP-ICESCR was that during the eviction process they and the local social services asked the court to assess the vulnerability of the family. The CESCR found that the court did not do so and that it did not consider the proportionality of the eviction by weighing it against the objective of the eviction and its consequences for the evicted persons. Furthermore, it was found that the state party's (Spain) legislation did not provide the family with any other judicial mechanism through which to challenge or appeal the eviction order that would have given another judicial authority the opportunity to analyze the proportionality of the eviction. The CESCR concluded that the state party did not consider the particular circumstances of the complainants' case or take all reasonable measures to the maximum of its available resources and that the family's right to adequate housing was violated.¹⁵

In the case of Rosario Gomez-Limon Pardo, the CESCR found that the complainant's right to adequate housing was violated, as the courts failed to carry out an analysis of the proportionality between the legitimate objective of the eviction and the impact on the evicted person. In that case, the evicted person was a woman who had experienced gender-based violence, had no income or suitable alternative housing, and had cancer.¹⁶

¹⁴ Access to justice for the right to housing 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, A/HRC/40/61, page 3, paragraph 2. <http://unhousingrapp.org/user/pages/04.resources/Access%20to%20justice%20Report.pdf>

¹⁵ CESCR. *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 85/2018*, Hakima El Goumari and Ahmed Tildi, E/C.12/69/D/85/2018.

¹⁶ CESCR. *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 52/2018*, Rosario Gomez-Limon Pardo, E/C.12/67/D/52/2018.

In both cases, the CESCR found that the applicable legislative framework failed to ensure that evictions would only take place when they are reasonable and proportional and that courts did not properly review evictions in light of proportionality. Additionally, in these cases, it was found that measures were not taken to ensure access to alternative housing. Here, the CESCR further articulated that the State (Spain) must:

- (a) Ensure that the normative framework [meaning legislation that regulates the eviction of persons from their homes] allows those subject to an expulsion order that risks causing them to fall into destitution or result in a violation of their rights under the Covenant can oppose this decision before the judicial authorities or another impartial and independent authority with competence to put an end to the violation and grant an effective remedy. These authorities would examine the proportionality of the measure in the light of the criteria provided for in article 4 of the Covenant concerning limitations to which the rights enshrined in the Covenant may be subject;
- (b) Take the necessary measures to ensure that the eviction orders imposed on people who do not have the means to relocate are carried out only after having genuinely consulted the persons concerned and having done all that is necessary, by taking action to the maximum of available resources, so that they are rehoused, in particular when the eviction concerns families, the elderly, children, or other vulnerable persons;
- (c) Do everything necessary to ensure that the temporary accommodation offered in the absence of immediately available permanent accommodation meets standards of dignity and safety. Although temporary housing is only one step towards adequate housing, the state party should ensure that those who live there enjoy a certain stability, especially when it comes to families, the elderly, children, or other vulnerable people.¹⁷

In another case from Spain, that of [Soraya Moreno Romero and her children](#) (E/C.12/69/D/48/2018), the CESCR applies further criteria for access to justice requirements in security of tenure legislation.¹⁸ The criteria summarized in this case include:

¹⁷ CESCR. *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 52/2018*, Rosario Gomez-Limon Pardo, E/C.12/67/D/52/2018.

docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1Xt9%2fAm48919J%2bLiFOhYPe4xBaWd9lI3vly3sL1oDdbel8QtKbA7rvpWMVSencrH9B8AqhvWbrwkGs1Ywz9AWi%2fj%2bFk%2fi2kqu5a6sJ6laop9nTOB5CNF24faVnvczIN3BXt6HLgiKTAf%2fXrUwzWNs%3d

¹⁸ The CESCR has listed access to justice requirements for security of tenure legislation: Committee on Economic, Social and Cultural Rights. *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 48/2018*, E/C.12/69/D/48/2018 (April 2021).

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1Xt9%2fAm48919J%2bLiFOhYPfcEvvoZ3Y%2bZXZlnkfBPqkkvvim06iWDYDpW5kVRE6ciJOf28wvoeaJvhjvMm4CaBgrII66LaehmQWx%2bq0VcKkOuw1hwFOzHlWRMXB%2bnPFEAEI5jDBc2MV4SNZ%2b%2f7lpxoo%3d>

- (a) Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the state party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement, or access to productive land, as the case may be, is available.
- (b) The state party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private entities, such as the owner of the property.
- (c) In the event that a person is evicted from his or her home without the state party granting or guaranteeing alternative accommodation, the state party must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned.
- (d) Policies on alternative housing in cases of eviction should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person. Moreover, state parties should take consistent and coordinated measures to resolve institutional shortcomings and the structural causes of the lack of housing.
- (e) Alternative housing must be adequate, according to the elements of the right to housing, and must also take account of the right of members of a family not to be separated.
- (f) States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements, and does not become a permanent solution, but is a step towards obtaining adequate housing.¹⁹

Jurisprudence from the OP-ICCPR has similarly looked to evictions from land in the context of marginalized groups that face discrimination and need protection (such as Roma populations). The Human Rights Committee has found these groups' lack of legal title to be a violation of the right to protection of the home, of the family, and the right to enjoy one's culture in some instances.²⁰ In [Liliana Assenova Naibidenova et. al. v. Bulgaria](#) (CCPR/C/106/D/2073/2011), the Human Rights Committee found that the eviction of a Roma community from an informal settlement, which was made up of structures on a plot of land that had existed for over seventy years, would violate article 17 of the ICCPR

¹⁹ CESCR. *Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 48/2018*, Soraya Moreno Romero, E/C.12/69/D/48/2018.

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1Xt9%2fAm48919J%2bLiF0hYPfcEvvoZ3Y%2bZXZlnkFBPqkkvvim06iWDYDpW5kVRE6ciJOf28wvoeaJvhjvMm4CaBgrII66LaehmQWx%2bq0VcKkOuw1hwFOzHlwRMXB%2bnPFEAEI5jDBc2MV4SNZ%2b%2f7lpxoo%3d>

²⁰ See: *Liliana Assenova Naibidenova et al. v. Bulgaria* ([CCPR/C/106/D/2073/2011](#)) and *Georgopoulos et al. v. Greece* ([CCPR/C/99/D/1799/2008](#)).

(the right not to be subjected to arbitrary or unlawful interference with privacy, family, or home). The Human Rights Committee found that the state of Bulgaria violated Article 17 because, in light of the long history of the complainants' undisturbed presence in the community, it did not consider the consequences of the eviction on the community members, such as the risk of homelessness, and did not make satisfactory replacement housing immediately available to them. The complainants further argued that racial discrimination against the Roma community contributed to the development of their informal settlement. This discrimination included a lack of education and employment opportunities necessary to afford housing at market rates.²¹ In *Georgopoulos et al. v. Greece* (CCPR/C/99/D/1799/2008), the Human Rights Committee found that the demolition of a shed inhabited by a Roma family and the prevention of construction of a new home violated Articles 17 (interference with home), 23 (protection of family), and 27 (right to enjoy one's culture).²² This OP-ICCPR jurisprudence, which considers evictions from land of protected groups, may be particularly relevant when considering evictions in the context of Indigenous rights holders in Canada.

These international instruments, procedures, and jurisprudence are powerful tools that can be used to identify shortcomings in a country's implementation of the right to housing and to hold it accountable. The Advocate and the federal government can draw from the access to justice requirements for security of tenure legislation that were articulated in the above jurisprudence and create guidelines for basic protections that need to be in place around security of tenure that provincial governments can draw on to advance the right to housing for their residents.

In addition to the above-mentioned jurisprudence, recommendations from international human rights bodies, such as the CESCR and the Human Rights Committee, can have a positive impact in helping countries better respond to the needs of their residents, including developing ways to strengthen security of tenure. For example, in its last completed CESCR review in 2016, the committee recommended that Canada "develop and effectively implement a human-rights-based national strategy on housing and ensures that all provincial and territorial housing strategies are aligned with the national strategy," recognizing the devolution of some mandates related to the right to housing to the provincial level.²³ In 2017, the Government of Canada introduced the National Housing Strategy, and in 2019, the *National Housing Strategy Act* (NHTSA). In the 2020 list of issues presented to Canada by the CESCR (part of a review process that is still underway), the committee acknowledged the important step of establishing the NHTSA but requested an update on "steps taken by the State party to give effect to the *National Housing Strategy Act* at the provincial level," once again highlighting the need for federal leadership and coordination in ensuring security of tenure is equally realized across provincial

²¹ *Liliana Assenova Naibidenova et al. v. Bulgaria* ([CCPR/C/106/D/2073/2011](#))

²² CCPR. *Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (ninety-ninth session)* *Georgopoulos et al. v. Greece*, [CCPR/C/99/D/1799/2008](#).

²³ CESCR. *Concluding Observations on the Sixth Periodic Report of Canada*, E/C.12/CAN/CO/6 (2016). Recommendation 40.

jurisdictions.²⁴ This principle is reflected in the 2019 report of the Special Rapporteur for the Right to Adequate Housing (*Guidelines for the Implementation of the Right to Adequate Housing*), which reiterates the need for national-level leadership and effective intergovernmental coordination to implement key elements of the right to housing, including security of tenure.²⁵ Similarly, in 2013, the former Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, wrote a thematic report dedicated to security of tenure and exploring the application of protections by states like Canada.²⁶

Current State of Security of Tenure in Canada

The NHTSA commits the federal government to implement the right to housing as expressed in the ICESCR. Article 28 of the ICESCR states that it extends to all parts of federal states without limitations or exceptions,²⁷ which means the right to housing applies to all the levels of government and that the jurisdictional limitations present in a federal political system should not form a barrier to its implementation or shield different levels of government from accountability for failing to advance the right to housing. Jurisdictional barriers to the implementation of the right to housing extend to the issue of security of tenure, which is viewed as solely a matter under provincial or territorial jurisdiction. For example, the laws and regulations that protect tenants and the bodies that govern landlord and tenant relationships are provincially enacted and differ across provinces.²⁸ As well, key policies that impact security of tenure protections and prevent evictions, such as rent control measures, differ across provinces.²⁹ For example, the provinces of British Columbia, Manitoba, New Brunswick, Ontario, Prince Edward Island, and Quebec restrict increases in rent to a specific percentage of current rent, while the remaining provinces and territories in Canada, such as Alberta, Newfoundland and Labrador, Northwest Territories, Nova Scotia (with the exception of pandemic-related limits to rent increases), Nunavut, Saskatchewan, and Yukon, do not limit the amount by which landlords can increase the rent.³⁰

²⁴ CESCR. *List of Issues Prior to the Seventh Periodic Report of Canada*, E/C.12/CAN/QPR/7 (April 7, 2020).

²⁵ Human Rights Council. *Report of the Special Rapporteur on adequate housing, A/HRC/43/43* (26 December 2019). Online at: <<https://undocs.org/A/HRC/43/43>> [UN Special Rapporteur Report in Guidelines to Implement the Right to Housing].

²⁶ Human Rights Council. *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, Raquel Rolnik, A/HRC/25/54* (December 2013). <https://undocs.org/A/HRC/25/54>

²⁷ Article 28 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), <https://www.ohchr.org/sites/default/files/ceschr.pdf>

²⁸ CCHR. “Housing Resources for Tenants in All Provinces and Territories Across Canada” (August 19, 2021). <https://www.equalityrights.org/resources/housing-resources-for-tenants-provinces-and-territories-across-canada>

²⁹ *Guidelines for the Implementation of the Right to Adequate Housing, A/HRC/43/43*, para. 38(d). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/353/90/PDF/G1935390.pdf?OpenElement>

³⁰ CCHR. “A Look at Rent Control Policies Across Canada” (April 15, 2021). <https://www.equalityrights.org/cera-blog/a-look-at-rent-control-policies-across-canada>

Without direct intervention from the federal government, including through the NHSA, tenants do not enjoy equal protection for security of tenure across Canada, which, in turn, negatively impacts the advancement of the right to housing over time.

A deeper dive into how security of tenure legislation and the availability of legal services for tenants differ in Ontario and British Columbia can shed further light on disparities around security of tenure protections across Canada. It is important to look at both legislation and the availability of legal services because access to justice and security of tenure, protected under the right to adequate housing, go hand in hand. The availability of legal services provides a greater opportunity for tenants to learn about their rights, exercise their right to housing, and access justice within their provincial housing legal systems to protect their tenancies.

Ontario

In Ontario, the *Residential Tenancies Act* (RTA) is the main piece of legislation that protects tenants and their right to security of tenure. Tenants in Ontario are legally protected from arbitrary evictions, as landlords are required to seek evictions through the Landlord and Tenant Board (LTB), an independent tribunal, which holds a hearing to allow the landlord and the tenant to make their case and explain their circumstances.

Where a tenant has contravened their lease, the RTA confers on adjudicators the discretion to determine the appropriate remedy. Remedies are not limited to eviction but can also include orders requiring tenants to change their behaviour or pay amounts owing to their landlords, either immediately or via payment plans. Adjudicators are required to consider all the circumstances and to only order eviction if it would be unfair to refuse it.³¹ These provisions allow adjudicators to consider whether eviction would be a proportionate remedy, as required by international law. However, the provisions depend on individual adjudicators' willingness to exercise their discretion in a way that respects security of tenure and international law standards.

If the hearing results in an eviction order being issued, the eviction order is enforced by the Court Enforcement Office, which operates under the Ministry of the Attorney General and enforces orders issued by courts and tribunals, including eviction orders.

In addition, for tenants to exercise their legal rights, legal services for low-income tenants are available in Ontario through Legal Aid Ontario, which provides funding to a province-wide community legal clinic system. The community legal clinic system provides housing legal support to help low-income and marginalized tenants secure their housing, although, in recent years, funding cuts have resulted in understaffing³² which impedes tenants' ability to access justice to protect their tenancies.

³¹ Residential Tenancies Act, 2006, s. 83(1) and s. 83(2). <https://www.ontario.ca/laws/statute/06r17#BK112>

³² Ruby, Michelle. "Cuts to Legal Aid Will Have Local Impact, Says Brantford Clinic's Executive Director." *The Brantford Expositor*, April 25, 2019. <https://www.brantfordexpositor.ca/news/local-news/cuts-to-legal-aid-will-have-local-impact-says-brantford-clinics-executive-director>

British Columbia

In British Columbia (BC), the *Residential Tenancy Act* (RTA), 2002, provides a different set of legislative protections than Ontario for security of tenure. The RTA outlines how and when tenancies can be terminated as well as the main types of eviction notices that landlords can give tenants, such as for non-payment of rent, disturbing the landlord or other occupants, or damaging their unit or building.³³ The protections provided under the RTA in BC differ from those in Ontario's RTA in that if tenants receive a notice to end their tenancy, their tenancy will end on the date stated in the notice unless they dispute it. Tenants can do so by applying for dispute resolution at the Residential Tenancies Branch (RTB) within a specified time frame after receiving the notice. If a tenant applies for dispute resolution, the notice to end the tenancy is suspended until an arbitrator at the RTB makes a decision. If a tenant does not apply for dispute resolution, the tenancy ends on the date specified in the notice.³⁴ Placing the burden of disputing evictions on tenants leads to weaker security of tenure protections than there are in Ontario. A recent report by the University of British Columbia shows that the rate of evictions in the Greater Vancouver Area is the highest across other major urban centers in Canada, almost twice the rate of the national average, which can be attributed to less robust protections in BC's RTA.³⁵

Unlike in Ontario, the BC RTA requires that adjudicators order eviction if a tenant has contravened their lease. Adjudicators are not permitted to exercise discretion. The RTA does not permit any consideration of whether eviction would be an appropriate or proportionate way to resolve an issue. This is directly contrary to the international standards on security of tenure and Canada's obligations under international law.

A further difference from Ontario is that due to the deterioration of legal aid services in BC, a result of funding and service cuts,³⁶ low-income tenants in BC lack access to legal services. This limits the ways in which they can utilize the legal protections in the RTA such as applying for dispute resolution. Without access to legal services, tenants facing eviction are left to defend themselves without legal knowledge or the ability to navigate a complex RTB system.

Tenants in both BC and Ontario face numerous hurdles to exercising their legal rights. Additionally, legal protections for the security of tenure in both provinces have been inadequate, preventing marginalized tenant communities from living in secure rental homes. The examples of

³³ Office of Housing and Construction Standards. "Ending a Tenancy." Province of British Columbia. June 4, 2020. <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy>.

³⁴ Government of British Columbia. "Landlord Notice to End Tenancy." British Columbia. Accessed October 1, 2021. <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/ending-a-tenancy/landlord-notice>

³⁵ Xuereb, Silas, Andrea Craig, and Craig Jones. *Understanding Evictions in Canada through the Canadian Housing Survey* (Vancouver: University of British Columbia, 2021). <https://housingresearch.ubc.ca/understanding-evictions-canada>

³⁶ Canadian Bar Association. "We Need Legal Aid." CBA British Columbia. Accessed August 18, 2021. <https://www.cbabc.org/Our-Work/Advocacy/We-Need-Legal-Aid>.

Ontario and BC illustrate how the legislative protections for security of tenure and the availability of legal services for tenants differ from province to province. This points to the inconsistency in security of tenure protections for tenants across Canada. This has resulted in a major gap in the protection of security of tenure for residents, which is essential to the progressive realization of the right to housing. Creating safeguards for security of tenure at the federal level and enhancing interjurisdictional collaboration, where federal standards for a baseline of security of tenure protections are adopted by provincial governments, could ensure equal protection for all tenants throughout Canada. This could increase the minimum standards that apply to protecting security of tenure.

The CESCR commentaries above demonstrate the ways in which interjurisdictional collaboration can be enhanced through the adoption of policies that align with the goal of advancing the right to housing across Canada. These challenges are not unique to Canada. Other countries around the world with similar government structures and divisions of power have identified these challenges and adopted solutions that ensure a base level of protection for security of tenure. The next sections will delve deeper into these solutions to draw on the experiences of other countries and take note of the lessons learned from their experiences.

Protecting Security of Tenure: Country Case Studies

Each country chosen for this case study has ratified the ICESCR and received recommendations from the CESCR on ways to advance the right to housing. It is worth noting that only the Netherlands has ratified the Optional Protocol of the ICESCR. Each country has responded to the CESCR recommendations with multi-level government solutions resulting in significant amendments to housing legislation that strengthen the recognition of the right to housing and protect security of tenure.

Scotland

Scotland's housing programs provide strong protections for security of tenure through a rights-based approach that encourages effective coordination between national and local governments and with both social and private housing providers.

Recognition of the Right to Housing

Scotland's commitment to the realization of the right to housing is enshrined in legislation, including the *Housing (Scotland) Act 1987* and the *Homelessness etc. (Scotland) Act 2003* which together provide a broad and inclusive definition of homelessness and widen the definition of persons with a priority need for accommodation.³⁷ Moreover, the *Housing (Scotland) Act 1987* places duties on local

³⁷ Under the current legislation, the definition of homelessness in Scotland includes:

- A person who has no accommodation in the United Kingdom or elsewhere. A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family, are legally entitled to occupy.
- A person who has accommodation but cannot secure entry to it, or if it is probable that occupation of it will lead to violence or threats of violence from some other person residing in it and those threats are likely to be carried out.

councils to ensure security of tenure and access to accommodation for homeless households. Subsequently, the *Homelessness etc. (Scotland) Act 2003* strengthened guarantees of security of tenure with a commitment that, from 2012, everyone assessed as being unintentionally homeless³⁸ would have the right to settled accommodation, which refers to accommodation that is reasonably secure or permanent.³⁹ Known as the 2012 Commitment, the Act moved from a needs-based approach to a human rights-based approach. It also removed the priority/non-priority distinction which considered family circumstances in determining the state's duty to provide accommodation, making the experience of homelessness the sole condition for accessing accommodation.⁴⁰

Policies to Protect Security of Tenure

Section 8 of the *Homelessness etc. (Scotland) Act 2003 (the Act)* permits local authorities to refer a homeless applicant to another local authority in certain circumstances. The intent of this referral is to give those who make a homeless application as much choice as possible in choosing where to live.⁴¹ This move increases a tenant's chances of living in a preferred area and can help to encourage tenure.

Section 11 of the Act requires that both social- and private-sector landlords give notice to the local authority of their intention to seek repossession of a home and evict a tenant, such as for the

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- A person who has accommodation, but it is probable that occupation will lead to violence, or threats of violence which are likely to be carried out from some other person who previously resided with that person in that accommodation or elsewhere.
 - A person who has accommodation that is a movable structure, vehicle, or vessel designed or adapted for human habitation, but there is no place where she is entitled or permitted to place it and reside in it.
 - A person who lives in accommodation that is overcrowded within the meaning of Section 135 of the *Housing (Scotland) Act 1987* and that may endanger the health of the occupants.
 - A person who is not in permanent accommodation in circumstances where, immediately before the commencement of her occupation, a local authority had a duty under section 31(2) of the *Housing (Scotland) Act 1987* in relation to him.

<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1214&context=jlsp>

³⁸ "Unintentionally homeless" refers to becoming homeless due not to one's actions, such as not paying arrears that they could pay or abandoning their home, but as a result of other circumstances. King, Fiona. "Scotland: Delivering a Right to Housing." *Journal of Law and Social Policy*, 24 No. 9 (2015): 156.

<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1214&context=jlsp>

³⁹ "Permanent accommodation" includes accommodation of which the person is the heritable proprietor, secured by a Scottish secure tenancy, secured by an assured tenancy that is not a short assured tenancy, or secured by a private residential tenancy. Section 24(5) of the *Housing (Scotland) Act 1987*.

<https://www.legislation.gov.uk/ukpga/1987/26#commentary-key-2e1b75dd21c7908d6e6d1b446812dabc>

⁴⁰ King, Fiona. "Scotland: Delivering a Right to Housing." *Journal of Law and Social Policy*, 24 No. 9 (2015): 157.

<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1214&context=jlsp>

⁴¹ Scotland. *Ending Homelessness Together: Updated Action Plan* (October 2020), 45.

<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/10/ending-homelessness-together-updated-action-plan-october-2020/documents/ending-homelessness-together-updated-action-plan-october-2020/ending-homelessness-together-updated-action-plan-october-2020/govscot%3Adocument/ending-homelessness-together-updated-action-plan-october-2020.pdf>

purpose of selling the property. The purpose of this provision is to ensure that wraparound supports are provided to the affected tenant in the form of information and resources so that they can access long-term housing and re-establish security of tenure.⁴²

The Scottish Social Housing Charter, revised in 2017, sets out the standards and outcomes that all social housing landlords should aim to achieve, including rent affordability and ensuring that “tenants get the information they need on how to obtain support to remain in their home.”⁴³ Effective implementation of the Charter is routinely reviewed by the Scottish Housing Regulator and by the relevant national ministry.⁴⁴ In addition, since 2018, all 32 councils in Scotland have implemented Rapid Rehousing Transition Plans, providing settled accommodation and wraparound supports to those at risk of homelessness, ensuring access to stable accommodation, and offering other forms of assistance in line with a Housing First approach. Under these programs, 306 tenancies were arranged between 2018 and 2020, with a tenancy sustainment rate of 87%.⁴⁵ To date, no one has been evicted from their home under this program.

Local councils can apply to Scottish ministers to have an area designated as a “Rent Pressure Zone” if they can prove that rent increases are causing problems for tenants and that the local council is struggling to provide housing or subsidize the cost of housing. If, through a consultative process, an area is designated as a Rent Pressure Zone, a maximum limit is set on how much rents are allowed to increase each year for existing tenants living in a private residential home in that area. Once a rent cap is put into place, it can last for up to five years.⁴⁶

[Recommendations Made by the United Nations Committee on Economic, Social and Cultural Rights](#)

The United Kingdom was last reviewed by the CESCR in June 2016. Noting the persistent and critical situation of inadequate housing in terms of availability, affordability, and accessibility, the review recommended that the United Kingdom, including Scotland, enacts specific measures to deal with unaffordability in the private rental sector. Taking direction from the Committee, Scotland undertook steps to progressively realize the right to adequate housing, measuring these efforts against the elements of the right to housing elaborated upon by the CESCR in General Comment Four, which include the availability, affordability, and accessibility of adequate housing. The Scottish government introduced

⁴² Ibid, 26.

⁴³ One Scotland. *The Scottish Social Housing Charter* (April 2017). <https://www.gov.scot/binaries/content/documents/govscot/publications/regulation-directive-order/2017/03/scottish-social-housing-charter-april-2017/documents/00515058-pdf/00515058-pdf/govscot%3Adocument/00515058.pdf>.

⁴⁴ Scotland. *Ending Homelessness Together: Updated Action Plan* (October 2020), 26. <https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/10/ending-homelessness-together-updated-action-plan-october-2020/documents/ending-homelessness-together-updated-action-plan-october-2020/ending-homelessness-together-updated-action-plan-october-2020/govscot%3Adocument/ending-homelessness-together-updated-action-plan-october-2020.pdf>

⁴⁵ Ibid, page 33.

⁴⁶ Scotland. *Private Renting*. Scottish Government. Accessed August 11, 2021. <https://www.gov.scot/policies/private-renting/rent-pressure-zones/>.

significant reforms to the *Private Housing (Tenancies) (Scotland) Act 2016* that strengthened the regulation and accountability of the private rental sector, increasing affordability and security of tenure.⁴⁷ This included measures to constrain rent increases and provide local authorities with discretionary powers to designate an area as a Rent Pressure Zone, stabilizing rents to an extent and counteracting the impact of private sector speculation.⁴⁸

The Netherlands

Some of the housing programs implemented in the Netherlands to protect security of tenure could serve as excellent examples for Canada. These programs require implementation and cooperation at all levels of government to successfully protect people from eviction.

Recognition of the Right to Housing

The right to housing is guaranteed by the Dutch constitution under Article 22.2 which reads, “It shall be the concern of the authorities to provide sufficient living accommodation.”⁴⁹ It is further enshrined in the *Housing Act of 1901*, which requires the state to fund and regulate housing associations⁵⁰ to meet national housing needs.⁵¹ Since this Act was introduced, housing associations have increasingly financed social housing on their own, and the government now provides financial support to tenants by way of individual subsidies to households that cannot afford market rate rent. The *Housing Allowance Act of 1997* entitles all qualifying tenants who apply for the housing allowance to

⁴⁷ CESCR. *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland* (July 14, 2016).

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW3XRinAE8KCBFogOHNz%2fvuCC%2bTxEKAl18bzE0UtfQhJkxxOSGuoMUxHGypYLjNFkwxnMR6GmqogLJF8BzscMe9zpGfTXBkZ4pEaigi44xqil>

⁴⁸ Scotland. *Ending Homelessness Together: Updated Action Plan* (October 2020), 26.

<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/10/ending-homelessness-together-updated-action-plan-october-2020/documents/ending-homelessness-together-updated-action-plan-october-2020/ending-homelessness-together-updated-action-plan-october-2020/govscot%3Adocument/ending-homelessness-together-updated-action-plan-october-2020.pdf>

⁴⁹ Housing Rights Watch. “State of Housing Rights.” HRW. Last modified October 9, 2013.

<https://www.housingrightswatch.org/pag/state-housing-rights-13>

⁵⁰ In the Netherlands many dwellings are owned by housing associations. These are organizations that rent or sell accommodation and provide homes for older people and people with disabilities. They are responsible for:

- housing older people, people with a disability and those needing assisted housing;
- building and letting social property such as schools and sports facilities;
- appointing caretakers and neighbourhood managers;
- maintaining houses and the immediate surroundings, such as alleyways and parking spaces;
- selling rented properties to tenants and other house seekers.

<https://www.government.nl/topics/housing/housing-associations>

⁵¹ Housing Rights Watch. “State of Housing Rights.” HRW. Last modified October 9, 2013.

<https://www.housingrightswatch.org/pag/state-housing-rights-13>

receive it.⁵² Internationally, the Netherlands ratified the ICESCR and became a signatory of its Optional Protocol in 2009.⁵³ The Netherlands has also ratified the *European Social Charter* and the *European Convention on Human Rights*.⁵⁴

Policies to Protect Security of Tenure

The Netherlands's genuine commitment to the right to housing has led to the implementation of several policies and programs that have improved security of tenure. For example, the *Rent Tribunal Act* mandates that rent can be increased for inflation once a year by an amount set by the Minister of Public Housing. Tenants can challenge unreasonable rent increases through the Rent Tribunal and request that the Tribunal determine the appropriate increase.⁵⁵

Approximately 75% of the 3 million rental homes in the Netherlands belong to housing associations responsible for renting out social housing where the initial monthly rent is below the rent limit set for the private sector.⁵⁶ Housing associations are also responsible for maintaining housing and its immediate surroundings, including community facilities.⁵⁷ Each year, housing associations must rent 80% of their vacant social housing to people with specific incomes, while they may only rent 10% of units to households with higher incomes. Judicially, the Dutch Supreme Court has held that evictions are considered a severe interference with the right to the inviolability of the home.⁵⁸ Everyone at risk of this interference, in principle, must be able to have the impact of the eviction determined by an independent court before the eviction is carried out.

Recommendations Made by the United Nations Committee on Economic, Social, and Cultural Rights

The United Nations CESCR last reviewed the Netherlands in July 2017. The Committee expressed concern about the significant rise in homelessness among marginalized and disadvantaged groups. A recommendation was made that urged the state to investigate root causes of homelessness, take all necessary measures to secure affordable housing for those who are marginalized and disadvantaged

⁵² Ibid.

⁵³ CESCR. "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights." United Nations Treaty Collection. Accessed August 15, 2021. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4.

⁵⁴ Kusumawati, Erna Dyah and Michael Vols. "The International Right to Housing, Evictions and the Obligation to Provide Alternative Accommodation." *Asia-Pacific Journal of Human Rights and the Law* (2020). 261. <https://doi.org/10.1163/15718158-21020003>

⁵⁵ Housing Rights Watch. "State of Housing Rights." Housing Rights Watch. Last modified October 9, 2013. <https://www.housingrightswatch.org/pag/state-housing-rights-13>.

⁵⁶ Government of Netherlands. "Rented Housing." Accessed August 16, 2021. <https://www.government.nl/topics/housing/rented-housing>

⁵⁷ Government of Netherlands. "Housing Associations." Accessed August 15, 2021. <https://www.government.nl/topics/housing/housing-associations>.

⁵⁸ Dyah Kusumawati, Erna and Michael Vols. "The International Right to Housing, Evictions and the Obligation to Provide Alternative Accommodation." *Asia-Pacific Journal of Human Rights and the Law* (2020): 261. <https://doi.org/10.1163/15718158-21020003>

and to allocate appropriate funds to municipalities to assist with social housing.⁵⁹ In response to these recommendations, the government of the Netherlands instituted several programs and strategies. In May 2018, it announced the Multi-Annual Strategy for Protected Housing and Shelter, which urges municipalities and other stakeholders to strive towards social inclusion and the provision of integrated support for stable housing and self-reliance.⁶⁰

New Zealand

New Zealand is in the beginning stages of implementing the right to housing and instituting better protections for security of tenure. The government approach adopted is to keep its relationship with the country's Indigenous groups at the centre of its housing development programs.

Recognition of the Right to Housing

While the right to housing is not specifically recognized in legislation, seven elements of adequate housing derived from international human rights law have been integrated into domestic housing policies, including in the Framework Guidelines on the Right to a Decent Home in Aotearoa (the Maori name for New Zealand). These guidelines were established by the New Zealand Human Rights Commission to introduce the right to adequate housing to central and local governments and provide a framework for how the right to housing can contribute to a fair housing system in New Zealand.⁶¹ In addition, a range of central government policies, laws, and regulations provide certain rights and protections related to housing, including the *Residential Tenancies Act 1986*.⁶²

New Zealand was one of the first countries to provide state housing for low-income individuals and families that are unable to purchase housing through the private market. Gradually, the social housing model has changed to prioritize people with special housing needs. As a result, the right to housing in New Zealand has historically been limited to the most disadvantaged.

Policies to Protect Security of Tenure

New Zealand has implemented an accommodation supplement to protect security of tenure. Funded by the government, the accommodation supplement is a benefit paid to lower-income private-sector and social-housing tenants to assist them with the payment of rent. The supplement helps to ensure that vulnerable individuals can remain in safe and secure long-term housing.

⁵⁹ CESCR. *Concluding Observations on the Sixth Periodic Report of the Netherlands*. July 5, 2017.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW6IE23xM8tpu%2fowonn553mA8Glexx1ABG2ZXBgAxii%2fsGDVC8GFe1Big5xbiBHkOpVhX8WdsVQLa2ENfWj4Yf5BXGOFc55BIXaoBF4SLbKZRH>

⁶⁰ Oostveen, "ESPN Thematic Report on National Strategies to Fight Homelessness and Housing Exclusion: The Netherlands." Last modified 2019. <https://ec.europa.eu/social/BlobServlet?docId=21607&langId=en>

⁶¹ New Zealand Human Rights Commission. *Framework Guidelines on the Right to a Decent Home in Aotearoa*. Government of New Zealand (2021).

https://www.hrc.co.nz/files/7416/2784/4778/Framework_Guidelines_on_the_Right_to_a_Decent_Home_in_Aotearoa_FINAL.pdf

⁶² New Zealand Human Rights Commission. "Right to Housing." Government of New Zealand. Accessed August 14, 2021. https://www.hrc.co.nz/files/9214/2388/0508/HRNZ_10_right_to_housing.pdf.

Recommendations Made by the United Nations Committee on Economic, Social and Cultural Rights

In May 2018, the CESCR provided concluding observations on the implementation of ICESCR in New Zealand. The Committee noted several concerns with respect to the implementation of the right to housing. Specifically, disadvantaged groups and individuals, notably Māori and Pasifika families, and persons with disabilities were more likely to experience severe housing deprivation and live in overcrowded conditions. The Committee was also concerned about housing costs, rising unaffordability, and a shortage of social housing, which were exacerbating the homelessness problem.⁶³

The Committee recommended several changes, including protecting security of tenure by, in part, ensuring that evictions comply with international standards.⁶⁴

In response to these recommendations, the Government of New Zealand has made significant changes to address homelessness and protect security of tenure over the past few years. The Aotearoa Homelessness Action Plan—Phase One: 2020–2023 was first published in February 2020 to deliver on the government’s vision that “homelessness is prevented where possible, or is rare, brief and non-recurring.”⁶⁵ In this plan, the federal government pledged to partner with, support, and empower Indigenous communities to deliver housing solutions by addressing individual needs within the context of an individual’s relationships, support networks, and community connections. This is important because the right to housing should be ensured in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in order to protect the security of tenure of Indigenous communities who have historically been dislocated from their lands.⁶⁶ As such, states are obligated to implement strategies that address the legacy of colonization and the systemic housing inequality and dispossession experienced by Indigenous peoples,⁶⁷ and Indigenous peoples have the right to be actively involved in developing and determining housing programs that affect them.⁶⁸ States must also consult with Indigenous peoples to obtain their free, prior, and informed consent before adopting or

⁶³ CESCR. *Concluding observations on the fourth periodic report of New Zealand* (May 1, 2018).

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW%2FLN41VeUtud3gjfWhwNd9fXQeEr7RlggzV%2F4HPdt9o5jg3AAQR1j5TlUtSyUbBmyecr1jbv7vboM%2Fe1bStaBBovVUjiv%2F%2BW7IZcRFdsdFRM>

⁶⁴ *Ibid.*

⁶⁵ Ministry of Housing and Urban Development. “Aotearoa Homelessness Action Plan 2020–2023.” New Zealand Government. Accessed August 14, 2021, <https://www.hud.govt.nz/community-and-public-housing/addressing-homelessness/aotearoa-homelessness-action-plan-2020-2023/>.

⁶⁶ Guidelines for the Implementation of the Right to Adequate Housing 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, A/HRC/43/43, page 11, paragraph 48 (d) (ii) <https://www.ohchr.org/EN/Issues/Housing/Pages/GuidelinesImplementation.aspx>

⁶⁷ 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, A/HRC/37/53, page 8, para. 38 <https://assets.cmhcschl.gc.ca/sites/place-to-call-home/pdfs/report-of-the-special-rapporteur-leilana-farha-en.pdf>

⁶⁸ Guidelines for the Implementation of the Right to Adequate Housing 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, A/HRC/43/43, page 6, paragraph 24 (d). <https://undocs.org/A/HRC/43/43>

implementing administrative and legislative measures that may affect them, and no relocation of Indigenous peoples is permitted without their free, prior, and informed consent.⁶⁹

A year later, in 2021, reforms were made to the *Residential Tenancies Act* with the goal of providing better protection for security of tenure.⁷⁰ These reforms include:

- Landlords can no longer end a tenancy without cause and must give a reason which meets the criteria specified in the Act.
- If a landlord provides notice to sell the rental property, that property must be put on the market within 90 days of the tenant vacating the unit. This should prevent landlords from evicting tenants and re-renting to others at a higher rent.
- A landlord must now issue a tenant three notices for separate anti-social acts within a 90-day period before they can apply to the tribunal to end the tenancy. Prior to this change, any instance of anti-social behaviour was usually dealt with by issuing a “no cause” notice of eviction.
- Fixed term tenancies will automatically become periodic tenancies at the end of the fixed term. This rule will apply unless the landlord and tenant come to an agreement to extend, renew, or end the fixed tenancy or unless the tenancy is renewed, the tenant gives notice to terminate the tenancy, or the landlord gives notice based on one of the specified reasons listed in the Act.

Germany

Recognition of the Right to Housing

In Germany, we again see how the government’s genuine commitment to the right to housing has led to improvements for security of tenure. The federal constitution of Germany, also referred to as the Grundgesetz, or the Basic Law, provides for a basic right to a minimum standard of living in line with human dignity.⁷¹ This requirement, outlined in Article 20, Section 1, ensures the provision of adequate

⁶⁹ Guidelines for the Implementation of the Right to Adequate Housing 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, A/HRC/43/43, page 9, paragraph 38 (d).

<https://www.ohchr.org/EN/Issues/Housing/Pages/GuidelinesImplementation.aspx>

⁷⁰ Bell, Miriam. “Tenancy law changes: What do they really mean?” Stuff Limited, February 11, 2021.

<https://www.stuff.co.nz/life-style/homed/renting/124198085/tenancy-law-changes-what-do-they-really-mean>.

⁷¹ Government of Germany Response to “UN Special Rapporteur on the Right to Adequate Housing Homelessness Questionnaire.” Office of the United Nations High Commissioner for Human Rights (October 29, 2015).

housing for residents of Germany.⁷² Additionally, four of the country's 16 states have the right to housing enshrined in their respective constitutions.⁷³

Policies to Protect Security of Tenure

Rental housing is the dominant form of housing in Germany.⁷⁴ Among rental dwellings, 64% are owned by private landlords, with the remainder being social housing. Following the constitutional reform in 2006, states were given jurisdiction over social housing policy. While the German civil code outlines several housing regulations, including tenants' rights, the federal government took a back seat in social housing policy after the constitutional reform, mainly contributing financially. Since the reform, many states have passed their own housing promotion acts and are free to legislate on housing matters as long as they are not in violation of federal laws passed in the same thematic area. Municipalities also play an important role in housing policy as they own and manage some existing housing stock and implement planning processes to build new residential spaces. In recent years, many municipalities have sold their housing stock to private landlords for financial reasons and have included conditions on the sales to protect affordability and security of tenure for residents.⁷⁵

There are several forms of rental agreements in the private rental market that protect security of tenure. They include indefinite rental agreements, where there is no fixed date for the termination of the agreement, and permanent rental agreements, where the landlords cannot terminate an agreement as long as the tenant behaves in accordance with the law.⁷⁶ Most tenancies in Germany are indefinite, and tenancies last 11 years on average, demonstrating strong security of tenure protections.⁷⁷ Leases can be entered into for a fixed period of time only in limited circumstances, such as if the landlord wishes to use the dwelling for themselves or for their family, or if they wish to make significant renovations. In these cases, landlords must provide reasons for entering into a fixed-term agreement.⁷⁸

Strict lease termination requirements are also in place to provide additional protections for tenants.⁷⁹ For example, a landlord can only terminate an indefinite lease by providing a legally

⁷² German Ministry of Foreign Affairs. "Contribution by the FEDERAL REPUBLIC OF GERMANY to the Report of the Special Rapporteur on the Responsibilities of Sub-National Governments with Respect to the Right to Adequate Housing." Office of the United Nations High Commissioner for Human Rights. Accessed August 16, 2021. <https://www.ohchr.org/Documents/Issues/Housing/sub-nationalgovernments/Germany.pdf>

⁷³ Housing Rights Watch. "State of Housing Rights Germany." Housing Rights Watch. December 7, 2016. <https://www.housingrightswatch.org/country/germany>.

⁷⁴ Cornelius, Julia, and Joanna Rzeznik. "National Report for GERMANY." TENLAW: Tenancy Law and Housing Policy in Multi-level Europe (2014). <http://www.iut.nu/wp-content/uploads/2017/03/National-Report-for-Germany.pdf>.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Davies, Bill, Charlotte Snelling, Ed Turner, and Susanne Marquardt. "Lessons from Germany: TENANT Power in the Rental Market." The Progressive Policy Think Tank. May 12, 2017. <https://www.ippr.org/publications/lessons-from-germany-tenant-power-in-the-rental-market>.

⁷⁸ German Civil Code. Section 575. http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

⁷⁹ German Civil Code. Section 569. http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

recognized justification.⁸⁰ A notice of termination is allowed at the latest on the third working day of a calendar month to the end of the second month thereafter. The notice period required by the landlord can be extended depending on how long the tenant has been living in the dwelling.⁸¹ Additionally, under some state regulatory laws, municipalities are entitled to order that a tenant remains in their dwelling if they are at risk of becoming homeless, despite a valid termination of their tenancy.⁸²

Another protective measure is the Tenancy Law Amendment Act, passed in 2015. This law requires that in strained housing markets, rent at the beginning of a tenancy may not exceed the local comparative rent by more than 10%. While this is a federal amendment, states are authorized to outline which areas should be identified as strained housing markets. This legislation has been referred to as the “rent brake” policy.⁸³

Recommendations Made by the United Nations Committee on Economic, Social and Cultural Rights

In its concluding observations in the sixth periodic report on Germany, the CESCR made several recommendations relevant to housing. The recommendations included that Germany reduce the level of homelessness and ensure adequate provision of reception facilities, including emergency shelters and hostels, as well as social rehabilitation centres for those experiencing homelessness. Further, the CESCR recommended that Germany take appropriate measures to counteract the impact of speculation in urban residential accommodation on residents’ access to affordable housing, as the lack of affordable housing had rendered many families homeless.⁸⁴ In a follow-up to the concluding observations, Germany noted the introduction of a housing campaign, with measures and investments aimed at increasing housing supply and safeguarding affordable housing, including investments in social housing, a housing allowance, and urban development assistance. Additionally, Germany drew attention to the rent brake policy that was implemented in 2015.⁸⁵ In May of 2021, the Committee responded by affirming that Germany had made sufficient progress in recognizing the right to housing.⁸⁶

⁸⁰ German Civil Code. Section 573. http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

⁸¹ German Civil Code Section 573c. http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

⁸² Cornelius, Julia, and Joanna Rzeznik. “National Report for GERMANY.” TENLAW: Tenancy Law and Housing Policy in Multi-level Europe (2014). <http://www.iut.nu/wp-content/uploads/2017/03/National-Report-for-Germany.pdf>

⁸³ Housing Rights Watch. “State of Housing Rights Germany.” Housing Rights Watch. December 7, 2016. <https://www.housingrightswatch.org/country/germany>.

⁸⁴ CESCR. “Concluding Observations on the Sixth Periodic Report of Germany.” United Nations (November 27, 2018), p. 8, para. 55. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/DEU/CO/6&Lang=En

⁸⁵ CESCR. “Information received from Germany on follow-up to the concluding observations on its sixth periodic report.” United Nations (October 28, 2020), page 6, para. 3. <https://digitallibrary.un.org/record/3900140?ln=fr>.

⁸⁶ CESCR. “Follow up to concluding observations of the Committee on Economic, Social and Cultural Rights on the examination of the sixth periodic report of Germany at the Committee’s sixty-fourth session” (September 2018). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCESCR%2FFUL%2FDEU%2F44142&Lang=en

Conclusion

Although Canada has committed to the progressive realization of the right to housing through the NHTA, it lacks a federal standard on security of tenure. While a commitment to the right to housing has been made at the federal level, tenant protection laws remain a matter of provincial jurisdiction, creating a challenge for the implementation of the right to housing and for creating uniform standards for protecting security of tenure. As a result of this reality, unequal legal protections for security of tenure exist throughout Canada, as provinces can implement policies that weaken existing protections, resulting in a patchwork of eviction prevention policies across the country.

However, this jurisdictional barrier to implementation should not be used as a reason to abdicate responsibility for one of the most egregious violations of the right to housing affecting rights holders in Canada. The NHTA recognizes the right to housing as expressed in the ICESCR, which states that the covenant extends to all parts of federal states without limitations or exceptions.⁸⁷ On this basis, and by using their mandate under the NHTA, the Advocate can play a key role in fostering interjurisdictional collaboration and federal leadership in implementing stronger protections for security of tenure by referring to international jurisprudence and examples from other countries. The international jurisprudence and country case studies presented above provide two important insights. First, international human rights legal standards and associated mechanisms can play a critical role in encouraging state action towards more effective protection of security of tenure, such as developing criteria for access to justice requirements in security of tenure legislation, as described in communications to the CESCR and Human Rights Committee. Second, countries have adopted varying models to develop strong intergovernmental and interjurisdictional coordination for the protection of security of tenure stemming from international human rights obligations. Consequently, important recommendations can be drawn from each of these case studies to guide Canada's own efforts to strengthen security of tenure.

The Advocate can refer to international jurisprudence and to policies from other jurisdictions as part of their mandate under the NHTA to work towards strengthening security of tenure protections in Canada. Here are our recommendations:

1. When monitoring the progress of the implementation of the right to housing under Section 13(b) of their mandate, the Advocate can use an international human rights law lens.
2. Under Section 13(a) of their mandate, the Advocate can monitor the implementation of housing policy by all levels of government, as this aspect of their mandate is not limited to any specific jurisdiction. Specifically, the Advocate can refer to the standards found in international human rights law and jurisprudence on protecting security of tenure to ensure that housing policies implemented by governments are compliant with those standards. For example, provincial legislation that governs residential tenancies can be reviewed in reference to international law standards to ensure that eviction is considered as a measure of last resort, that tenants'

⁸⁷ Article 28 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

particular circumstances must be considered, that evictions must be proportional, and that the possible impact of the eviction on the tenant is considered before the decision to evict is made.

3. Under Section 13(c), of their mandate, the Advocate can conduct research on rental protection legislation across Canada and identify gaps in protections where international standards for the protection of security of tenure are not met. The Advocate can also conduct research on how these gaps affect marginalized and disadvantaged groups in particular and advise the Minister of their findings, with the goal of developing standards and criteria for enhancing security of tenure.
4. Under Section 13(g) of their mandate, the Advocate can advise the Minister on policies that were successful at improving security of tenure protections in international jurisdictions in order to meaningfully implement the right to housing in Canada. The following are some of the lessons that can be drawn:
 - a. Looking at the Scottish example, Canada could take an approach to implementing the right to housing and security of tenure that both regulates unlawful or forced evictions and progressively realizes the right of all people experiencing homelessness to be provided with stable housing, regardless of prioritization, family status, or how they came to be homeless. The federal government can provide recommendations to provincial governments on strengthening protections for security of tenure to ensure that people are not arbitrarily evicted. They can also recommend ways to strengthen policies that can create more affordable housing supply, for example, by creating a streamlined system by which non-profit housing providers can access funding under the National Housing Strategy to build more affordable housing units.
 - b. Drawing again on the Scottish example, Canada could develop more effective interjurisdictional coordination to ensure a supply of affordable housing through standard setting and oversight by the national government, in coordination with municipalities to ensure effective implementation. The NHSA can be used to enhance interjurisdictional coordination, as the Canadian government has committed domestically to realizing the right to housing across Canada. One aspect of implementing the right to housing is that, “steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies (economics, agriculture, environment, energy, etc.)” with the obligations under the ICESCR to the implementation of the right to housing.⁸⁸ Therefore it is the responsibility of all levels of government to commit to advancing the right to housing under the NHSA and to work together to implement the right to housing as defined in the ICESCR.
 - c. Drawing from the Netherlands, Canada could strengthen intergovernmental and intersectoral coordination on security of tenure using a decentralized approach to the provision of affordable social/non-market housing. This could be paired with effective regulation and oversight from the federal government and a clear approach to coordination with the not-for-profit sector to ensure the provision of wraparound services to people with unstable tenure.

⁸⁸ CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 [1] of the Covenant) at paragraph 12, <https://www.refworld.org/pdfid/47a7079a1.pdf>

- d. Canada could learn from New Zealand’s commitment to meet the unique housing challenges and needs of its Indigenous populations. These needs are at the centre of New Zealand’s housing programs and policies to allow greater autonomy for Indigenous communities to identify housing solutions with support and housing frameworks developed by the central government. These steps are necessary to ensure the security of tenure of communities that were historically displaced from their lands, and they are in line with Canada’s obligations under UNDRIP, which include ensuring that Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including housing. Indigenous peoples also have the right to be actively involved in developing and determining housing programs affecting them, and where possible to administer such programs through their own institutions.⁸⁹
- e. Canada could learn from the German model and ensure provincial legislation and policies regarding security of tenure are in line with federal guidelines on the right to housing, which reflect international human rights standards and principles. The Advocate can use their powers under Section 13(a) of their mandate to monitor provincial policies related to security of tenure and advise the Minister of gaps in protections. The Advocate can further advise the Minister under Section 13(g) of their mandate on what federal guidelines on security of tenure should look like according to international human rights law standards. The Minister can then present these guidelines to the provinces.
- f. Canada could also draw from Germany’s rigorous regulation of the private rental market to strengthen security of tenure and enable comprehensive measures that regulate evictions and affordability to meet the needs of its large tenant communities. The NHSA can help address jurisdictional boundaries, since it recognizes the right to housing as expressed in the ICESCR. The ICESCR’s right to housing guidelines state that “housing policies and programs at all levels of government should be coordinated through national-level leadership and oversight as well as by intergovernmental bodies with an explicit mandate to promote and ensure compliance with the right to housing.”⁹⁰ These guidelines and Canada’s commitments under the NHSA can be helpful in building more robust guidelines for the development of policies that ensure equitable access to rental housing and, as a result, stronger protections for security of tenure.

Using these insights and recommendations, the Office of the Federal Housing Advocate can identify major gaps in protections for tenants in Canada and reflect on international experiences of advancing the right to housing by strengthening security of tenure.

⁸⁹ UNDRIP Articles 21 and 23, https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁹⁰ Guidelines for the Implementation of the Right to Adequate Housing: 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, at page 15 para. 63(a), distributed on December 26, 2019, available at: <https://undocs.org/A/HRC/43/43>