Assembly of First Nations Submission

A place to live in dignity for all: Making housing affordable

Report of the Special Rapporteur on the right to adequate housing to the
78th session of the UN General Assembly

## Introduction

First Nations are impacted by housing affordability at a greater rate than the general population. This is in large part because First Nations Peoples disproportionately experience poverty, unemployment, and housing insecurity compared to the non-Indigenous population in Canada. Housing within First Nations communities has been and continues to be chronically underfunded and neglected. As a result, many homes on First Nations reserves are overcrowded and in poor states of repair. This has led to substandard living conditions, poor health and socioeconomic outcomes, and higher rates of poverty and homelessness for First Nations Peoples.

The policies that led to the current housing crises faced by First Nations Peoples are rooted in racism and discrimination. For centuries, Canada has discriminated against First Nations through colonization, neglect, forced displacement, and economic disenfranchisement. Article 21 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states that Indigenous Peoples have the right “*without discrimination* to the improvement of their economic and social conditions” (emphasis added). Recently, Canada adopted domestic legislation to implement the UN Declaration.

In addition to rights recognized and affirmed in the UN Declaration, First Nations also have Inherent, Treaty, and Aboriginal rights to housing, as well as a broader human right to housing. Inherent rights to housing are rooted in First Nations sovereignty and jurisdiction as the original Nations of what is now called Canada. Many First Nations also assert that Treaties and agreements signed between the Crown and First Nations include protections for, and rights to, housing. Section 35 of the *Constitution Act, 1982* recognizes and affirms First Nations Aboriginal and Treaty rights in Canada.

Although Canada has acknowledged housing as a human right through its National Housing Strategy, Canada has failed to uphold First Nations rights to housing. Several systemic and jurisdictional barriers exist that prevent First Nations from building adequate housing. This issue is compounded by other colonial policies and processes that have resulted in the systemic marginalization of First Nations Peoples, such as the direct and intergenerational impacts of Indian Residential Institutions of Genocide.[[1]](#footnote-1)

Ensuring affordability is an important aspect of realizing the human right to housing and fulfilling Canada’s fiduciary obligation to First Nations. However, guaranteeing affordability may not be sufficient to fully satisfy First Nations rights and/or Canada’s obligations. Any measures to address housing affordability for First Nations must consider the historical and current context of the Crown’s relationship with First Nations, the broad obligation to meet all the minimum human rights standards affirmed by the UN Declaration and other international human rights instruments and the persistent gap in well-being between First Nations and Canadians on a range of socio-economic indicators. On the latter, a recent study by Canada, requested by the Assembly of First Nations, shows that the Human Development Index ranking for “Registered Indians” in 2016 would be 52 among countries, while Canada ranked 12th (Cooke, 2016). A holistic understanding of housing is required to ensure positive socioeconomic outcomes, safe and healthy communities, and individual and community well-being. This includes ensuring that housing is safe, suitable, and culturally appropriate.

## Policy Context in Canada

The Government of Canada provides certain services for First Nations that are otherwise provided by provincial or municipal governments, such as housing, healthcare, and child welfare. Housing and homelessness services for First Nations are managed across *three* federal departments: Indigenous Services Canada (ISC), the Canada Mortgage and Housing Corporation (CMHC), and Infrastructure Canada (INFC).

Two key pieces of legislation govern Canada’s approach to housing: the *National Housing Strategy Act* (2019) and the *National Housing Act* (1985). The National Housing Act is a key, underpinning piece of legislation that references housing affordability in Canada. That Act “promotes the construction of new houses, the repair and modernization of existing houses, and the improvement of housing and living conditions.” The *National Housing Act* led to the creation of the Section 95 On-Reserve Housing Program, which funds non-profit rental housing for First Nations communities.

In 2019, the Government of Canada enacted the *National Housing Strategy Act*. That Act recognizes the right to adequate housing as a fundamental human right, as recognized by the International Covenant on Economic, Social, and Cultural Rights. That Act aims to create a National Housing Strategy that includes goals, such as improving the affordability and availability of housing and reducing homelessness (Government of Canada, 2019).

The preamble to the *National Housing Strategy Act* (2019)explicitly acknowledges that “affordable housing contributes to achieving beneficial social, economic, health and environmental outcomes.”That Act also recognizes housing as a human right in its Housing Policy Declaration section**.** Canada’s National Housing Strategy is the primary policy document aimed at increasing the supply of housing in Canada and addressing the affordability crisis (Government of Canada, 2017).

Many advocates have pointed to Canada’s failures to meet the targets outlined within the National Housing Strategy, and some are calling for a renewal of the strategy, particularly in the wake of the COVID-19 pandemic, rampant inflation, and other events which have affected Canada’s ability to meet these targets. In 2022, the Office of the Auditor General of Canada released a report that looked at whether the government is on track to meet its targets to reduce chronic homelessness by 50% by 2028 under the National Housing Strategy. That report found that the government lacked the ability to measure whether it was on track to meet those targets. That Report also found that where CMHC and Infrastructure Canada shared responsibility for programs and initiatives related to this goal neither department demonstrated full accountability for that goal.

Further, in 2021, Canada passed the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA) (2021). Section 4 of that Act states that one of the Acts purposes is “to affirm the Declaration as a universal international human rights instrument with application in Canadian law.” The UNDA compels Canada to take all measures necessary to ensure that the laws of Canada are consistent with the UN Declaration (section 5).

The UNDA also requires Canada to prepare and implement an action plan to “address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons.” The Action Plan must include “measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration” (section 6). Canada’s implementation of its obligations to meet the minimum human rights standards of the UN Declaration will impact housing, housing affordability, and the human right to housing.

Notably, Articles 21 and 23 of the UN Declaration explicitly reference Indigenous Peoples’ right to the improvement of economic and social conditions without discrimination, including housing (UN General Assembly, 2007). The Declaration’s two explicit references to housing are:

 Article 21 (1): Indigenous Peoples have the right, without discrimination, to the improvement of their economic and social conditions, including inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

 Article 23: Indigenous Peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous Peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

The right to adequate housing has been recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights and in other international instruments. Having a secure place to live is one of the fundamental elements for human dignity, physical and mental health, and overall quality of life, which enables one’s development. The UN Declaration affirms that Indigenous peoples are entitled to all human rights without discrimination.

In addition, the right to housing for Indigenous Peoples must be recognized to include the right to maintain attachment and residence in their home community, and/or the community or communities of their First Nation. Not being able to secure adequate housing in their home communities can rob First Nations Peoples of their right and opportunity to use their own resources to control and determine their economic, social, and cultural development; and to participate in the life of the community. As stated in a 2005 report of the United Nations Housing Rights Programme: “Because the enjoyment of the right to adequate housing is intertwined with indigenous peoples’ access to and control over resources, housing must be understood as an integral component of the rights to land” (United Nations Housing Rights Programme, 2005).

Words, however, do not implement themselves. Consequently, federal budget decision-making each year is critical for Canada to meet its minimum human rights obligations and to close the gap in well- being between First Nations and Canadians. Every year, the AFN provides Canada with a pre-budget submission on the fiscal supports required to address the housing crisis among First Nations, and every year what is allocated falls short of the AFN’s submissions.

Finally, while the Canadian *Charter of Rights and Freedoms* does not explicitly mention housing affordability, it is a human rights instrument that sets out protections for certain fundamental rights and freedoms, such as the right to life, liberty, and security of the person (Section 7) and the right to equality (Section 15). The Charter sets out limits on government action to protect the rights and freedoms contained therein but these protections are limited, and infringement can be justified under certain circumstances. The Charter also lacks specific protections for housing and as a result, is inconsistent with international law and the human right to adequate housing.

Recently, claimants attempted to argue for greater housing protections under the Charter. However, Canada’s failure to adopt economic rights when drafting the Charter forces claimants to argue these protections under section 7 and section 15. Section 15 has proven particularly difficult because socioeconomic status is not recognized as a protected ground under this section.

Claimants have had some success with section 7. In *Victoria City v Adams* (Court of Appeal for British Columbia, 2009), the Court found that municipal bylaws prohibiting temporary shelters erected by people experiencing homelessness violated Section 7 when shelter beds were full. The protections provided by this ruling, however, are quite narrow and questions remain over the rulings application to other shelter issues related to homelessness.

## The National First Nations Housing and Related Infrastructure Strategy

In 2018, the Assembly of First Nations (AFN) First Nations-in-Assembly approved the National First Nations Housing and Related Infrastructure Strategy (AFN, 2018). This Strategy was developed jointly with Government of Canada representatives from ISC, CMHC, and Employment and Social Development Canada (housing and homelessness initiatives managed by the latter department were later moved to INFC).

The National First Nations Housing and Related Infrastructure Strategy sets out targets to support First Nations goals to assume responsibility and control over the delivery and management of housing and related infrastructure within First Nations communities. To support this work, the AFN regularly brings representatives from ISC, CMHC, and Infrastructure Canada together in a Joint Technical Working Group. The Working Group aims to implement the goals outlined in the National First Nations Housing and Related Infrastructure Strategy.

In addition to the National First Nations Housing and Related Infrastructure Strategy, the AFN also released several reports detailing First Nations housing needs. In 2021, the AFN released a report calling for the investment of $60 Billion over 10 years to meet current and future housing needs in First Nations, and to bring First Nations housing to a level enjoyed by the rest of Canada (Institute of Fiscal Studies and Democracy, 2021). In its 2022 budget, the Government of Canada committed $2.4 billion over 5 years. This represents the largest investment in First Nations housing from the Government of Canada to date, but still falls short of the actual needs.

The AFN and ISC have also jointly developed a report which identifies the investments needed to close the infrastructure gap between First Nations and the rest of Canada by 2030. This report has resulted in an updated estimate of $135.1 billion required to address First Nations housing needs (AFN & ISC, 2023)

## Measuring Housing Affordability for First Nations

### The 30% Shelter Cost-Income Ratio

In Canada, housing affordability is often assessed using the concept of the 30% shelter cost-income ratio (STIR). According to this measure, a household is more likely to face housing affordability challenges if they spend 30% or more of their gross (pre-tax) income on housing costs (CMHC, 2020). This measure is widely used by various levels of government, researchers, and non-profit organizations to assess housing affordability.

Housing costs typically include rent or mortgage payments, property taxes, and utility costs (such as heating, electricity, and water). Spending 30% or more of the gross income on these expenses can make it difficult for a household to afford other necessities, such as food, clothing, healthcare, and transportation.

It is important to note that the 30% threshold is a general guideline, and individual circumstances can vary. Some households may be able to afford spending more than 30% of their income on housing without facing financial strain, while others might struggle even if their housing costs are below this threshold.

Housing affordability, whether it is measured using the 30% STIR or other metrics, disproportionately affects First Nations Peoples due to the higher number of First Nations Peoples living in low-income households. According to 2021 census data, 31.4% of First Nations Peoples on-reserve and 22.7% of First Nations Peoples overall live in low-income households, compared with 10.7% of the non-Indigenous population (Statistics Canada, 2022c). First Nations Peoples are also disproportionately likely to experience homelessness. Assembly of First Nations research indicates that First Nations are 23 times more likely to experience homelessness compared to non-Indigenous peoples in Canada (AFN, 2021).

Attempting to measure and define housing affordability by its impact on individual households is not adequate to fully understand the First Nations context. On First Nations reserves, market-based housing makes up a much smaller proportion of the housing stock than the rest of Canada and the number of households spending more than 30% of their income on housing is actually much *lower* than in the rest of Canada. While housing on reserves may meet a certain minimum standard of being *affordable*, housing on First Nations reserves is often inadequate, in need of significant repairs, and overcrowded due to a limited amount of available housing. This is the inevitable outcome of decades of chronic government neglect and underfunding, as well as jurisdictional complexities that make obtaining land and building new housing difficult or, in some cases, impossible. Housing affordability from a First Nations perspective must be understood through a lens of community affordability as defined by First Nations, not just in terms of affordability for individual households.

### Alternative Measures: The Housing Hardship Concept

Recognizing some of the limitations associated with the 30% STIR measure, CMHC also introduced the Housing Hardship Concept. The Housing Hardship Concept looks at a household’s ability to afford basic goods after housing costs are accounted for, using the non-housing portion of the Market Basket Measure (MBM). The MBM is a measure of low income and poverty in Canada. It is designed to represent a basic standard of living that includes the costs of specified quantities of goods and services required by a reference family of two adults and two children. The MBM includes five major components: food, clothing, transportation, shelter, and other necessary goods and services (Statistics Canada, 2019).

The Housing Hardship Concept is intended to show a more holistic picture of the difficulties faced by households when they are unable to afford adequate and suitable housing, often resulting from high housing costs, low income, or other financial constraints. Housing hardship can have various impacts on individuals and families, including reduced access to other essential goods and services, increased vulnerability to homelessness, and overall negative effects on health and well-being (CMHC, 2020). Because the MBM is not used on-reserve, and has other notable limitations as described below, the Housing Hardship Concept is also limited in its applicability to First Nations.

### Limitations of the MBM:

Lack of annual adjustments: The MBM is typically updated every few years rather than annually, which means it may not accurately reflect the current costs of living. This lag in adjustment could lead to an underestimation of First Nations experiencing poverty or low income, as well as the depth of their financial struggles (CCPA, 2011).

Geographical limitations: The MBM concept is not currently used in the territories or on-reserve because, in both contexts, remoteness, socio-economic factors, and jurisdictional differences in how programs and services are provided in these regions all have significant impacts on the affordability of goods and services. The Government of Canada has committed to work with National Indigenous Organizations, including the Assembly of First Nations, to identify and co-develop indicators of poverty and well-being, including non-income-based measures of poverty, that reflect the multiple dimensions of poverty and well-being experienced by First Nations, Inuit, and Métis (Heisz, 2019).

Inadequate consideration of distinct needs and circumstances: Besides not being used on First Nations reserves, the MBM has additional limitations with respect to the unique needs of First Nations. The MBM does not fully account for the distinct cultural, social, and economic needs of First Nations in Canada. This can include factors such as the higher cost of living in remote communities, the availability of traditional foods, and access to culturally appropriate services (Heisz, 2019). This can lead to an inaccurate representation of the actual cost of living and result in underestimating the income required for these individuals and families to meet their basic needs.

## The Canadian Human Rights Tribunal and a Minimum Standard of Living Based on Substantive Equality

Canada’s legal obligations to First Nations stem from historical treaties, the *Constitution Act*, *1982*, and various federal legislation and policies. Section 35 of the *Constitution Act, 1982* recognizes and affirms existing Aboriginal and Treaty rights. In addition, based on the Crown’s historical relationship with Indigenous Nations, governments across Canada have a fiduciary duty to act in the best interests of First Nations; this includes the Government of Canada’s responsibility to provide essential services, such as healthcare, education, and social services, to First Nations communities living on reserves.

In many cases, the Government of Canada funds or directly provides services for First Nations. These services are often provided through prescriptive funding mechanisms that are limited, inflexible, and generally at lower funding levels than for non-Indigenous populations. This funding disparity has led to significant gaps in the quality and accessibility of services for First Nations (AFN, 2019).

In 2016, the Canadian Human Rights Tribunal (CHRT) ruled that the federal government discriminated against First Nations children by underfunding child welfare services on reserves. The CHRT ordered the government to cease this discriminatory practice and fully implement Jordan's Principle, a child-first principle aimed at ensuring First Nations children can access public services without delays, disruptions, or denials due to jurisdictional disputes (CHRT, 2017). As amended in 2017, the ruling requires Canada to adopt the principle of Substantive Equality in providing services to First Nations Children (2017 CHRT 35, 2017).

The principle of Substantive Equality recognizes that First Nations children face specific disadvantages and barriers due to the mistreatment of First Nations in Canada. To obtain outcome equality, services and benefits must be provided in a way that meets any unique needs and circumstances, such as cultural, social, economic, and historical disadvantage. This requires Canada to provide all First Nations children (on and off reserve), and Indigenous children ordinarily living on-reserve, with publicly funded benefits, supports, programs, goods, and services in a manner and according to a standard that meets their particular needs and circumstances, on a *substantively* equal basis with non-First Nations children.

In considering the ruling’s implications related to housing, it is important to consider that one of the factors that leads to First Nations children being apprehended at disproportionate rates is poor and inadequate housing on-reserve and the social issues that result from it (Olsen, 2016). Although the CHRT ruling specifically addresses the First Nations Child and Family Services program, it may have broader implications for various programs that affect First Nations Peoples in Canada, particularly where programs and services on-reserve have been historically underfunded and neglected in a discriminatory manner. This includes housing, education, healthcare, and other essential services, which contribute to disparities in living conditions and quality of life.

For housing affordability and the minimum standard of living, the Tribunal’s ruling suggests that First Nations Peoples have the right to equitable access to resources and services, including adequate housing in alignment with the principle of substantive equality. The ruling also demonstrates that the federal government is responsible for ensuring First Nations housing meets the standard enjoyed by the rest of Canada or exceeds it where there are greater needs due to the impacts of colonial policies and practices. This can be achieved by providing adequate funding, addressing the housing crisis on reserves, and ensuring that housing programs are culturally appropriate and meet the unique needs of First Nations.

## Data and Data Gaps on First Nations Housing Affordability[[2]](#footnote-2)

New housing data from the 2021 Census provides shelter cost information for 373,920 people living on-reserve, the majority of whom are First Nations Peoples. These data are available due to new questions that were added to the 2021 Census questionnaire to measure shelter costs on-reserve. Because housing affordability data could not be collected for on-reserve households in past censuses, changes in housing affordability over the past 10 years cannot be measured. As previously discussed, housing affordability is a less significant challenge on-reserve compared to over-crowding and the need for major housing repairs. However, data indicates that affordability is still a significant challenge for renter households on-reserve, of which 24.5% spent 30% or more of their income on shelter costs (Statistics Canada, 2022a).

In 2022, Statistics Canada published new data related to housing conditions among First Nations Peoples, Métis, and Inuit in Canada from the 2021 Census. This data focuses on housing adequacy and overcrowding, rather than affordability (Statistics Canada, 2022b).

First Nations are often undercounted or underrepresented in federal census data due to myriad factors. First Nations census uptake has improved in recent years; however, in 2021, the number of First Nations who participated was impacted by the COVID-19 pandemic, natural disasters, and the widely publicized discoveries of unmarked graves at former Indian Residential School sites.

## Causes and Consequences of Housing Affordability

While housing in Canada is becoming increasingly unaffordable to all demographics, this disproportionately impacts First Nations, who face higher rates of poverty, unemployment, and negative outcomes across a range of socioeconomic factors. The root causes of these issues are all linked to the historic and ongoing impacts of colonialism in Canada. This includes the direct and intergenerational impacts of Indian Residential Institutions of Genocide, the Sixties Scoop, the *Indian Act*, and countless laws and actions that have led to the social and economic marginalization of First Nations Peoples, as well as the underfunding and neglect of First Nations communities.

No federal tenancy laws target First Nations. For the rest of Canada, housing is a provincial responsibility and provinces have enacted tenancy legislation. Provincial tenancy laws do not apply to First Nations on-reserve. First Nations can, however, pass their own laws related to tenancies, although this varies by First Nation.

No data exists on how many households in First Nations have been evicted under First Nations tenancy laws. According to Statistics Canada (2021), 12% of National Housing Survey off-reserve respondents identifying as First Nations reported being evicted in the past compared to 7% of respondents overall. This indicates that First Nations experience eviction at disproportionate rates. The report does not disaggregate the number of First Nations respondents who were evicted due to non-payment of housing costs. Overall, 8% of respondents who reported being evicted in the past indicated that they were evicted due to being behind on rent payments.

## Conclusion

Analysing the impact of housing affordability for First Nations in Canada is complex. This is due to the Government of Canada’s unique fiduciary obligation to First Nations housing, Canada’s jurisdictional responsibility for on-reserve housing programs, and the historic and ongoing underfunding and neglect of housing on-reserve, which impacts housing affordability on both the community and individual levels. Further, First Nations Peoples are disproportionately impacted by social issues such as poverty, homelessness, and child welfare involvement. This means that First Nations experience the impacts of housing affordability more acutely than the general population. It is essential that the UN Special Rapporteur on the Right to Adequate Housing consider these unique circumstances when reviewing the housing affordability situation in Canada and take particular note of Canada’s failure to meet its fiduciary obligation, and its Treaty and human rights commitments to ensure First Nations Peoples have access to housing that is safe, healthy, and affordable.References

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1. <https://www.afn.ca/residential-institutions/> [↑](#footnote-ref-1)
2. Statistics Canada tracks measures related to housing affordability, including STIR measures. This data can be found [here](https://www150.statcan.gc.ca/n1/en/subjects/housing/housing_costs_and_affordability) (Statistics Canada, 2023). [↑](#footnote-ref-2)