



Aligning Federal Housing Policy with commitments under the National Housing Strategy Act (2019)

Presentation to Department of Justice

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By Bruce Porter, Michèle Biss, Sahar Raza &
Kaitlin Schwan





Why the turn to international human rights as a framework for housing policy and programs?

Understanding and implementing the **paradigm shift**

National Housing Strategy Act: Housing Policy Declaration

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

(a) recognize that **the right to adequate housing is a fundamental human right** affirmed in international law;

(b) recognize that **housing is essential to the inherent dignity and well-being of the person** and to building sustainable and inclusive communities;

(c) support improved housing outcomes for the people of Canada; and

(d) further the **progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights**.

The NHSA's unique reliance on international human rights

All of the accountability mechanisms in the NHSA reference this central commitment to the right to housing under international human rights law. For example, it requires:

- A **national housing strategy** "to further the housing policy, taking into account key principles of a human rights-based approach to housing."
- A **Federal Housing Advocate** to engage with rights-holders, receive submissions, conduct reviews, adopt opinions, and recommend measures **"to further the housing policy, including the progressive realization of the right to housing..."**
- **Review Panels** that include persons with 1) lived experience and 2) human rights expertise to conduct **participatory hearings into systemic issue and report on "findings and recommended measures."**



UNIVERSAL DECLARATION OF HUMAN RIGHTS

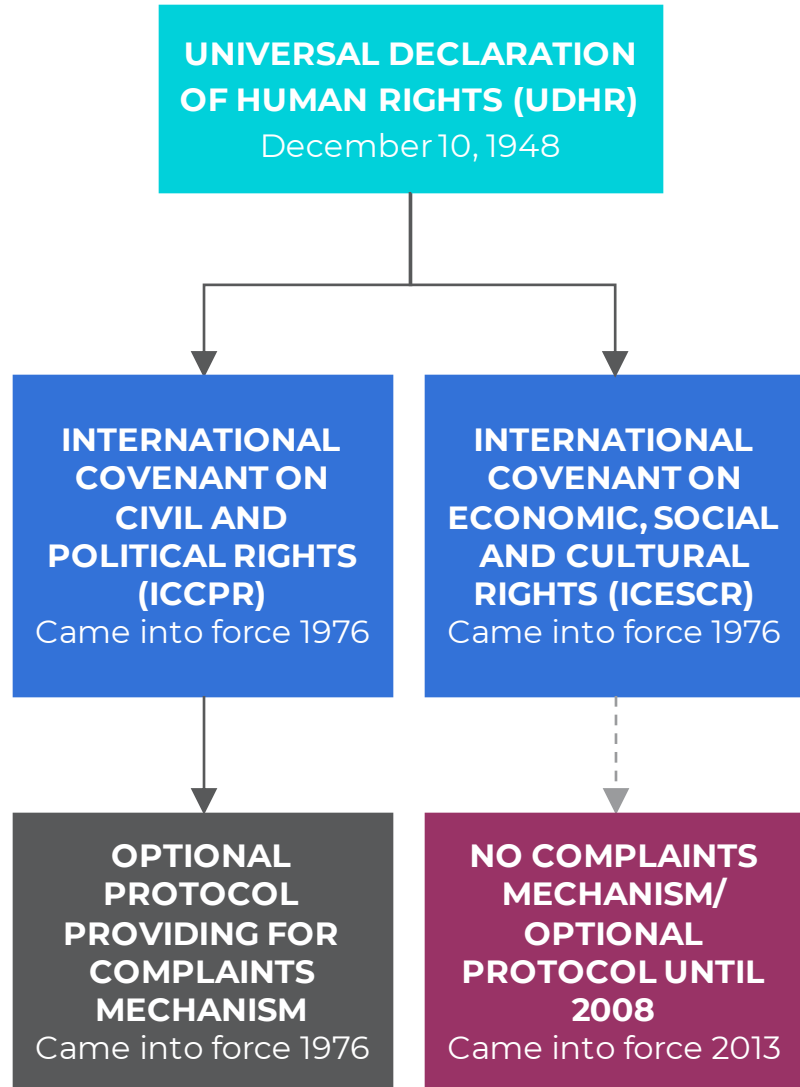
The NHSA is grounded in the principles affirmed in the Universal Declaration of Human Rights

"The phoenix that rose from the ashes of World War II...**International human rights norms... were not meant to be theoretical aspirations or legal luxuries, but moral imperatives and legal necessities.**"

- Supreme Court of Canada, *Nevsun v Aryana*, 2019

- The NHSA draws directly on the language of international human rights so that policies and programs are framed around a commitment to **core human rights values**
- The Universal Declaration of Human Rights (UDHR) affirmed "faith in **fundamental human rights**" and that "**All human beings are born free and equal in dignity and rights,**" and declared **economic social and cultural (ESC) rights** like the right to **housing** as "**indispensable for dignity and the free development of the person**"
- The UDHR affirmed that **access to justice and effective remedies** must be ensured **for all fundamental human rights**, including ESC rights
- The NHSA relies on a new commitment to the right to housing as a "**moral imperative and legal necessity**" and rather than on courts to ensure access to justice

Overcoming the false divide: Ensuring access to justice for ESC rights



- Prior to the 1990s, ESC rights viewed more as "policy aspirations" to be left up to governments
- During the 1990s increasing numbers of constitutional democracies recognized the right to housing and other ESC rights as fundamental human rights and other courts interpreted them as components of the right to life



“Human rights made whole”: Access to justice for ESC rights

“This will break down the walls of division that history built and will unite once again what the Universal Declaration of Human Rights proclaimed as a sole body of human rights 60 years ago. It will finally provide at the international level **the same degree of protection to economic, social and cultural rights that has existed for civil and political rights since 1976.**”

- President of the General Assembly

- In 2008, the UN General Assembly adopted the **Optional Protocol to the ICESCR (OP-ICESCR) to ensure access to justice for ESC rights claimants**
- Spearheaded by Justice Louise Arbour as UN High Commissioner on Human Rights
- Canada was not supportive and has not yet ratified the OP-ICESCR
- The NHSA **embraces the modern inclusive human rights paradigm** by affirming the right to housing as a fundamental human right **requiring access to justice and accountability** based on the ICESCR



Turning to international human rights for a more inclusive human rights paradigm

- As with Indigenous human rights, systemic racism or gender-based discrimination **human rights problems must be recognized and named as such**
- Countries like Finland that are more successful in eliminating homelessness identify the first step as simply **treating homelessness as an unacceptable violation of human rights**
- Courts have **failed to address homelessness or inadequate housing as human rights violations** under the Canadian Charter or human rights legislation
- Civil society in Canada turned to international human rights for **a more inclusive understanding and practice** of human rights that recognizes **those living in poverty or homelessness as rights holders** and allows their **claims to dignity and equal rights be heard**



What is the value of this new human rights framework for policy and programming?

- The right to housing under international law **has primacy** over other laws and policy providing a principled framework that **transcends government silos**
- **All laws must be interpreted and applied in conformity with the right to housing under international law**
- The right to housing under has been the subject of **authoritative commentary, recommendations and adjudication** that provides a clear normative framework for the development of rights-based legislation, policy and programs
- Housing systems in Canada are the product of **legislation, policy, and decisions at all levels of government**, with overlapping federal and provincial/territorial jurisdiction and municipal governance. The NHSA formally applies only to the federal government, but the commitment to the right to housing under the ICESCR applies to all levels of government in Canada
- Properly implemented, a rights-based approach **affirms the shared obligations of multiple actors towards upholding the right to housing**; it **clarifies responsibilities and solves problems that governments on their own can't solve**



International human rights—like the right to housing—are **transformational**.


- The challenge in Canada is to **change a housing system** that gives rise to inequality and homelessness into one which ensure access to adequate housing for all
- Human rights claims **identify systems, structures, and barriers** that obstruct the realization of the right to housing and identify effective remedies
- Human rights like the right to housing are thus both **purposive and practical**—they help us map how to get to where we want to go

"Systemic violations have broad causes and effects, **often arising from the ways in which society is organized politically, socially and economically**. It is often difficult to identify individual perpetrators who bear individual responsibility for systemic violations. **The State as a whole will be responsible.**"

- UN Office of the High Commissioner on Human Rights

The “Dialogic Model”

- **Meaningful engagement** (not just consultation):
 - The engagement **starts with a clarification of the rights** that must be ensured through the engagement process
 - Results in **decisions made jointly** with representatives of the community are participants
 - It requires **sufficient support** for the **community to be able to be properly represented and informed**
- Commitment to **human rights norms**
- An **adjudicative space** through which norms can be applied
- Implementation of **remedies through dialogue and participation**



“The Constitution will be worth infinitely less than its paper if the reasonableness of State action concerned with housing is determined without **regard to the fundamental constitutional value of human dignity.**”

- South African
Constitutional Court,
Grootboom v SA



“Simply stating that housing is a human right means nothing unless there are **robust accountability and reporting mechanisms in place.** With these amendments, we are doing precisely that.”

- Minister Maryam Monsef, House of Commons Debates, May 31 2019.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

2(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the **maximum of its available resources**, with a view to **achieving progressively the full realization of the rights** recognized in the present Covenant **by all appropriate means, including** particularly the adoption of **legislative measures**.

2(2) The States Parties to the present Covenant undertake to guarantee that **the rights** enunciated in the present Covenant will be **exercised without discrimination** of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

What is “progressive realization”?

The NHSA has committed to “progressive realization” as recognized in the ICESCR. **The key standards are:**

- **All appropriate means**, including legislation
- **Maximum available resources**
- **Aimed at achieving the full realization** of the right
- Exercise of **the right to housing without discrimination**
- The standard of **reasonable measures**

"In essence, **the obligation is** to demonstrate that, in aggregate, the **measures being taken are sufficient to realize the right for every individual in the shortest possible time** in accordance with the maximum of available resources."

- CESCR, General Comment No. 4



What does this all mean? The government's responsibilities

- Start with **meaningful engagement** with claimant community about their circumstances and dignity interests.
- Identify and **prioritize** those in the most extreme or vulnerable circumstances.
- Address **systemic discrimination and socioeconomic inequality**, with particular attention paid to the rights of Indigenous peoples, women, persons with disabilities, persons relying on social assistance, racialized groups, and persons experiencing homelessness.
- Ensure a **"comprehensive" approach** by hearing from diverse perspectives.
- Exercise national leadership to allocate responsibilities and ensure co-operation of **all orders of government**, including through funding and inter-governmental agreements.
- Ensure **appropriate budgeting and resource allocation** based on "**maximum of available resources**" standard including all appropriate taxation measures.
- Ensure **access to justice** and accountability for the right to housing and within all housing programs and areas of governance affecting the right to housing.
- Ensure **independent monitoring and assessment** of progress.
- Use all appropriate means, including **regulatory and legislative measures**, to ensure that investment and actions of private and non-governmental actors contributes to and does not undermine progressive realization of the right to housing (e.g., **regulate private actors** to address the financialization of housing).
- Incorporate a "transformative" dimension to all **legislation, regulation, planning and decision-making** is consistent with the progressive realization of the right to housing within the shortest possible time.
- Avoid any **retrogressive measures**, except where absolutely necessary in times of crisis, with provisions to ensure that vulnerable groups are not affected.

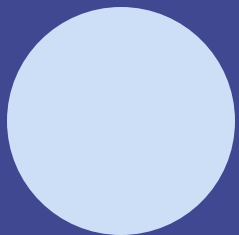


Expanding the National Housing Strategy

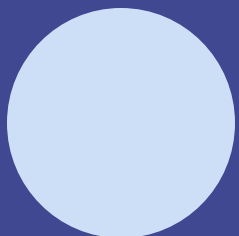
Applying a **rights-based approach**



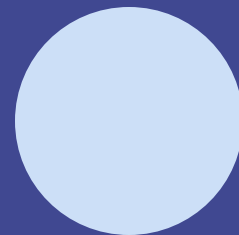
Methodology



Grey literature review
and analysis



13 qualitative interviews
conducted among the
NRHN membership



46 surveys completed
within the NRHN
membership

Research Objective

- The **2017 National Housing Strategy** (i.e. the NHS, or “the Strategy”) has not been revised to stay in step with the requirements of Canada’s **2019 National Housing Strategy Act** (i.e. the NHSA, or “the Act”), which recognizes housing as a fundamental human right as affirmed under international law
 - The NHSA commits the federal government to **“the progressive realization of the right to adequate housing as it is recognized in the International Covenant on Economic, Social, and Cultural Rights”**
- The federal government is expected to review and revise the NHS in 2021-22
- This research offers **human rights-based analyses and recommendations for improving the NHS**

National Housing Strategy Act: National Housing Strategy

5 (1) The Minister must develop and maintain a national housing strategy to further the housing policy, **taking into account key principles of a human rights-based approach to housing.**

- set out **a long-term vision**
- establish **goals, priorities, initiatives, timelines and desired outcomes**;
- focus on **persons in greatest need**; and
- provide for **participatory processes** to ensure the ongoing inclusion and engagement of **civil society, stakeholders, vulnerable groups and persons with lived experience of housing need, as well as those with lived experience of homelessness.**

Background on implementing the right to housing in Canada

- The creation of a national housing strategy has been a key recommendation from international human rights authorities since the early 1990s due to **concerns about widespread homelessness in an affluent country like Canada**
 - The UN Committee on Economic and Social Rights (2006) and the UN Special Rapporteur on the Right to Housing (2007) both urged Canada to implement a housing strategy “based on **indivisibility of human rights and the protection of the most vulnerable**,” with “**measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms**”
- Some **key international resources on implementing the right to housing** include:
 - Jurisprudence applying to other countries through the **Optional Protocol** to the International Covenant on Economic, Social, and Cultural Rights (OP-ICESCR)
 - **General comments and concluding observations** about Canada from the UN Committee on Economic, Social, and Cultural Rights (CESCR)
 - Independent UN authorities like the **Special Rapporteur** on the Right to Adequate Housing

1.

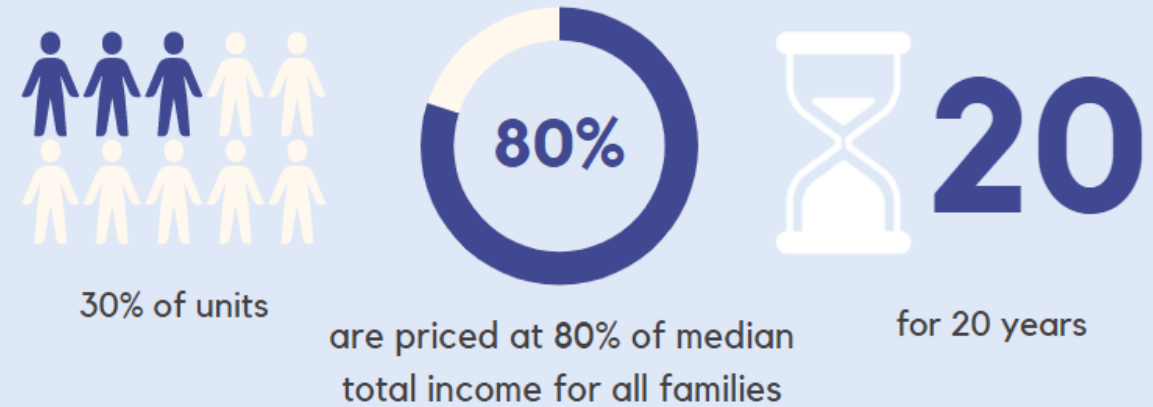
Investments in the NHS are inadequate to meet the goals of reducing core housing need or ending homelessness.

Background

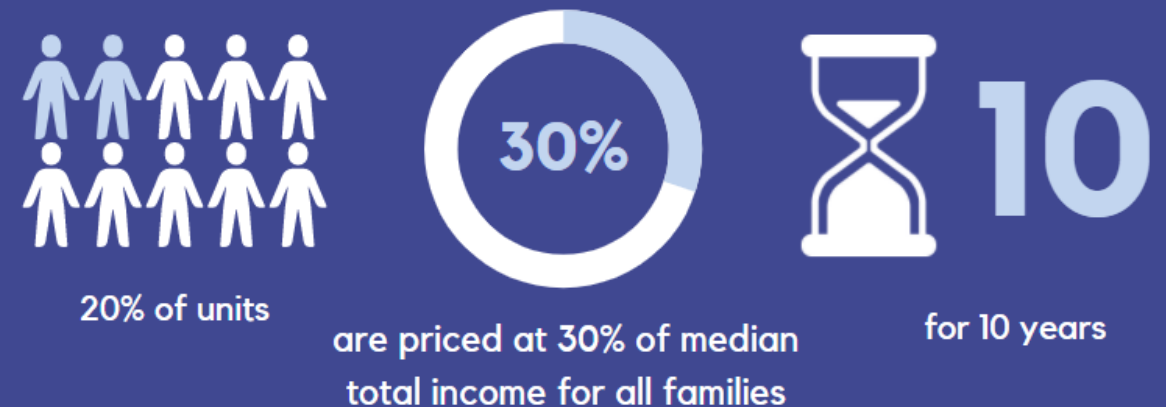
- The Parliamentary Budget Officer's (PBO) June 2019 report found that the NHS **"largely maintains current funding levels for current activities and slightly reduces targeted funding for households in core housing need"**
 - Concludes that the assumptions made by the government on the impacts and output of the NHS "do not reflect the likely impact of those programs on the prevalence of housing need"

- The PBO found that the eligibility criteria of **NHS capital initiatives** like the National Housing Co-Investment Fund (NHCIF) and Rental Construction Financing Initiative (RCFI) **do not target the needs of low-income households**
 - For example, the **RCFI** only requires that 20% of units be priced at 30% of median income, which **far exceeds what is affordable for low-income individuals**
 - Recent studies found that in **one NHS-funded project in Toronto**, units **would be unaffordable to between 75-90% of renter households**

NATIONAL HOUSING CO-INVESTMENT FUND (NHCIF)



RENTAL CONSTRUCTION FINANCING INITIATIVE (RCFI)



Human Rights Analysis

- The International Covenant on Economic, Social and Cultural Rights (ICESCR) requires that investments to implement/progressively realize the right to housing **must reflect a standard of a maximum of available resources**
 - A “reasonableness” standard is connected to this requirement such that **wealthy states like Canada are assessed using a relatively high standard** to ensure adequate resource allocation
- The UN Special Rapporteur on Adequate Housing has also stated that we must **reign in the financialization of housing**:

“[T]he State must **regulate, direct and engage with private market and financial actors**, not simply to ensure that they do not explicitly violate rights, but also to ensure that the rules under which they operate and their actions are consistent with the realization of the right to adequate housing.”

2.

The NHS is not improving housing outcomes for those most in need.

Background

The web-version of the NHS identified the following groups as **those in greatest housing need** (updated since 2017):

- Women and children fleeing domestic violence
- Seniors
- Young adults
- Indigenous peoples
- People with disabilities
- People dealing with mental health and addictions issues
- Veterans
- LGBTQ2+
- Racialized groups
- Recent immigrants, especially refugees
- People experiencing homelessness

Absent from the list of NHS priority groups and targeted programming are:

- **Persons of colour** (missing from the original 2017 NHS)
- Persons with **precarious immigration status**
- **Low-income women** and **lone caregivers**
- Persons who have interacted with the **criminal justice system**
- **Rural and remote** communities
- Persons with **disabilities** who require both **housing and accompanying support services** to live independently in the community



Human Rights Analysis

- Progressive realization of the right to housing requires that governments move beyond a framework of “negative rights” to ensure that programs, laws, and policies—including budgetary decisions—are **consistent with “positive rights”** (requiring that the right to housing be actively upheld and **progressively realized** by relevant duty-holders)
- The NHS must apply **an intersectional lens** and be consistent with commitments in:
 - The International Covenant on the Elimination of Discrimination Against Women, International Covenant on the Elimination of Racial Discrimination, International Convention on the Rights of Persons with Disabilities, International Covenant on the Rights of the Child, Universal Declaration on the Rights of the Child, and UN Declaration on the Rights of Indigenous Peoples, **all of which include a commitment to upholding the right to housing**
- NHS program **impacts on priority groups must be monitored** to ensure their efficacy

3.

There are few opportunities to participate in the development of the NHS, particularly for first voice of homelessness advocates.

Background & Human Rights Analysis

- The 2017 NHS provides an allocation of \$49.2 million to integrate a human rights-based approach to housing via the **NHSA legislation, Federal Housing Advocate, National Housing Council, Review Panel, Community-Based Tenant Initiative (CBTI)**, and related public engagement campaigns
 - CBTI's grant stream is a key feature for delivering participatory mechanisms in the NHS
- However, **the right to housing must drive all areas of the NHS**
 - E.g., the duty to provide participatory processes extends to the NHS, for which there has been **little engagement with the public or those directly affected since 2017**



Assessing the NHS in accordance with international rights-based guidelines

Analysis under the UN Special Rapporteur's **ten right to housing guidelines for domestic housing strategies**

UN Special Rapporteur's **ten** **right to housing** **guidelines** for domestic housing strategies

1

Basing a strategy
in law and legal
standards



2

Prioritizing those
most in need and
ensuring equality



3

Comprehensive
and whole-of-
government



4

Rights-based
participation



5

Accountable
budgeting and
tax justice



6

Human rights-
based goals
and timelines



7

Accountability
and monitoring



8

Ensuring access
to justice



9

Clarifying the
obligations of
private actors
and regulating
financial,
housing, and real
estate markets



10

Implement international
cooperation and
assistance





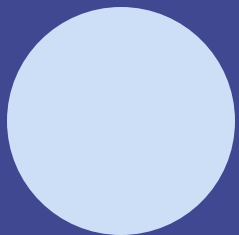
- Though these 10 criteria are a useful tool for assessing the rights-based gaps of the 2017 NHS, **a human rights analysis extends beyond those ten criteria**
 - In 2019, the UN Special Rapporteur further developed her **16 guidelines for States for the implementation of the right to adequate housing**
 - Additionally, the UN Special Rapporteur's **guidance on the right to housing and encampments, the rights of persons with disabilities, and the rights of Indigenous peoples** contribute to a more fulsome analysis of right to housing requirements
- Canada has a long a way to go before our National Housing Strategy and housing policies meet the standards set by international human rights law, however—as we demonstrate—there are many opportunities for the NHS to be revised to make it more human rights-compliant



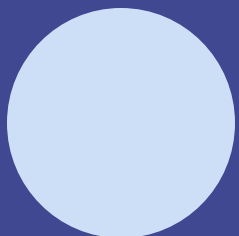
Implementing the right to housing for women, girls and gender-diverse persons



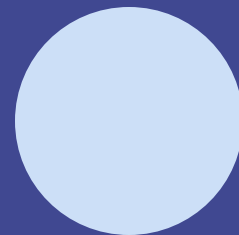
Methodology



Scoping literature review
and analysis



**Pan-Canadian Survey with
500 women and gender
diverse people**



**Rights-based, GBA+
analysis of the National
Housing Strategy**

Research Questions

- What unique challenges do women, girls, and gender diverse peoples in Canada face with respect to the enjoyment of the right to housing?
- To what extent, and how, does the *National Housing Strategy* address the barriers to adequate housing faced by women, girls, and gender diverse peoples in Canada?
- How can the Federal Housing Advocate best support the progressive realization of the right to housing for women, girls, and gender diverse people?

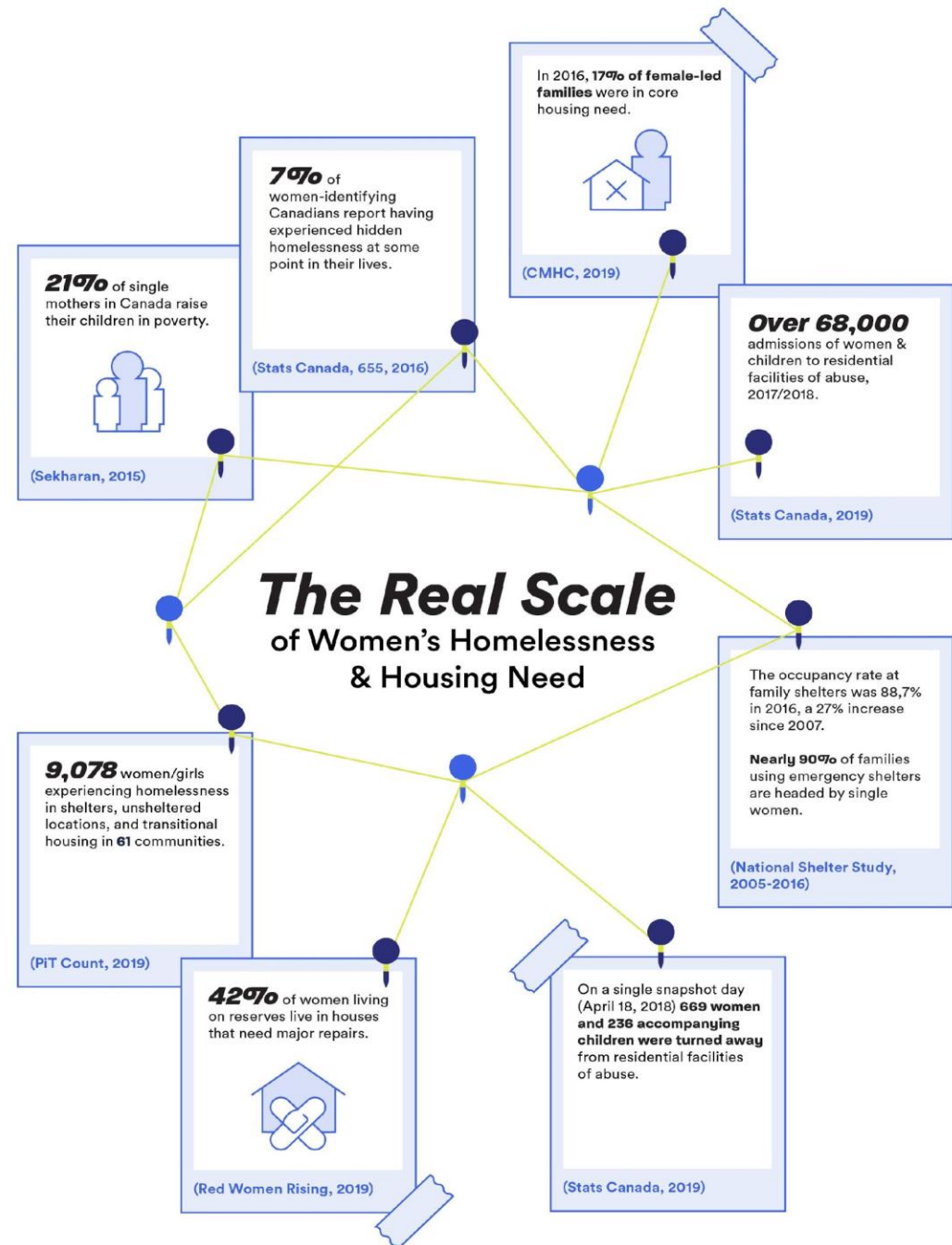


Housing realities for women and gender diverse persons in Canada

- Disproportionate core housing need
- Hidden homelessness
- Systemic gender-based violence
- Gender-based income inequality and poverty
- Intersectional, gender-based discrimination in housing markets
- Overburdened VAW and women's shelters

Definition of homelessness

1. Unsheltered
2. Emergency sheltered
3. Provisionally accommodated
4. At risk of homelessness





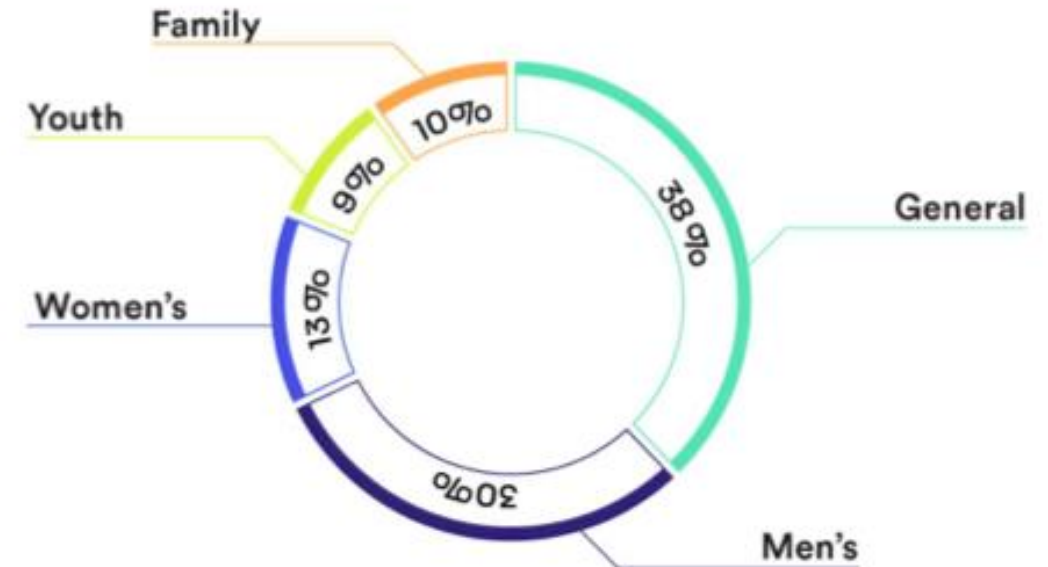
Mobilizing the NHSA for women and gender diverse persons in Canada: What would it mean to take substantive equality seriously?

1. **Non-discrimination** in resource allocation
2. Policy **targets, timelines, and indicators** that equitably prioritize those most in need
3. **Ongoing GBA+ analysis** of policy design and service delivery

1.

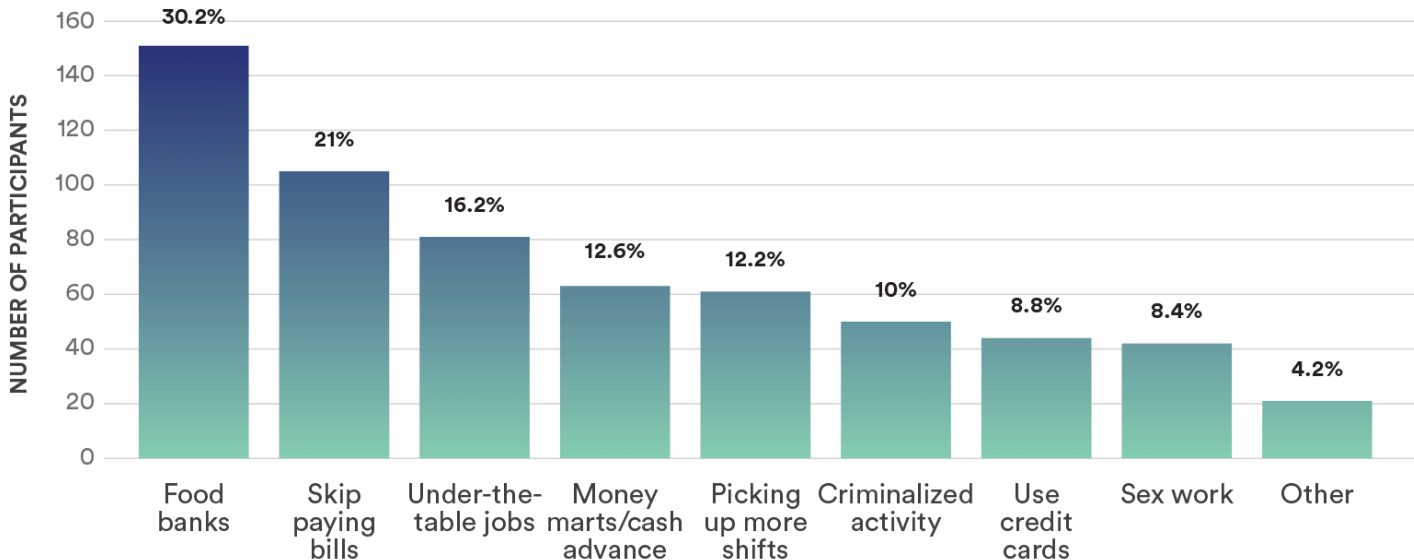
Non-discrimination in resource allocation

Emergency shelter beds by clientele served PiT 2018



Deep Poverty of Women vs. Federal Investments in Affordable Housing

STRATEGIES USED TO AFFORD BASIC NECESSITIES



Participants had an average of \$596.66 left over after paying for their housing each month.

Rental Construction Financing Initiative:

- Represents 40% of NHS funding + aims to produce 14,000 housing units over the life of the program
- Relaxed affordability criteria - 30% of the median total income for families in the area
- 80% of the rental units have no affordability requirements
- Only maintain the affordability of 20% of units for 10 years
- No targets re: women, girls, and gender diverse people

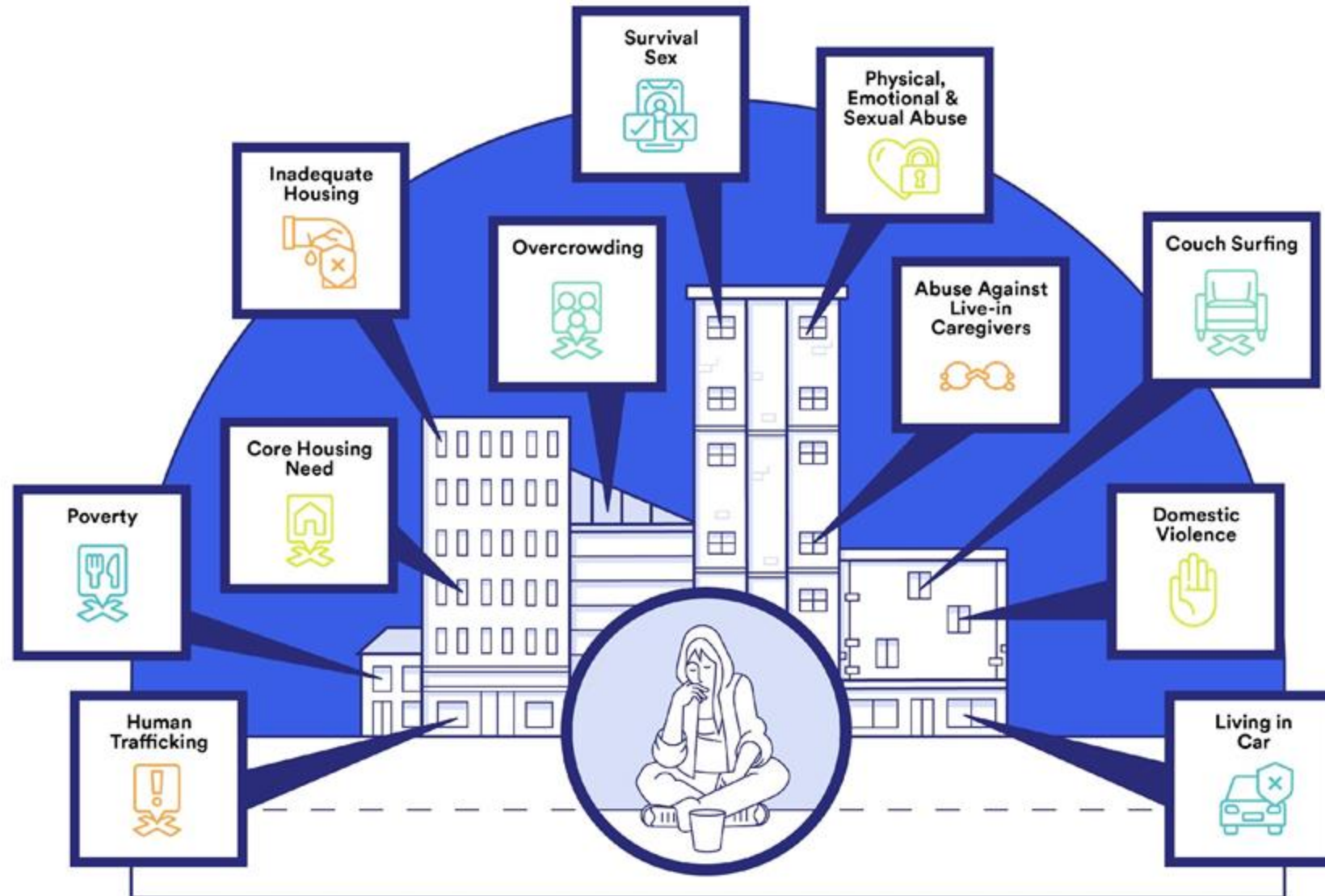
2.

Policy targets, timelines, and indicators that equitably prioritize those most in need

1. **Targets:** NHS specifies **at least 25% of funding should go to housing for women and girls**, but many NHS programs fail to implement this target or monitor allocation (e.g., RCIF, NHCIF)
2. **Definitions:** Definitions of **chronic homelessness** used often **fail to account** for some of the primary ways that women experience housing precarity and homelessness
3. **Indicators:** Measurement tools and data collection methods (e.g., PiT, Street Needs Assessments) typically **undercount women, girls, and gender diverse people**
4. **Timelines:** Limited infrastructure to **track progress towards the progressive realization** of the right to housing for women, girls, and gender diverse people

Hidden Homelessness

Amongst Women, Girls & Gender Diverse People



Some icons made or modified by Smadicons from www.flaticon.com

3.

Ongoing GBA+ analysis of policy design and service delivery

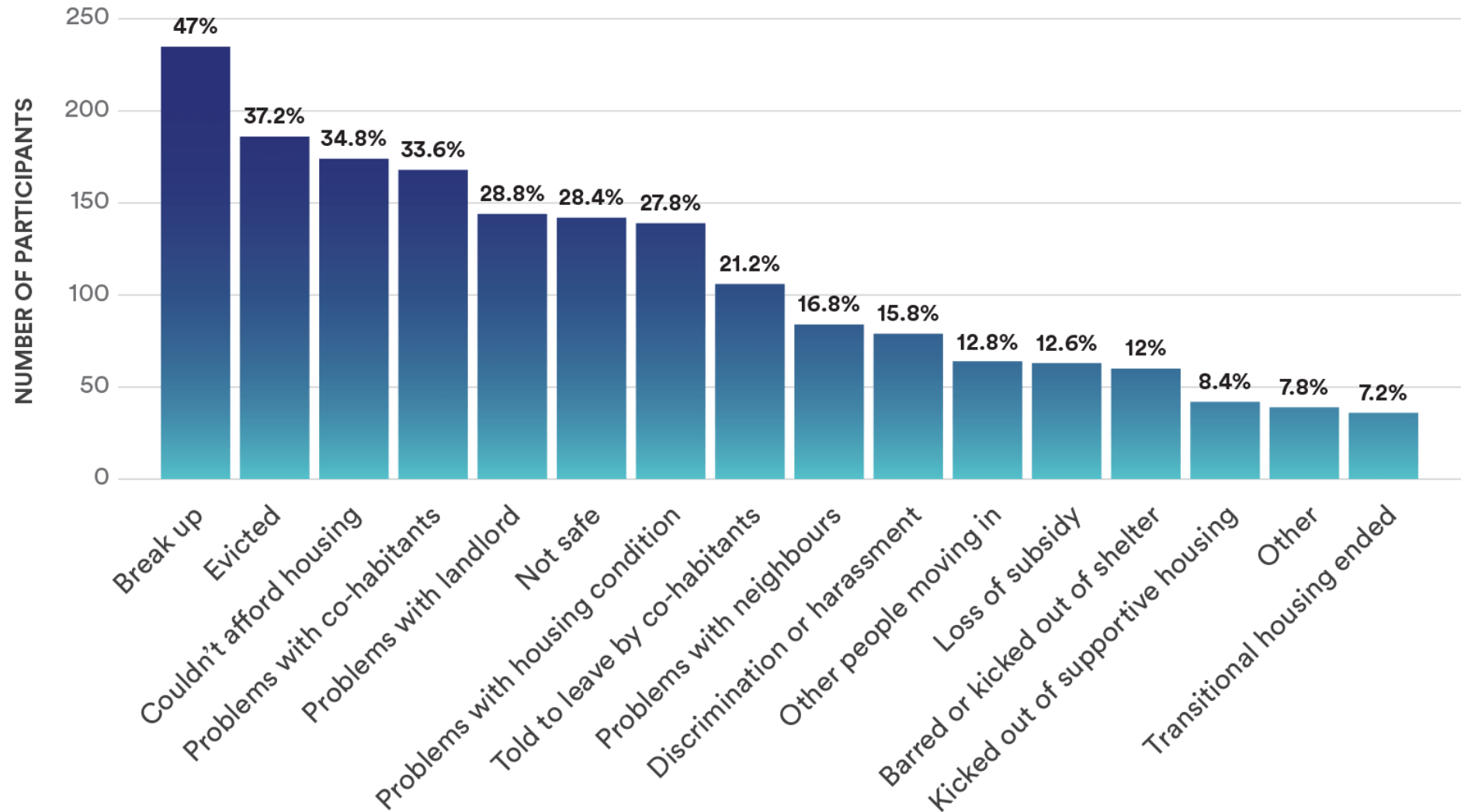
“You have to have your **children ‘living with you’** in order to obtain social housing. But FCS says you have to have adequate housing in order **to get your kids back.**”

“My aggressor was removed from the home but **I lost my housing** as a result and became homeless.”

“They asked me why don’t I go to men’s [shelter]. I was like I did go to men’s before and **I was getting sexually harassed all the time.** I remember one time waking up at [a men’s shelter] and there was like five guys standing around my bed in the dark and they were all naked from the waist down... I never went back.”

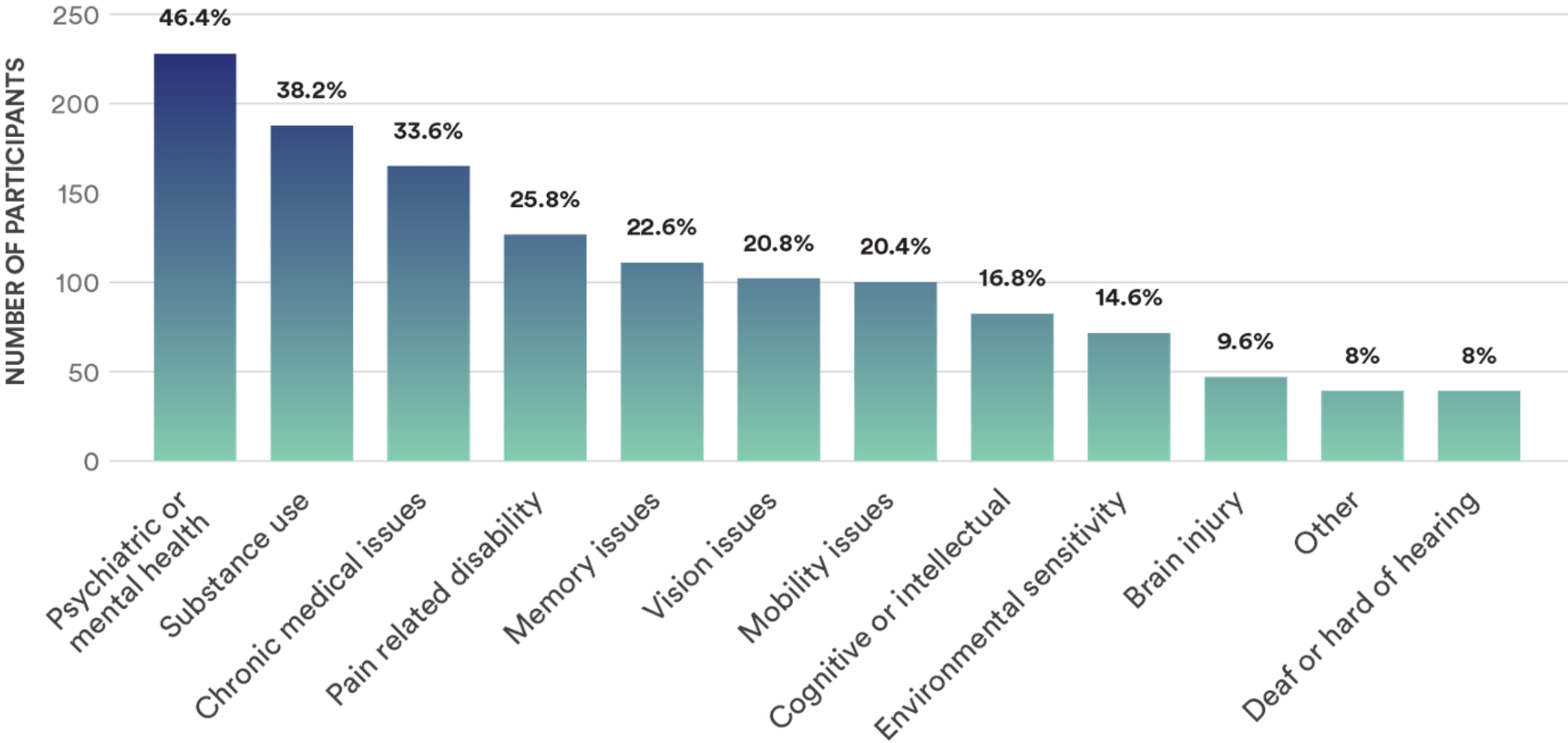
Pan-Canadian Women's Housing & Homelessness Survey (2021)

REASON PARTICIPANTS WERE FORCED TO MOVE OUT



Pan-Canadian Women's Housing & Homelessness Survey (2021)

PARTICIPANT DISABILITIES





What does this all mean?

- Importance of **meaningful engagement** with women and gender diverse people about their unique circumstances + value of engagement that is led by lived experts
- Identify how **seemingly benign policies + practices** can have discriminatory effects on diverse women and gender diverse people
- **Prioritize** those in the most extreme or marginalized circumstances + create tools for assessment and monitoring that are gender-sensitive
- Embed GBA+ **AND** right to housing lens in your work
- Engage in **cross-sectoral cooperation** in order to address the policy fusion issues that contribute to housing inequities
- Ensure **appropriate budgeting and resource allocation** based on "**maximum of available resources**" standard including all appropriate taxation measures.



Key Takeaways

How the NHSA changes the legal paradigm with respect to housing

LEGAL PARADIGM PREVIOUSLY ADVANCED IN COURTS	THE NEW NHSA HUMAN RIGHTS PARADIGM
Housing is an economic benefit that is not provided by law (so access to housing for vulnerable groups is not protected under ss 7 or 15 of the <i>Charter</i>).	The right to housing is now recognized in federal legislation as a fundamental human right linked to dignity and the well-being of the person.
There is no positive obligation on the government to adopt legislation or create or enhance programs to address homelessness.	Governments must utilize “all appropriate means” , including legislation and apply the “maximum of available resources” to realize the right to housing.
Access to justice for fundamental human rights must respect “the limits and differences between the political process and the judicial process in a democracy. ”	The NHSA incorporates rights claiming and adjudication of the right to housing into political processes through a form of “democratic experimentalism.”
Requiring the government to adopt and maintain a national housing strategy to realize the right to housing as required under international human right law “would constitute an impermissible “fetter” on parliamentary sovereignty. ”	The NHSA requires the adoption and maintenance of a national housing strategy and puts in place “robust accountability mechanisms” to give effect to the commitment to the progressive realization of the right to housing under the ICESCR.

LEGAL PARADIGM PREVIOUSLY ADVANCED IN COURTS	THE NEW NHSA HUMAN RIGHTS PARADIGM
To be subject to adjudication, a rights claim must challenge a particular act or omission, not address general conditions in society such as homelessness.	The NHSA provides access to participatory justice to address systemic issues arising from the way society is organized politically, socially and economically.
Remedies to rights claims must be clearly defined and of immediate application.	Remedial measures should be transformational, comprehensive and include ongoing engagement with affected communities.
Reasonableness and proportionality should be assessed in relation to a specific objective not abstract or idealized objectives.	Reasonable policies and programs must be capable of realizing the “long term vision” of the full realization of the right to housing.
The public interest will usually be served by lawyers for the government presenting “the best case for the constitutionality of federal law” to maintain the government’s decision-making authority.	Government decision-makers should engage in constructive dialogue with rights claiming communities, apply international human rights norms as “moral imperatives and legal necessities” and advance the best case to ensure the realization of the right to housing.

LEGAL PARADIGM PREVIOUSLY ADVANCED IN COURTS	THE NEW NHSA HUMAN RIGHTS PARADIGM
<p>Canada did not support access to justice for ESC rights under the OP-ICESCR because deference should be accorded to States' competence to make policy choices and allocate resources and ESC rights are too vague, to be subjected to “quasi-legal assessments”.</p>	<p>Canada has affirmed the importance of access to justice for the right to housing and ensured accountability to international human rights law through non-judicial participatory adjudication and remedy, respecting the competencies of both governments and of rights claiming communities in the development of policy responses to systemic issues.</p>
<p>Commentary from treaty bodies and special rapporteurs is not binding on Canada so Canada is free to disagree with such commentary.</p>	<p>Commentary from human rights bodies provides authoritative clarification of the requirements of the right to housing under international human rights law to which Canada is committed.</p>
<p>While international human right law may be a relevant and persuasive source for interpreting the Charter, it cannot be used to rewrite the text of the constitution to add a right to housing or to require access to housing to ensure rights to life, security of the person or equality.</p>	<p>The Charter should be interpreted consistently with the recognition of the human right to housing and the interdependence of all human rights, ensuring effective remedies to violations of rights to life, security of the person and equality in the housing context, including measures to ensure access to housing where necessary.</p>



Thank you!

LEARN MORE AT:

[HOUSINGRIGHTS.CA](https://housingrights.ca)

[WOMENSHOMELESSNESS.CA](https://womenshomelessness.ca)



WOMEN'S NATIONAL
HOUSING & HOMELESSNESS
NETWORK



THE NATIONAL
RIGHT TO HOUSING
NETWORK