

# Responding to homeless encampments

## Local governments' human rights obligations

Homeless encampments are increasingly common across British Columbia. These encampments are a result of structural conditions, including the failure of all levels of government to uphold the right to adequate housing. They must be understood in the context of historical and ongoing systems of discrimination and colonization.

Human rights are grounded in the dignity inherent in each of us.<sup>1</sup> Too often, encampment residents encounter neither empathy nor empowerment; instead, they face criminalization and dehumanization. In partnership with other levels of government, local authorities must challenge the paradigm that leads to this treatment and centre encampment residents' dignity and human rights in all policy responses.

B.C.'s Human Rights Commissioner endorses the [National Protocol for Homeless Encampments in Canada](#) and firmly supports the understanding that housing is a human right protected under international law that must be recognized in Canadian public policy. Governments at all levels have an obligation to urgently ensure access to adequate housing for residents of encampments and all unhoused people. In their [observational report on B.C.](#), the Federal Housing Advocate consulted with many people who are unhoused or precariously housed, and their direction is clear. Now is the time to take action.

### 1. The right to adequate housing

**Housing is a human right with binding obligations for local governments.**

In 1976, Canada, with the support of the provinces and territories, ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), thereby committing all levels of government—including municipalities—to the progressive realization of the right to adequate housing.<sup>2,3</sup> To progressively realize a right, governments must take steps, to the maximum of available resources, to ensure that a right is fully protected and can be fully exercised.<sup>4</sup>

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- 1 Article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."
  - 2 Article 28 of the International Covenant on Economic, Social and Cultural Rights states: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions."
  - 3 The federal government affirmed its commitment to the right to housing through the *National Housing Strategy Act*. Progressive realization is advanced through requirement to set targets, issue public report and establish independent monitoring. Provincial and local governments are obligated to take similar steps.
  - 4 UN Office of the High Commissioner. (2009) *The Right to Adequate Housing: Fact Sheet No. 21/Rev.1.*, page 7

To be considered adequate, housing must be safe, secure, affordable, accessible, habitable and culturally appropriate. It must come with long-term security of tenure and be in a location that recognizes the resident's needs.<sup>5</sup>

In addition, the ICESCR also includes protections of the right to housing that are immediately binding, including against forced eviction.

## 2. The rights of encampment residents

Encampments do not meet the conditions of adequate housing under human rights law, but they are still home to their residents. This fact creates clear human rights obligations for local governments.

### **Encampment residents have a right to meaningful participation, inclusion and empowerment.**

As affirmed in *Bamberger v. Vancouver*, a case addressing the rights of those sheltered in Vancouver's CRAB Park, local governments have a duty of procedural fairness and "[residents] have a right to notice and a right to be heard, as their rights, privileges, or interests are uniquely affected."<sup>6</sup>

International human rights law similarly guarantees the right to meaningful participation.<sup>7</sup> Residents must be given sufficient notice and sufficient time to consider and respond to local government actions that affect them. Residents also have a right to be heard—for example, they may create their own process to respond to local government and to propose alternatives for those governments to consider in good faith. Where residents' needs and views differ, local governments must be prepared to develop several solutions, each of which must be compliant with law.

The process of building trusting relationships between municipal representatives and encampment residents requires consistency, patience and a recognition that encampment residents have the same right to self-determination as other residents.

### **Local governments are obligated to provide the basic needs of encampment residents until adequate housing is available.**

While there is no question that local governments have human rights obligations towards encampment residents, it is also clear that they cannot do it alone. All levels of government need to be involved in supporting longer-term solutions to homelessness, including through the provision of accessible and adequate housing options.

However, this shared jurisdiction does not lessen the obligations of local authorities. Without local government intervention, the conditions in encampments are likely to violate a range of human rights, including rights to housing, privacy and water and sanitation.

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5 UN Office of the High Commissioner. (2009) The Right to Adequate Housing: Fact Sheet No. 21/Rev.1., page 4

6 *Bamberger v. Vancouver*, 2022 BCSC 49 at paras. 64 and 69.

7 Office of the UN High Commissioner for Human Rights. *Guidelines for the Effective Implementation of the Right to Participate in Public Affairs* (2018), paras. 19-20.

International human rights law requires that local governments work in collaboration with residents to provide the following.<sup>8</sup>

- tents or other structures composed of suitably durable materials
- access to safe and clean drinking water
- access to sufficient and appropriate clothing
- access to warming/cooling areas
- access to hygiene and sanitation facilities, such as toilets, showers and hand-washing stations within the encampment or in close proximity; relying on existing facilities that are open to the public is not appropriate; peer-led hygiene and sanitation facilities have worked well in some contexts.
- resources and support to ensure fire safety
- secure storage for personal belongings
- rodent and pest prevention and waste management systems that remove refuse before it becomes a fire, disease or exposure hazard
- social supports and services in a manner that is equitable to other community residents
- guarantees of the personal safety of residents based on community-developed safety protocols; local governments must recognize that the involvement of police or other state authorities may put residents at increased risk of harm
- access to facilities and resources that support food safety, for example through a food distribution hub or kitchen within an encampment that has access to a generator to power appliances for heating and refrigeration
- resources to support harm reduction

**Local governments must not harass, control or punish people living in encampments.**

People experiencing homelessness are often assumed to be involved in criminal activity. They regularly face the threat or reality of police and bylaw officers taking and destroying their belongings.<sup>9</sup>

When police are needed, community policing approaches should be used. Policing practices must be applied consistently across all communities; encampments should not face disproportionate levels of police involvement or coercion. For example, if a resident is suspected of keeping weapons in their tent, they should be policed in the same way that a suspected resident of an apartment would be policed, which would not include forceable eviction of neighbouring residents.

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8 See pages 25-27 of the [National Protocol](#) for a more robust delineation of many of these requirements. The [Sphere Handbook](#) used by humanitarian aid workers may also be of assistance.

9 For example, see [#StopTheSweeps: Ending Cyclical Displacement & Criminalized Poverty in Vancouver](#), released on May 2, 2022.

### 3. Forced evictions violate human rights

#### Removal of encampments without adequate alternative housing is a form of forced eviction and is a gross violation of human rights.

B.C. courts have held that there is a constitutionally protected right to shelter in public parks, at least during nighttime hours, when there are insufficient shelter spaces available or when those spaces are inappropriate for the residents of the encampment.<sup>10</sup> This applies whether there are not enough beds, or whether the beds available are not truly accessible to those sheltering in parks. The Court has also recognized in some circumstances that “there is a legitimate need for people to shelter and rest during the day and no indoor shelter in which to do so.”<sup>11</sup>

Similarly, under international human rights law, the removal of homes—regardless of the material with which they are constructed—is prohibited without meaningful engagement with the residents to find adequate alternative housing.<sup>12</sup>

In addition, deteriorating health and safety conditions within an encampment should not be used to justify forced eviction when this deterioration could have been avoided through timely, proactive action by a local government. The solution to health and safety concerns in encampments is for governments to provide for residents’ health and safety needs until adequate housing is available. For example, if propane tanks in tents are creating a fire hazard, government can create centralized and supported spaces for cooking.

Forced eviction<sup>13</sup> is isolating and traumatizing for encampment residents and may exacerbate gender-based violence and the risks from a toxic drug supply.<sup>14</sup> Furthermore, unless governments address the underlying causes, encampments will return.

#### In limited cases, eviction may be justified based on other overriding human rights concerns.

There are some circumstances under which evictions can be justified. Displacing people from hazardous areas, for example, may be necessary to protect their lives. In instances where residents must be evicted from encampments, all viable alternatives to eviction must first be considered in consultation with residents. Furthermore, the decampment process must conform to the following requirements of international human rights law.

- Adequate alternative housing must be in place prior to eviction.<sup>15</sup> A shelter bed is not adequate housing; if an individual refuses to accept this option (due, for example, to a lack of security, autonomy or privacy or separation from family or community), government should provide another form of acceptable housing.

10 *Bamberger v. Vancouver*, 2022 BCSC 49 at paras.11-20; *Victoria (City) v. Adams*, 2009 BCCA 563 aff’g 2008 BCSC 1363

11 *Abbotsford (City) v. Shantz*, 2015 BCSC 1909 at para.276

12 UN Special Rapporteur on adequate housing. *Guidelines for Implementation of the right to adequate housing*. 2020 (A/HRC/43/43), para 36

13 Force eviction includes relocating multiple smaller encampments to one site.

14 Papamihali, K., Yoon, M., Graham, B. et al. *Convenience and comfort: reasons reported for using drugs alone among clients of harm reduction sites in British Columbia, Canada*. Harm Reduct J 17, 90 (2020). <https://doi.org/10.1186/s12954-020-00436-6>

15 In addition to international human rights law, BC courts have found that “the suitability of available shelter spaces, in addition to the number of available spaces, is relevant to the constitutional right of sheltering in a public park.” (*Bamberger v. Vancouver*, para 123)

- Residents' private property must not be removed without their knowledge and consent. If relocation is required, residents must have safe, secure, long-term places to store their belongings. After being confiscated, belongings should not be destroyed but rather proactively returned to their owners.
- Relocation must keep families and communities intact if residents express this desire.
- Residents must have access to justice (e.g., due process, access to legal aid.) at all times—not only when eviction is imminent.<sup>16</sup>
- If residents are at heightened risk of or have been subjected to gender-based violence, then supportive and safe housing must be provided. Reports of gender-based violence in camps must be addressed immediately, but survivors should not be forcibly displaced as a result. If survivors must relocate, government should provide tailored supports and safer housing options.

If relocation is truly consistent with the human rights of residents, it will almost always be achievable voluntarily and without the use of force. Police or private security forces should not be involved to force relocation.

### **Encampment responses must uphold the unique rights of Indigenous peoples.**

The legacy of colonialism has left Indigenous people significantly overrepresented among unhoused people in British Columbia. Per the *United Nations Declaration on the Rights of Indigenous Peoples*, local governments must do the following.<sup>17</sup>

- Recognize Indigenous peoples' distinct relationships and rights to their lands and territories. This means that governments must secure free, prior and informed consent before relocating Indigenous peoples from their lands or territories, including encampments on those lands (Art. 10). Local governments must engage with representatives chosen by Indigenous peoples themselves (Art. 19).
- Prioritize the safety of Indigenous women, girls, gender diverse and two-spirit peoples (Art. 22). This means governments must provide protections that address intersecting forms of discrimination including gender-based violence while upholding Indigenous self-determination and self-governance. For example, anti-violence services can be offered within an encampment rather than displacing a community in the name of protecting women.
- Actively involve Indigenous peoples in developing and administering housing programs (Art.23), including ensuring the availability of culturally supportive housing options.

In sum, local governments should take a human rights-based approach with regard to homeless encampments in the province, recognizing that they are a form of housing (an internationally protected human right) and that people in encampments deserve to have their needs met, to be included in decision-making and to be empowered rather than controlled, punished and displaced.

<sup>16</sup> UN Special Rapporteur on adequate housing. *Guidelines for Implementation of the right to adequate housing*. 2020 (A/HRC/43/43).

<sup>17</sup> See pages 29-31 of the [National Protocol](#) for more on the specific requirements under international human rights law.