



Submission to the UN Committee on Economic, Social and Cultural Rights in Connection with the Consideration of the Sixth Periodic Report of Canada

Recommendations on strengthening the capacity of local governments to be effective in delivering on the obligations of the ICESCR

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1.0 About Maytree

Maytree is committed to advancing systemic solutions to poverty and strengthening civic communities. We take a human rights approach to addressing the systems that create poverty, with the ultimate goal of having social and economic rights safeguarded for all people living in Canada.

Maytree's work supports leaders, organizations and civic communities by: developing and sharing knowledge; strengthening learning and leading; and mobilizing action to further social and economic rights.

Maytree has been dedicated to creating solutions to poverty with our many partners since it was founded in 1982. We listen to the voices of communities to understand their most pressing needs and priorities. We work with governments at all levels because they are central players in creating equity and prosperity. We collaborate with civil society organizations, policy advisors, employers, and major institutions to build strong communities.

To have the most impact, Maytree has long focused on finding solutions that change the big systems: government policy and the regulatory environment; corporate policy, particularly regarding employment practices; and the way key institutions like the criminal justice and police systems work.

To achieve change, Maytree has co-founded and supported multiple organizations over the years. The Caledon Institute of Social Policy works at the level of public policy. Its work on income supports for example has had a material effect on the lives of low-income Canadians. Tamarack – An Institute for Community Engagement focuses on collective impact and community collaboration to design and undertake local poverty reduction initiatives. The Institute on Municipal Finance and Governance (IMFG) produces research, commentary and teaching on how cities manage and pay for their services and programs.

In light of the central role and responsibilities of cities and municipal governments in the implementation of Canada's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), Maytree has chosen to focus its submissions for the present review on important issues and recommendations related to the responsibilities of local governments in Canada.

2.0 Status of Cities in Canada

The Constitution Act, 1867 defines federal and provincial responsibilities. Section 92 of the Constitution Act, 1867 grants the Provinces of Canada their basic legislative authority:

In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein after enumerated; that is to say, ...

(8) Municipal Institutions in the Province,

(9) Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

In effect, this means that cities are “creatures of the provinces” and rely on provincial legislatures to enable their capacity to define their mandate and to raise revenues. As noted in Canada’s Core Document: “Canada’s approximately 5,000 municipal governments (cities, towns, villages and metropolitan regions) are created by the provincial or territorial legislatures and have such powers as the legislatures deem required for local governance.”¹ Each province has enacted specific legislation to define the role and responsibilities of municipalities.

The City of Toronto, Canada’s largest city, with a population of 2.6 million, was given its own Act in 1997 when the Province of Ontario amalgamated the old city of Toronto with five adjacent municipalities to form a mega-city thereafter known as the City of Toronto. The City of Toronto Act addressed some of the specifics of the amalgamation. Amendments to the Act in 2006 added new powers and revenue tools for the City, allowing the City to make decisions on matters where there was no clear provincial interest.

Municipalities in Canada are mandated by their provincial governments to provide a number of programs and services: environmental services (water, sewers and solid waste collection); roads and streets; planning; policing (except territories and not all municipalities in every province); and fire protection (not all municipalities). They also provide a set of non-mandated services which build strong communities: libraries, parks, community centres, and recreation services.

Some provinces have downloaded additional social programs and public services to the municipal level of government. In Ontario, municipalities were given key responsibility for the administration and funding of many additional programs that are central to the implementation of Covenant rights, including social assistance, social services, non-profit housing, shelters, homelessness programs, public health, emergency food provision, long-term healthcare, childcare, child protection agencies, ambulances, and transportation. This massive downloading of responsibilities onto municipalities during the 1990s occurred without an equivalent transfer of funding or matching fiscal supports.

¹ Canada Core Document (2013) HRI/CORE/CAN/2013 at para 83.

3.0 Responsibilities of Cities under the ICESCR

Article 28 of the ICESCR establishes that the provisions of the Covenant “shall extend to all parts of federal States without any limitations or exceptions.” As noted by the UN Human Rights Committee, “All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level — national, regional or local — are in a position to engage the responsibility of the State Party.”² This Committee has similarly recognized that “Violations of the rights contained in the Covenant can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels.”³

The Human Rights Council, in its *Progress report of the Advisory Committee on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services (A/HRC/27/59)* states that “Local authorities are obliged to comply, within their local competences, with their duties stemming from the international human rights obligations of the State. Representatives of local authorities should be involved in the drafting of national human rights strategies and policies. Local authorities are actually those who are to translate such policies into practical application.” It further states that “The principle of shared responsibility of different tiers of government for the protection and promotion of human rights has been on several occasions underlined by the human rights treaty bodies and special procedures.”

In the case of Canada, rights and obligations under the Canadian Charter of Rights and Freedoms apply to all levels of government. As has been recognized by the Committee on Economic, Social and Cultural Rights (CESCR), these rights and obligations must be interpreted consistently with the ICESCR. The CESCR also mentioned that economic, social and cultural (ESC) rights should be taken as legal obligations under the Covenant and not as “principles and objectives.” In 1993 it also included two recommendations (paragraphs 25 and 30) regarding the incorporation of ESC rights in legislation and encouraging Canadian courts to keep adopting a broad and purposive approach in the interpretation of the Charter of Rights and Freedoms and on human rights legislation to provide remedies against violations of ESC rights.

As the CESCR has noted in General Comment 9, “...the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.”

2 Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, para. 4.

3 CESCR, General Comment 16 (E/C.12/2005/4) at para 42.

In 2006 the CESCR expressed concern about the recommendations not implemented from the preceding observations from 1993 and 1998, which were included in paragraphs 11.a and b regarding lack of legislation and policies, and also of legal redress instruments. The recommendations number 35, 36, 39, 40, 41, 44 and 52 of the observations referred to concerns regarding weaknesses in legislation, legal obligations at subnational levels, court obligations, domestic remedies, the commitment to employ the maximum available resources for the implementation of ICESCR, the transfer of federal resources to provinces and territories and fulfillment of General Comment 9.

Some of these recommendations were also included in the ESCR Committee observations of 1998 (paragraphs 50, 51 and 52), like the recommendation to adopt positions in litigation at federal, provincial and territory level in accordance with the ESCR Covenant, to pass legislation at the same levels to protect ESC rights and to create a Human Rights tribunal.

In past reviews of Canada, the CESCR has emphasized the need for action to ensure that provinces and territories are made aware of their obligations under the Covenant, that provinces and territories receive adequate transfer payments to meet their responsibilities and that measures are adopted to ensure that Covenant rights are subject to effective remedies under provincial and territorial legislation. These concerns and recommendations remain pressing and important. Of equal importance, however, is that where municipal governments have been accorded responsibility for the implementation of Covenant rights, measures are adopted to ensure that Covenant rights are fully protected in municipal law and policy and that municipal governments have the fiscal capacity to fulfill their obligations under the Covenant.

The systemic pattern in Canada has been that responsibilities for the implementation of Covenant rights have often been transferred to the municipal level of government without any reference to or accountability mechanism for compliance with Covenant obligations.

As noted below, there are a number of ways in which local governments can be made more accountable to Covenant rights and that access to effective remedies can be ensured at the local level, where decisions impacting the enjoyment of Covenant rights are often made.

4.0 Maximum Available Resources and Fiscal Capacity of Municipalities

In Canada, the jurisdictions with the greatest fiscal capacity are the federal and provincial governments. They are the only levels of government with the ability to levy the biggest and most productive taxes: income and sales taxes. Because of its broad geographic reach, the federal government's fiscal capacity is the most resilient: when oil is expensive and manufacturing struggling, the robust tax revenues from one region offset the weak revenues from another. Larger provinces with diverse economies, like Ontario, are more resilient than smaller ones.

Municipal governments have relatively weak fiscal capacity. They are generally barred from levying income and sales taxes, and have a high reliance on property tax. Other sources of municipal revenue include various fees and charges (e.g., transit, water and recreation), charges on new developments, and grants from other levels of government. They are only permitted to borrow for capital projects.

In a growing city like Toronto, where development charges provide strong revenue, property taxes account for only about 40% of revenue, whereas in Montreal they account for 70%. While the property tax has its virtues, it does not grow with the economy like income and sales taxes, and as a result municipal revenues have grown at a very slow pace in recent decades. Consequently, for any major expenditure for things like affordable housing or public transit, municipalities have to go to another level of government for significant financial support, with all of the political and timing issues that entails.

It is critical that provinces and territories address the fiscal shortfall created by the downloading of key responsibilities to municipalities without an equivalent transfer of fiscal resources. Some progress has recently been made in this regard. In 2010, the province of Ontario began an eight-year process of uploading some of the costs associated with public transit and social assistance back to the provincial level of government. However, while these changes provide some much needed uploading of administrative costs and revenue transfers, they have not addressed the significant unmet needs in social services, housing and other areas.

It is also important to note that in many cases, the programs that are administered by municipalities remain subject to provincial legislation and regulation which itself is incompatible with Covenant rights. As demonstrated in other civil society submissions to the Committee, such as Canada Without Poverty's, social assistance rates in Ontario and in other provinces do not cover the costs of housing, food and other necessities in Toronto or many other municipalities. There is presently no mechanism for municipalities to hold the province responsible to Covenant rights in the design and regulation of programs for which they are responsible for administering, even though it is municipal governments which have the most direct experience of provincial program inadequacies and have responsibility for addressing problems such as homelessness and hunger which result from them.

In addition to enhancing provincial/territorial responsibility for providing adequate funding to municipalities, there are also measures that can be taken to enhance ability of municipalities to

generate revenue. Because the provinces control the municipalities, they could decide to arm them with better revenue tools, like a municipal income or sales tax. They could also give municipalities the power to levy a much broader range of excise taxes, and they could allow cities to set the level of the taxes. Taxation, after all, is a central function of government, and it is desirable to have the government which is going to spend the tax revenue assume the responsibility for raising it, with all of the political and democratic onus implied.

Canada has an excellent tax collection system, with solid agreements between the federal government and the provinces to share collection mechanisms. Extending the use of existing mechanisms to municipalities, with enhanced accountability mechanisms to ensure Covenant rights, could significantly enhance the implementation of Covenant rights at the municipal level.

Subsidiarity will only be a positive feature if municipalities have the necessary resources and administrative capacity to perform the functions accorded them, if they are cognizant of human rights, accountable and responsive to stakeholders, and if meaningful participatory mechanisms are in place.

The Need for Rights-Based Budgeting at the Municipal Level

Important decisions about revenue sources as well as expenditure which impact on the implementation of Covenant rights are made by municipalities in Canada with little or no reference to Covenant obligations. The City of Toronto provides an example of this.

Most expert commentary shows that Toronto is failing to take advantage of its revenue opportunities.⁴ Its residential property tax levels are well below those of surrounding municipalities. Analysis of “revenue hills,” the slope which calculates when tax levels get so high that they change behaviour sufficiently to reduce revenue, show Toronto a long way from reaching that point.⁵

The “Stronger City of Toronto for a Stronger Ontario Act, 2005” permitted the Toronto government to enter into agreements with other governments, and increased the scope for the city government to raise revenue. The city implemented the Municipal Land Transfer Tax that is applied to purchases on all properties in the City of Toronto in addition to the Province’s Land Transfer Tax, and a Vehicle Registration Tax. Additional tools made available to the City of Toronto through this Act included excise taxes, for example on alcohol.

4 Côté, André and Enid Slack, “Perspectives No. 7 Pre-Election series paper, Is Toronto Fiscally Healthy? A Check-up on the City’s Finances” 2014.

5 Almos Tassonyi, Richard M. Bird, and Enid Slack, “Can GTA Municipalities Raise Property Taxes? An Analysis of Tax Competition and Revenue Hills” 2015.

The Land Transfer Tax remains in place and in 2014 it provided \$432 million dollars in annual revenue toward an operating budget of \$11 billion. City Council rescinded the Vehicle Registration Tax in 2011, forgoing much needed revenue.

While questions need to be asked of other orders of government about the adequate transfer of resources and provision of revenue instruments, cities such as Toronto need to show the willingness to use the revenue tools available.

As is likely the case in many cities, the challenge for the City of Toronto is that technical taxation calculations and opportunities are not the same as the political calculations that inform decision making on budgets, which is that re-election might be jeopardized by voting for a tax increase, even if that increase is to protect the most vulnerable members of the community.

As long as ESC rights are not part of the budget planning process and no reference is made to these rights or accountability assigned (whether within the City of Toronto planning or as part of the funding transfer), people living in vulnerable conditions will not see their issues addressed or their rights protected.

5.0 Cities Working on Poverty in Canada

Some efforts towards the fulfillment of ESC rights by cities have been developed in Canada, despite the limitations and difficulties for Canadian municipalities explained above. However, these good practices are not generally representative of the country.

For this report, we looked at the efforts of six cities: Calgary, Edmonton, Halifax, Montreal, Toronto and Vancouver. For a more in-depth overview of the social policy activity in these cities, please refer to the Caledon Institute's municipal monitor (www.canadasocialreport.ca/Policy/Municipal/2016-01.pdf), last updated in January 2016.

It is important to remember that these six cities do not represent the norm or a pattern — not only because of the small number but also because it is hard to find examples of municipalities in Canada that have specific action plans or documented strategies for protecting ESC rights. There is still a large scope for further research as other cities and rural municipalities might have already undertaken efforts in this regard.

Of the six cities surveyed, all have different action plans and strategies addressing issues related to the ICESCR like social assistance, food security, housing and homelessness, among others. Most of them have clear objectives and timelines defined and a realistic perspective of the situation in their municipalities from previous and diverse data collection and analysis tools.

Most also employ a participatory approach involving civil society and different branches of the municipality in the design, implementation, monitoring and evaluation of the strategies. As well, these cities try to be as effective as possible in addressing each issue with a special focus on ensuring the inclusion of populations in vulnerable situations like women, indigenous persons, children, persons with disabilities and low-income persons.

While all plans and strategies are valuable efforts, only two cities, Montreal and Edmonton, use the language of a human rights framework for their strategies. The rest do not refer to food security, housing or a decent standard of living, for example, as human rights. Neither do they mention the international and national human rights instruments nor base their strategies on them. Specific mechanisms recommended by the ICESCR for rights-based accountability, such as independent monitoring and accountability, a complaints mechanism and access to effective remedies through which governments can be held accountable are generally absent from these strategies.

Montreal

Montreal has subscribed to the United Cities and Local Governments' "Global Charter - Agenda for Human Rights in the City" and has developed a Montreal Charter of Rights and Responsibilities based on the international and human rights instruments. The city has an ombudsman who can receive complaints from citizens who feel their human rights have been violated by the local government and a mediation procedure to solve those.

Montreal has defined different action plans and strategies in order to ensure the fulfillment of ESC rights for its citizens, using a participatory multi-stakeholder approach, with clear objectives and focusing on populations in vulnerable situations. It has a clear perspective on the situation of the city and its needs, and the action plans are focused on ensuring the access of deprived populations to food security, economic development, social and cultural inclusion and housing.⁶ These action plans and strategies also include a multi-stakeholder participatory approach for their evaluation.

Edmonton

Edmonton has developed action plans and strategies based on the rights of its citizens as recognized by national and international instruments. Even though it does not have an ombudsman for attending complaints or a human rights remedies procedure, the language of the documents frames economic and social development as rights. The strategies have clear indicators and timelines, analyze root causes, and give particular attention to vulnerable populations including low-income families, Aboriginal persons, persons with disabilities and children. The city also invites citizen engagement and has developed instruments to facilitate this.

⁶ See *The Social Economy Partnership for Community Based Sustainable Development, The Strategy for the Inclusion of Affordable Housing in New Residential Projects, The Action Plan to Combat Unsanitary Housing, Plan de fidélisation des familles 2014-2017* and *Plan d'action montrealais en itinérance 2014-2017*.

The strategies include: the *End Poverty in a Generation Strategy*; the *10 Year End Poverty Edmonton Roadmap* that is due in spring 2016; *Edmonton's Food and Urban Agricultural Strategy*; the *Food Council 2016 Work Plan*; the *Leisure Access Program* for low-income earners; *Cornerstone II: 2012-2016*, which is the second five-year plan for affordable housing; the *First Place Program* for affordable housing for first time home buyers; and *A Place to Call Home: 10 Year Plan to End Homelessness*.

In its just released *End Poverty in a Generation Strategy*, the city emphasizes the importance of human rights: “We must affirm the basic human rights and freedoms of all Edmontonians to participate in the civil, cultural, political, social and economic dimensions of society.” It calls for Edmonton to become a “human rights city”: “By ensuring human rights are upheld in Edmonton, we will make certain that all citizens of every colour, ethnicity, sexual orientation and religious background have equal access to the resources and opportunities they need to reach their full potential and participate equally within in the community.”

While the success of the strategies in Montreal and Edmonton remain to be seen, these examples provide a foundation from which other cities in Canada can learn. As cities in Canada move forward in developing and implementing anti-poverty strategies, it is an opportune moment to strengthen this work by framing strategies with the language, goals and elements of a human rights approach. Municipal poverty reduction and/or housing strategies should be embedded with elements of independent monitoring and enforcement, complaints procedures, timelines and goals, strategies to enable civic engagement, and explicit reference to human rights.

Furthermore, at this moment in Canada, there is renewed commitment on the part of the federal government to invest in the necessary physical infrastructure of cities and other communities. As large transit and housing investments begin to unfold, it is an opportunity to include in funding agreements provisions that further the implementation and protection of social and economic rights of the most vulnerable populations. The employment of a rights lens on these investments might change the calculation from what current government budgets can afford to what investment is needed to fulfill the rights of people living in Canada.

6.0 Recommendations

A human rights approach to local governments recognizes that local governments are at a critical point of intersection between rights holders and complex systems of multilevel governance that makes them central actors in the realization of social and economic rights within diverse systems.⁷

⁷ 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, Leilani Farha. December 2014. Paragraph 72.

In order to strengthen the capacity of local governments to be effective in delivering on the obligations of the ICESCR, the following recommendations are submitted to the Committee:

6.1 ICESCR reflected in public policy, budgets and strategies

Federal, provincial and municipal policies, including budgets and poverty eradication strategies, should be based on the Covenant and other relevant human rights instruments and approaches. In addition to adequate budgets, considerations going forward should include the use and application of all resources. For example, in housing, the disposition of available land or property as an asset is an important resource, and decisions about whether it goes to real estate development or provision of adequate housing should be informed by ICESCR obligations.

6.2 Effective transfer of funding and capacity

Canada should ensure that provinces and municipalities have adequate financial and other resources for the discharge of their responsibilities, with capacity to respond to needs at the local level, particularly of marginalized and disadvantaged groups. Capacity includes sufficient knowledge regarding human rights, clarity and alignment of responsibilities between jurisdictions, and safeguards against protectionism and discrimination.

6.3 Enabling legislation

In order to harness the maximum available resources at the local level, provincial governments in Canada should review existing municipal Acts and implement enabling legislation to strengthen the capacity of local governments to generate revenue, particularly large revenue instruments like sales and income taxes.

6.4 City Charters of Rights

Canada should encourage cities and municipalities to adopt charters with explicit guarantees of Covenant rights. Municipal charters of rights could incorporate communication and monitoring mechanisms through which local challenges can be identified and addressed within a human rights framework.

Cities and municipalities in Canada can and should be key stakeholders and participants in delivering on the state obligations of the ICESCR. To be effective, they must be guided by clear legislative direction, policy tools, and revenue capacity that recognize and are accountable to economic, social and cultural human rights.

Maytree is committed to being a partner with civil society and all orders of government in Canada to work toward achieving this goal.



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