



Recommendations for Embedding Economic and Social Rights in Canadian Public Policy: A Focus on Housing and Income Security

Submission to the United Nations Human Rights Council on the Occasion of the Fourth Universal Periodic Review of Canada

Submitted by: Maytree
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About Maytree

Founded in 1982, Maytree is a charitable organization committed to advancing systemic solutions to poverty and strengthening civic communities. We believe the most enduring way to fix the systems that create poverty is to ensure that economic and social rights are respected, protected, and fulfilled for all people living in Canada.

We support non-profit organizations and people they work with by developing and sharing knowledge, strengthening leadership capacity, and mobilizing action. We also collaborate with governments at all levels, civil society organizations, employers, and major institutions to build strong and vital communities. In addition, Maytree develops its own policy analysis and recommendations in critical economic and social rights areas—namely, in efforts to strengthen housing and income security.

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Maytree
77 Bloor Street West, Suite 1600
Toronto, ON, M5S 1M2 CANADA
+1-416-944-2627
Email: info@maytree.com Website: www.maytree.com

1.0 Overview

In previous Universal Periodic Reviews (UPR), concerns were raised about the challenges of Canada's federalist structure and the need for measures to ensure the implementation of human rights by all orders of government. If the progressive realization of economic and social rights is to be the "north star" of Canadian social policy, it cannot be contingent on the actions of one government alone. Legislation, policy, and programmatic coherence is required across all governments in Canada to ensure that the maximum available resources used by one government are complemented by others.

It is in this spirit that Maytree is focusing its submission on developments related to recommendations from Canada's third UPR and on strengthening the implementation of social and economic rights, concentrating on housing and income security. Our submission emphasizes that Canada's commitments under international human rights law apply to all orders of government, and that implementation relies on legislation at each level.¹

2.0 Implementation of the Right to Adequate Housing

2.1 Supported Recommendations from the Third UPR on the Right to Adequate Housing

During the third UPR, Canada made a voluntary commitment (145.4) "to continue to take legislative and other steps to progressively realize the right to adequate housing as part of an adequate standard of living for its citizens."

Canada also:

- agreed to support recommendation 142.149 to "ensure the justiciability of economic, social and cultural rights" (South Africa);
- accepted in part recommendation 142.162 to "take urgent steps to address homelessness and adopt legislation that fully recognizes the right to housing and provide for effective remedies for violations for the right" (Philippines); and
- accepted recommendation 142.166 to "adopt the National Housing Strategy as soon as possible, taking into account the principles and recommendations included in the most recent report of the Special Rapporteur on adequate housing." (Uruguay).

2.2 *The National Housing Strategy Act (2019): New Federal Legislation to Implement Commitments and Supported Recommendations in the Third UPR*

¹ Dragicevic, Nevena and Bruce Porter. (2020). "Human Rights Cities: The Power and Potential of Local Government to Advance Social and Economic Rights." *Maytree*. Accessed at: https://maytree.com/wp-content/uploads/Human_Rights_Cities.pdf.

² Government of Canada, *National Housing Strategy Act*. (2019). Accessed at: <https://laws-lois.justice.gc.ca/eng/acts/n-11.2/index.html#hist>.

In 2019, the federal government passed the *National Housing Strategy Act* (NHSA).² The NHSA recognizes the right to adequate housing as a fundamental human right essential to the inherent dignity and well-being of the person. It commits the federal government to the progressive realization of this right as recognized under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

To fulfill this obligation, the NHSA requires Canada to develop and maintain a national housing strategy. This strategy must establish goals related to housing and homelessness, focus on improving outcomes for persons in greatest need, and provide processes for engagements, such as for people with lived experience of homelessness.

The NHSA also:

- Establishes a National Housing Council, including members with lived experience of housing precarity and expertise in human rights. The Council will advise the Minister of Housing, Diversity, and Inclusion (the Minister) and may be required to establish review panels on systemic housing issues.
- Requires the appointment of an independent Federal Housing Advocate. The Advocate must monitor progress made against the National Housing Strategy; analyze systemic housing issues; and provide advice to the Minister.
- Establishes accountability requirements for the Minister in which they must respond to reports received by the Advocate.

While Maytree welcomes these developments, serious concerns have emerged with respect to Canada's compliance with the NHSA, which should be raised in the UPR.

2.3 Failure of the Federal Government to Comply with the NHSA

The federal government has not made significant progress in meeting many of the NHSA's fundamental requirements. That is, it has not updated the National Housing Strategy to comply with the NHSA, has not established clear timelines for the reduction and elimination of homelessness, has not ensured that programs focus on persons in greatest need, nor has it applied the maximum available resources to housing. It has also failed to develop processes to engage stakeholders or provide effective remedies to systemic housing issues. All of these measures are required by the NHSA.

For example, in the 2020 Speech from the Throne, the federal government committed to eliminate chronic homelessness but has not provided a date or timelines to meet this

² Government of Canada, *National Housing Strategy Act*. (2019). Accessed at: <https://laws-lois.justice.gc.ca/eng/acts/n-11.2/index.html#hist>.

commitment.³ Moreover, the Auditor General of Canada found that the government has failed to monitor progress in achieving this goal.⁴ In fact, research has shown that homelessness has been on the rise, resulting in more encampments across the country.⁵

Moreover, the Federal Housing Advocate has identified significant concerns about how the National Housing Strategy has not yet been aligned with the goals of the NHSA, including that programs are not targeted to people in greatest need.⁶ For example, while the federal government has committed to reduce the number of families in housing need, many programs have not been redesigned to fulfill this pursuit.

This is evidenced by recent Statistics Canada estimates of people living in core housing need, a Canada-specific indicator of households that live in unaffordable, inadequate, or unsuitable housing. According to Statistics Canada, 10.1 per cent of Canadian households lived in core housing need in 2021.⁷ The data further showed that:

- Single and single parent households were the most likely of all family types to experience core housing need;⁸ and
- Indigenous Peoples were almost twice as likely to live in crowded housing and three times as likely to live in inadequate housing compared to the non-Indigenous population.⁹

Although the core housing rate need declined in 2021 compared to 2016, Statistics Canada has stated that this is not likely from federal National Housing Strategy programs but mainly due to temporary support to offset the impacts of COVID-19, which increased many people's incomes.

These trends indicate that while the federal government has made significant progress to advance the right to adequate housing in legislation, this commitment has not translated into

³ Governor General, Canada. (2020). "A Stronger and More Resilient Canada: Speech from the Throne to Open the Second Session of the Forty-Third Parliament of Canada, September 23, 2020." Accessed at: <https://www.canada.ca/en/privy-council/campaigns/speech-throne/2020/stronger-resilient-canada.html>.

⁴ Report of the Auditor General of Canada to the Parliament of Canada. (2022). "Chronic Homelessness." *Office of the Auditor General of Canada*. Accessed at: https://www.oag-bvg.gc.ca/internet/docs/parl_oag_202211_05_e.pdf.

⁵ Office of the Federal Housing Advocate. (2022). "Homeless Encampments in Canada: A Human Rights Crisis." Accessed at: <https://www.housingchrc.ca/en/homeless-encampments-in-canada-a-human-rights-crisis>.

⁶ Office of the Federal Housing Advocate. (2023). "Budget 2023 Fails to Address Canada's Housing Emergency." Accessed at: <https://www.housingchrc.ca/en/budget-2023-fails-to-address-canadas-housing-emergency>.

⁷ Statistics Canada. (2022). "To buy or to rent: The housing market continues to be reshaped by several factors as Canadians search for an affordable place to call home." Accessed at: <https://www150.statcan.gc.ca/n1/en/daily-quotidien/220921/dq220921b-eng.pdf?st=BKamDVXv>.

⁸ Ibid.

⁹ Statistics Canada. (2022). "Housing Conditions Among First Nations People, Métis and Inuit in Canada from the 2021 Census." Accessed at: <https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-X/2021007/98-200-X2021007-eng.cfm>.

policies that help people realize this right.

2.4 Implementation of the Right to Housing by Subnational Governments

At the provincial-territorial level, governments hold regulatory power over land use planning, zoning, building codes, and annual rent increases. Like the federal government, they may also use their fiscal capacity to provide investments for the development and maintenance of community housing, tax relief, and incentives to generate affordable housing and rent supports.

Some provincial and territorial governments, however, are using these powers to undermine efforts in achieving the right to adequate housing. For example, in Ontario, rent control only applies to buildings owned or occupied before 2018—meaning that tenants in newer buildings may be subject to annual rent increases that are higher than inflation. Moreover, there is no limit on the amount that can be charged between tenancies, creating inequities between long-term and new tenants.

Provincial-territorial governments also have human rights laws that could be used to strengthen the right to adequate housing. These laws typically take the form of human rights codes that focus on areas of provincial-territorial jurisdiction, including access to services, employment, and housing.¹⁰ However, at present, many of them fail to adequately protect economic and social rights, including the right to adequate housing.

To reflect the idea that human rights can only be enjoyed when they are kept whole, recognizing that they are interdependent and indivisible,¹¹ provincial and territorial protections for equality should be interpreted to be contingent on realizing the right to adequate housing. In addition, provinces and territories should explicitly implement the right to housing and other economic and social rights through legislation.

Local governments, on the other hand, are primarily responsible for implementing housing policy. That is, they enact bylaws related to zoning, development charges, and licensing; administer housing programs; and, in some cases, raise revenue for affordable housing

¹⁰ Canadian Human Rights Commission. (2021). "Human Rights in Canada." Accessed at: <https://www.chrc-ccdp.gc.ca/en/about-human-rights/human-rights-canada>.

¹¹ Arbour, Louise. (2005). "Keynote address by Louise Arbour, United Nations High Commissioner for Human Rights to the International Conference Organized by the World Organisation against Torture." Accessed at: <https://www.ohchr.org/en/statements/2009/10/keynote-address-louise-arbour-united-nations-high-commissioner-human-rights>.

programs, including homelessness services.¹²

As such, municipal governments also share responsibility for realizing the right to adequate housing. But, as “creatures of the provinces,” they must rely on provincial legislation to define their powers and capacity to develop policies that support economic and social rights.¹³

For example, municipalities’ efforts to advance the right to housing are often weakened by the actions of other orders of government, such as by weak rent controls. Furthermore, they do not have the fiscal powers needed to generate revenue (e.g., through sales taxes), nor the public or political support to raise revenues using existing mechanisms (e.g., through property taxes). These revenue tools are inadequate, and do not raise the level necessary to protect, maintain, and develop affordable housing. This effectively “handcuffs” the ability of local governments to generate the maximum resources needed to realize housing as a human right.

There are, however, ways in which municipalities can support the right to adequate housing. For example, in 2019, the City of Toronto updated its Housing Charter to recognize that adequate housing is a fundamental human right and that all orders of government, including municipalities, have a role to play in furthering the progressive realization of this right.¹⁴ In March 2023, Toronto’s City Council also approved the creation of a dedicated unit within the Ombudsman’s office, reporting to a new Deputy Ombudsman, that will focus on investigations and reports related to systemic housing discrimination and hurdles in the City’s housing planning and services.¹⁵

Taken together, all governments in Canada share responsibility over the protection and advancement of the right to adequate housing. As such, it is critically important that Canada develop improved mechanisms to implement this right across all orders of government, as well as provincial-territorial legislation and municipal instruments to ensure accountability.

2.5 Recommendations to Further the Right to Adequate Housing

¹² Dragicevic, Nevena. (2023). “Building Together: Improving Collaboration to Deliver More Affordable Housing.” *CSA Public Policy Group*. Accessed at: https://www.csagroup.org/wp-content/uploads/CSA-AffordableHousing-PolicyReport-EN_Accessible.pdf.

¹³ Mclsaac, Elizabeth and Alan Broadbent. (2016). “Recommendations on Strengthening the Capacity of Local Governments to be Effective in Delivering on the Obligations of the ICESCR.” *Maytree Submission to the UN Committee on Economic, Social and Cultural Rights in Connection to the Sixth Periodic Report of Canada*. Accessed at: https://maytree.com/wp-content/uploads/Maytree_Submission_Geneva.pdf.

¹⁴ City of Toronto. (2020). “Toronto Housing Charter – Opportunity for All.” Accessed at: <https://www.toronto.ca/wp-content/uploads/2022/02/948f-Toronto-Housing-Charter-2020.pdf>.

¹⁵ City of Toronto. (2023). “DM5.2 - Review and Consideration for a Housing Commissioner Role or Function at Ombudsman Toronto.” *City Council Consideration on March 29, 2023*. Accessed at: <https://secure.toronto.ca/council/agenda-item.do?item=2023.DM5.2>.

- I. The federal government should fully implement its commitment to progressively realize the right to adequate housing under the NHSA and align its National Housing Strategy with the requirements set out in the NHSA.
- II. Federal agreements with provinces and territories under the National Housing Strategy should require compliance with the NHSA.
- III. Canada should encourage provinces and territories to adopt legislation similar to the NHSA to ensure the coordinated implementation of the right to adequate housing.
- IV. Canada should also encourage all municipalities to recognize the right to adequate housing as it applies to areas of municipal responsibility.

3.0 Key Issues in Income Security and the Right to an Adequate Standard of Living

3.1 Supported Recommendations from the Third UPR on Income Security

At the third UPR, several Member States recommended that Canada improve its income security policies in line with a human rights-based approach. Recommendations supported by Canada include:

- **142.138** Continuing to support the social assistance programme and improve individual and family income (Libya);
- **142.156** Continuing to take all measures necessary to combat poverty more effectively while paying particular attention to groups and individuals that are more vulnerable to poverty, such as Indigenous Peoples, persons with disabilities, single mothers and minority groups (Serbia); and
- **142.159** Continuing efforts to holistically address poverty and homelessness, taking into consideration the needs of the most vulnerable communities, in particular Indigenous communities (Sri Lanka).

3.2 Implementation Issues in Income Security Policy

In 2019, about 3.7 million people, or 10.1 per cent of the population, lived below Canada's Official Poverty Line—the Market Basket Measure (MBM).

Single, working-age adults are particularly more likely to experience poverty compared to other families. For example, of the 1.8 million people in deep poverty in 2019 (i.e., people with incomes below 75 per cent of the MBM), half were working-age single adults without children. In addition, over one million working-age adults with disabilities lived below the MBM.¹⁶ Furthermore, some people may experience poverty and systemic marginalization given their

¹⁶ Laidley, Jennefer and Mohy Tabbara. (2022). "Welfare in Canada, 2021." *Maytree*. Accessed at: <https://maytree.com/welfare-in-canada/>.

intersecting identities, including people with disabilities, newcomers, and Indigenous Peoples.¹⁷

This situation is made worse by inadequate income support provided through provincial-territorial welfare programs. Maytree's annual Welfare in Canada report shows that unattached single adults receiving social assistance face extremely deep rates of poverty across Canada, particularly among people living in Prince Edward Island, Quebec, British Columbia, and Saskatchewan.¹⁸

Therefore, despite many income support policies and programs, some people in Canada continue to be behind. In addition, legislation to embed human rights principles in these policies is wanting.

3.3 Division of Policy Responsibility Over Income Security

Responsibility for the funding, development, and administration of income security programs is shared among all governments in Canada.

The federal government primarily designs and administers income support programs for seniors and families with children. Over time, this focus has led to retirement income security programs, as well as non-taxable financial assistance to low- and moderate-income families with children, such as the Canada Child Benefit. The federal government is also responsible for stewarding the development, implementation, and financing for programs like the Canada Pension Plan and Employment Insurance.

However, as discussed above, many people who experience income insecurity are not adequately supported from federal programs, such as single working-age adults and persons with disabilities.

The design and regulatory framework in which welfare programs operate is the main responsibility of the provinces and territories. These subnational governments are responsible for developing the programs' structure, parameters, and benefit levels. They can also provide tax credits and benefits to ease living costs, for example to support the cost of energy.

As noted in the previous section, many of these provincial-territorial programs—though critical for people in greatest need—are inadequate and have failed to keep up with changing needs, circumstances, and the cost of living. Some have even considered not raising social assistance

¹⁷ Employment and Social Development Canada. (2020). "Building Understanding: The First Report of the National Advisory Council on Poverty." *National Advisory Council on Poverty*. Accessed at: https://www.canada.ca/content/dam/esdc-edsc/documents/programs/poverty-reduction/national-advisory-council/reports/2020-annual/Building_understanding_FINAL_Jan_15.pdf.

¹⁸ Laidley, Jennefer and Mohy Tabbara. (2022). "Welfare in Canada, 2021." *Maytree*. Accessed at: <https://maytree.com/welfare-in-canada/>.

rates a human rights violation, since that can leave people worse off.¹⁹

At the local level, municipal governments can be responsible for the implementation and administration of select welfare programs, along with other important services, such as those for employment. In some cases, municipalities are also responsible for funding and administering services that complement income security, such as transportation.

All governments may also develop and implement poverty reduction strategies, which is currently the case for Canada at the federal level, provinces and territories, and some municipalities.

As such, it is clear that all governments in Canada have a shared responsibility to help people realize the right to an adequate standard of living.

3.4 Recommendations to Improve Income Security

- I. Canada should require that human rights-based principles, standards, and accountability mechanisms are embedded into poverty reduction strategies across all orders of government and incorporated into agreements to fund social programs.
- II. The federal government should exercise leadership in developing a national approach to ensuring the adequacy of social assistance levels in all provinces and territories.
- III. In these approaches, attention should be given to groups who are falling behind, such as working-age single adults and people with disabilities.

4.0 Co-ordinated Implementation of Human Rights Across All Orders of Government

4.1 Supported Recommendations from the Third UPR on Implementation

During the third UPR, Canada was asked to ensure that its obligations under international human rights treaties are being implemented across governments.²⁰ Recommendations supported by Canada include:

- **142.35** Strengthening national mechanisms for monitoring implementation of the international human rights recommendations received by the State (Paraguay);
- **142.36** Strengthening the coordination on human rights implementation across levels of government in order to ensure better implementation domestically (Norway); and

¹⁹ Gorman, Michael. (2023). "No increase to income assistance in N.S. budget is a human rights violation, says lawyer." *CBC News*. Accessed at: <https://www.cbc.ca/news/canada/nova-scotia/poverty-income-assistance-provincial-budget-human-rights-1.6799840>.

²⁰ United Nations Human Rights Council. (2018). "Report of the Working Group on the Universal Periodic Review: Canada." *Thirty-Ninth Session, Agenda Item 6*. Accessed at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/11.

- **142.37** Establishing a mechanism to follow up and implement human rights at all levels of government (France).

Canada also made important voluntary commitments in this regard. These include developing a protocol to follow up on recommendations received from international bodies, creating a federal-provincial-territorial collaboration mechanism specific to human rights, and holding future federal-provincial-territorial human rights ministerial meetings.²¹

4.2 Progress in Implementing Supported Recommendations

Canada has made some progress in implementing the recommendations from the third UPR. For example, in 2020, human rights officials from federal and provincial-territorial governments met virtually to discuss matters related to Canada's human rights obligations. A second meeting is scheduled for June 2023.

A new protocol for follow-up and a strategy for stakeholder engagement was adopted at the first inter-ministerial meeting. However, as pointed out in submissions from other organizations, these were adopted without consultation, are viewed as inadequate by many civil society organizations, and there has been no evidence of improved practices in either follow-up or engagement.

Local governments—though a key actor in the implementation of human rights—also remain absent from intergovernmental working groups. Furthermore, while civil society organizations and people with lived experience of economic and social rights violations can play a role in holding governments accountable, their voices are not consistently centred in policy debates.²²

4.3 Recommendations for Implementation Across All Orders of Government

- I. Regular intergovernmental working group meetings must be held to implement recommendations from international human rights bodies, address ongoing implementation challenges, and embed human rights principles in policy.
- II. Civil society organizations and people with lived experience of economic and social rights violations must also be part of the working group to continuously monitor the work of the intergovernmental body. In addition, local governments must be included in recognition of their important role in the implementation of many social services and programs.

²¹ Ibid.

²² Biss, Michele and Sahar Raza. (2021). "Implementing the Right to Housing in Canada: Expanding the National Housing Strategy." *National Right to Housing Network Report Prepared for the Office of the Federal Housing Advocate*. Accessed at: <https://housingrights.ca/wp-content/uploads/NRHN-OFHA-Expanding-the-NHS-2021.pdf>.