DISCUSSION PAPER

Human rights cities: The power and potential of local government to advance economic and social rights

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Poverty • Rights • Change

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Executive summary

The COVID-19 pandemic, which has disproportionately impacted racialized people, women, and those living in and on the margins of poverty, has revealed many weaknesses in Canada's social safety net and exacerbated pre-existing social and economic inequality. This has contributed to a growing sense that a new foundation built on fundamental human rights is necessary for a more resilient and inclusive society to emerge post pandemic.

Local government's proximity to the people it serves and its responsibilities in key areas such as housing, education, public health, planning, and policing mean that cities and municipalities are critical human rights actors. Amidst the COVID-19 pandemic, which has been felt most acutely in urban areas, this link has come into even sharper focus as cities have been called upon to deliver safe accommodation for homeless persons or ensure local food banks can address the rising tide of hunger.

Cities and municipalities are clearly well positioned to champion human rights, especially those pertaining to adequate housing, food security, health, education, and access to social supports, known as economic and social rights. Around the world and in Canada, local governments have increasingly turned to human rights to address social and economic inequality and to affirm a vision of more equitable, inclusive, and sustainable communities. They are coming to rely on human rights as a way to both understand and address systemic challenges such as poverty, homelessness, and racism. Such places may be broadly categorized as "human rights cities," a term used to describe local governments of any size that base some of their policies on human rights law and principles.

Crucially, cities and municipalities are not only well positioned to protect and fulfill human rights, they also have an obligation to do so. While the federal government has constitutional authority to ratify international human rights treaties, it can only ensure good faith compliance with its obligations if all orders of government commit to implementing these obligations. The provisions of the International Covenant on Economic, Social and Cultural Rights, ratified by Canada in 1976, "extend to all parts of federal States without exception or limitations." This, of course, includes local governments.

Cities and municipalities have taken many different approaches to implementing human rights at the local level - some weaker, others stronger. Common elements do exist, however, including:

- **Local recognition of human rights** through an ordinance, declaration, or charter, often drawing on international human rights documents, which includes a statement of rights, the city's obligations and responsibilities, how these will be met, and – crucially – how local authorities will be held to account;
- **Mainstreaming of rights**, such as rights-based audits of policies, plans and budgets, setting aside adequate staff and financial resources to embed a culture of rights, and providing relevant training to municipal staff;
- **Participatory governance and inclusion**, through close collaboration with residents and civil society in the development of local strategies and monitoring of progress; and
- **Accountability mechanisms**, such as human rights ombudspersons, local human rights commissions, and citizen juries, which empower local residents to claim their rights.

Human rights cities remain a work in progress. Most human rights cities initiatives are far from comprehensive, both in terms of the rights they recognize and the mechanisms in place to realize them. Still, lessons from experiences to date, and the wide range of approaches that have been tried, provide useful insights for local governments in Canada.

Additionally, while Canadian cities may forge ahead with their own initiatives to strengthen human rights locally, collaboration and resources are ultimately needed from other orders of government. A coordinated, multi-level approach involving the three orders of government is required. The protection of economic and social rights demands local implementation and initiative, but their enjoyment should not depend on which city or municipality one lives in.

In all, the concept of human rights cities raises exciting possibilities as well as complicated questions: Through which measures should cities be made more accountable to their obligations? How would these interact with mechanisms within provincial and federal jurisdictions? How might rights-holders claim these rights at the local level and what role is civil society best placed to play? How should meaningful engagement of individuals and communities be embedded into local governance and decision-making? What additional powers or resources might cities require to fulfill their commitments?

The purpose of this paper is to begin an important conversation on the role of Canadian cities as critical human rights leaders. This discussion is timely – local governments are in a moment of great transition as they look to heal and

strengthen their communities post pandemic. A number of cities across Canada have also begun localizing economic and social rights to varying degrees over the past few years. It is important to learn from these approaches and develop a greater understanding of how they may be enhanced.

Overall, it is critical for cities and municipalities in Canada to embrace a more holistic approach to rights, one that affirms the equal importance of economic and social rights, which have too often been neglected in Canada. By taking action to implement human rights obligations under domestic and international law at the local level, municipalities can recognize the central importance of human rights in urban life and emerge from the pandemic as more resilient and inclusive communities.

1. Introduction

The COVID-19 pandemic has surfaced many vulnerabilities in our public support system and brought cities to a crisis point. In urban areas, where the virus has been felt most acutely, people living on the margins and those facing systemic discrimination - including women, racialized groups, and Indigenous Peoples - have been hardest hit. From the lack of safe shelter spaces and overwhelmed food banks, to shuttered community centres, schools, and childcare facilities, individuals and families in need were cut off from vital lifelines almost overnight.

Ensuring everyone has an adequate home, enough to eat, and access to quality public services that allow them to live in dignity are goals that long predate the challenges surfaced by COVID-19, however. The pandemic has simply laid bare the existing inequality and social exclusion, and given a new urgency to addressing these issues.

Over the past 20 years, a number of cities have turned to the framework of human rights to address such systemic challenges, often referring to themselves as "human right cities." The designation was more formally adopted at a 2011 Forum of Human Rights Cities in Gwangju, South Korea, where cities convened around the theme of "globalizing human rights from below" and acknowledged the vital role cities play in "coping with socio-economic and political challenges through a human rights framework and a human rights-based approach."[1] The proliferation of local human rights initiatives was soon recognized by the United Nations Human Rights Council, which has published a number of reports examining the growing role and importance of local government in advancing human rights."[2]

The turn to human rights to help address different urban challenges makes sense. Local governments of all sizes make decisions on a daily basis in key areas like housing, education, public health, planning and zoning, and policing, all of which have a huge and direct impact on the enjoyment of human rights.

Yet, human rights have usually been perceived as the domain of national governments and international bodies. Despite the clear influence of local decisions on the realization of rights, limited attention has been paid to the human rights obligations of local governments, the means through which they can be held

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1 2011 World Human Rights Cities Forum. 2011. *Gwangju Declaration on the Human Rights City.* Accessed at https://www.uclg-cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf

2 United Nations Human Rights Council Advisory Committee. 2015. *Role of local government in the promotion and protection of human rights: final report of the Human Rights Advisory Committee.* A/HRC/30/49. Accessed at https://digitallibrary.un.org/record/848739?ln=en

accountable, or the overall benefits of local implementation of human rights. This is especially true of economic and social rights, such as the rights to adequate housing, food, social security, health, education, and access to work.

The pandemic has, however, thrown into sharp focus the role of local government as a frontline human rights actor. Cities have been called on to adopt measures to provide alternative accommodation for the homeless where safe distancing is possible, and ensure that local food banks and social service agencies are able to address the rising tide of hunger. Local school boards have been largely charged with mitigating the unequal effects of school closures on students living in poverty or with a disability.

What are economic and social rights?

Economic and social rights – the focus of this discussion on human rights cities – are those that relate to employment, social security, access to housing, food security, water and sanitation, education, health, and an adequate standard of living. The Universal Declaration on Human Rights affirms that these rights are indispensable to ensuring that everyone is equal in dignity and rights. Subsequent human rights treaties and declarations have affirmed that economic and social rights are interrelated, interdependent, and indivisible with civil and political rights. One set of rights cannot be fulfilled without the other, and they are to be placed "on the same footing, and with the same emphasis."[3]

Local governments' heightened engagement in the protection of economic and social rights throughout the pandemic has made it easier to understand what fulfilling these rights means in practice at the local level. The pandemic has also contributed to a growing sense that things cannot go back to the way they were before. By implementing human rights obligations that already exist under both domestic and international law at the local level, municipalities can recognize the central importance of economic and social rights in urban life and emerge from the pandemic as more resilient and inclusive communities.

The purpose of this paper is to begin a conversation on what a human rights city in Canada could look like. We propose that cities should embrace a more holistic approach to human rights, one that seeks to affirm the equal importance of economic and social rights. Achieving greater socio-economic equality and rooting out systemic discrimination and racism that leaves far too many people with disabilities, Indigenous People, communities of colour and other historically marginalized groups behind can only be realized when economic and social rights become deeply embedded within our culture and public institutions, including local government. As cities look to "build back better," the imperative to rebuild on a solid human rights foundation has never been clearer.

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3 United Nations General Assembly. July 12, 1993. *Vienna Declaration and Programme of Action*. A/CONF 157/23. Endorsed by General Assembly Resolution 48/121, December 20, 1993, para 5.

The paper proceeds in the following way: we first examine how municipal responsibilities are currently understood with respect to international and domestic human rights protections. Second, we explore implementation strategies and lessons from human rights cities across jurisdictions. Finally, we reflect on intergovernmental considerations before putting forward a set of key considerations to guide discussion on the future and potential of human rights cities in Canada.

2. International human rights and local government

2.1. Understanding the foundations of human rights law and local obligations

The modern human rights movement is founded on the Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948. Based on the principle that "everyone is equal in dignity and rights," the UDHR was drafted and adopted in response to the human rights atrocities of the second world war and the immense social, economic, and political challenges of post-war reconstruction.

Importantly, the UDHR was to establish democratic governance and civil rights, as well as secure rights to education, health care, housing, and social security. The affirmation central to the UDHR was that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Both economic and social rights, and civil and political rights were key to this hope for a new world order.

However, in the negotiation of human rights treaties based on the UDHR during the Cold War, the two categories of rights were split in 1966 into the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Instead of a single treaty as originally envisioned, countries were now given the option to ratify either or both Covenants. Canada immediately ratified both. (See appendix 1 for a chronology of human rights law in Canada.)

Canada's commitment to the international treaties it ratifies, like the ICCPR and ICESCR, apply to all orders of government, including municipalities. Because international human rights are not directly enforceable in Canadian courts, Canada's commitments must be implemented by adopting Canadian laws that match or exceed protection afforded by the signed treaties.

Compliance with international human rights law therefore relies on the Canadian Charter of Rights and Freedoms, on provincial human rights legislation, and on a myriad of other laws and policies which, according to Canadian courts, should be interpreted wherever possible based on the assumption of conformity with international human rights law. International human rights in treaties ratified by Canada are relevant to the interpretation of any laws and policies applied by municipalities that may affect the realization of these rights.

As such, while it is the federal government that has constitutional authority for ratifying international human rights treaties, Canada can only ensure good faith compliance with its human rights obligations if all orders of government commit to implementing these obligations within the areas of their jurisdiction.[4] When Canada ratified the ICESCR and the ICCPR, it accepted that their provisions "extend to all parts of federal States without any limitations or exceptions" – this includes municipalities (appendix 2 provides further explanation.)

A core obligation of all orders of government under international law is to implement international human rights in laws and policies through which rights-holders can be heard, governments held accountable, and the realization of rights ensured. With the significant and growing areas of responsibilities of cities and municipalities, this obligation is critical at the local level.

2.2. Clarifying local obligations through the courts – impacts and limitations

One critical way in which governments' human rights obligations are clarified and understandings of human rights evolve is through the justice system, where cases are brought forward by people who have experienced a violation of their rights.

However, despite the fact that States are obliged under international law to ensure access to effective remedies for all human rights, Canadian courts have largely ignored obligations to ensure and fulfill economic and social rights.

This means that people whose economic and social rights have been violated – including those who are homeless, hungry, and live in poverty – have had little recourse through the justice system, even when these violations are clearly linked to systemic discrimination, racism, and the effects of colonization, or violate the right to life or security of the person. UN human rights bodies have repeatedly called out and criticized various orders of government in Canada for failing to ensure access to justice or meaningful accountability for economic and social rights.[5]

Given this context, cases challenging violations of economic and social rights by local governments have been rare in Canada. More cases exist in other countries,

4 See Appendix 2. For more, see Canada Department of Justice. November 10, 2016. "International Human Rights Treaty Adherence Process in Canada." Accessed at https://www.justice.gc.ca/eng/abt-apd/icg-gci/ihrl-didp/ta-pa.html

5 See for example: United Nations Human Rights Committee. August 13, 2015. *Concluding observations on the sixth periodic report of Canada*. CCPR/C/CAN/CO/6. Accessed at https://undocs.org/en/CCPR/C/CAN/CO/6; United Nations Human Rights Council. December 24, 2012. *Report of the Special Rapporteur on the right to food, Olivier De Schutter Mission to Canada*. And A/HRC/22/50/Add.1. Accessed at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/189/56/PDF/G1218956.pdf?OpenElement

although these too are somewhat limited. Nevertheless, a few things can be inferred from the collection of domestic and international cases (see box 1 for examples) that are relevant to Canadian cities:

1. Local governments are undeniably duty bearers of economic and social rights and are often directly implicated in critical areas of decision-making;

2. Courts in other countries have identified systemic problems at the local level and required action by cities commensurate with obligations under international human rights law, challenging the notion that courts in Canada are not similarly competent to assess the adequacy of measures to protect economic and social rights; and

3. Where courts and tribunals have considered economic and social rights claims at the municipal level, their decisions have led to impactful change. Courts have also strengthened local participatory democracy by clarifying the obligations of municipalities to engage meaningfully with vulnerable and marginalized communities to fully protect economic and social rights.

Although gains made through the judicial system are significant, there are also some important challenges.

For one, cases can take years and significant financial resources to resolve. Individuals experiencing rights violations may not find resolution for a long time, while many others are unable to access the courts at all. Courts are also inclined to focus on narrow remedies that ignore broader systemic issues. For example, courts in Canada have overturned by-laws that prohibit rough sleeping when there is no alternative, but have declined to order governments to address the systemic violations linked to homelessness (see box 1).

Affirming economic social rights as components of Charter rights and clarifying the obligations of local government through the courts will remain an important area of human rights advocacy. But cities and municipalities are also well-placed to devise other creative solutions. Novel approaches developed by human rights cities have produced accountability mechanisms that engage civil society, residents, and city officials in both addressing individual violations and finding solutions on a larger scale (see section 4). Such options can be nimbler, and more inclusive and responsive. The UN has in fact pressed for a similar approach for Canada, urging not only better access to justice for economic and social rights, but also that all orders

of government enhance protections by adopting additional laws and accountability mechanisms to explicitly recognize and ensure economic and social rights.[6]

Through the development of local charters, rights-based policies, and meaningful engagement with affected communities, cities in Canada can exercise significant leadership to support the progressive realization of economic and social rights. Such approaches may draw on the diverse initiatives of human rights cities, which are examined next.

6 See for example: UN Committee on Economic, Social and Cultural Rights (CESCR). May 22, 2006. *UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada*. E/C.12/CAN/CO/4; E/C.12/CAN/CO/5 para 35; UN Committee on Economic, Social and Cultural Rights (CESCR). December 10, 1998. *UN Committee on Economic, Social and Cultural Rights: Concluding Observations: Canada*. E/C.12/1/Add.31 para 58. All sources accessed at undocs.org.

Box 1: Overview of case law of economic and social rights claiming in cities

Overview of cases	Significance
CANADA	
Victoria City v. Adams (2009) challenged a city by-law prohibiting overnight sheltering in public parks, which was found to violate the right to life, liberty, and security of the person under the Canadian Charter. In 2015, the B.C. courts again ruled in favour of the plaintiffs in *Abbotsford v. Shantz*, where another by-law prohibiting overnight sleeping in public spaces was overturned.	*Adams* resulted in the creation of 80 new shelter spaces and overturned the ban on sheltering in parks overnight. Despite the fact that the claim advanced in Adams fell far short of the right to housing under international law, it was the first case to recognize the right to adequate housing as a component of the "right to life, liberty and security of the person" under the Canadian Charter, relying on the ICESCR as an interpretive aid.[7]
UNITED STATES	
Callahan v. Carey (1979) was a class action lawsuit on behalf of a group of homeless men in New York City, who sought an injunction requiring the City to provide them shelter during a particularly cold winter. It was one of the first cases to challenge a local government on its economic and social rights obligations.	*Callahan* resulted in the "Callahan Decree," which required the city to provide shelter for homeless men and set minimum standards for shelter beds and provision of supplies. The right to shelter was subsequently extended to homeless women *(Eldredge v. Koch* (1983)) and to homeless families with children *(McCain v. Koch* (1983)). As a result, deaths among the homeless dropped dramatically.
In April 2020, a federal appeals court ruled that students in five low-performing Detroit school districts have a constitutional right to a minimum standard of education.[8]	The case ruling was significant for breaking years of negative jurisprudence on the right to education under the federal constitution. Previously, students in underfunded schools had no guarantee of access to a basic level of education.

7 ESCR-Net. *Victoria (City) v. Adams, 2009 BCCA 563; 2008 BCSC 1363*. Accessed at https://www.escr-net.org/caselaw/2010/victoria-city-v-adams-2009-bcca-563-2008-bcsc-1363

8 Gary B., Jessie K., Cristopher R., Isaias R., Esmeralda V., Paul M., and Jaime R., minors, v. Gretchen Whitmer, et al. April 23, 2020. Accessed at https://www.opn.ca6.uscourts.gov/opinions.pdf/20a0124p-06.pdf

Overview of cases	Significance
SOUTH AFRICA	
The landmark case of *Irene Grootboom et al.* (2001) found that the Cape Metropolitan Council failed to make reasonable provision within its available resources for residents who were living in intolerable conditions. The Court clarified that the constitution requires that all orders of government, including municipal governments, devise and implement comprehensive and coordinated programs to realize the right to adequate housing, that prioritizes those in most urgent need.[9] Since 2001, more than a dozen cases across South African cities concerning economic and social rights and municipal responsibility have been adjudicated based on standards developed in the *Grootboom* case.	South Africa's Constitutional Court established a standard of "reasonableness" for assessing compliance with the obligation to progressively realize social and economic rights in its *Grootboom* decision. In the years following, municipalities across the country implemented "Grootboom allocations" to address the needs of those in desperate circumstances. Further elaborating on the standard of "reasonableness," other court decisions have found it requires meaningful engagement with communities affected by eviction,[10] inclusive planning and upgrading that protects the rights of residents to remain in place,[11] and provision of alternative housing by the municipality to ensure residents who are evicted are not rendered homeless.[12] Other cases in South Africa have applied the reasonableness standard to assess municipal obligations to ensure access to water, education, and other social rights.[13]

9 *Government of the Republic of South Africa and Others v. Grootboom and Others*. (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000). Accessed at http://www.saflii.org/za/cases/ZACC/2000/19.html

10 *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v. City of Johannesburg and Others*. (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC) ; 2008 (5) BCLR 475 (CC) (19 February 2008). Accessed at http://www.saflii.org/za/cases/ZACC/2008/1.html

11 *Melani and Others v. City of Johannesburg and Others*. (02752/2014) [2016] ZAGPJHC 55; 2016 (5) SA 67 (GJ) (22 March 2016). Accessed at http://www.saflii.org/za/cases/ZAGPJHC/2016/55.html

12 *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another.* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011). Accessed at http://www.saflii.org/za/cases/ZACC/2011/33.html

13 See for example, *Section 27 and Others v. Minister of Education and Another.* (24565/2012) [2012] ZAGPPHC 114; [2012] 3 All SA 579 (GNP); 2013 (2) BCLR 237 (GNP); 2013 (2) SA 40 (GNP) (17 May 2012). Accessed at http://www.saflii.org/za/cases/ZAGPPHC/2012/114.html

Overview of cases	Significance
INDIA	
The Indian Supreme Court has held that the right to life includes the right to live with dignity and all that goes along with it, including the right to food. A famous right to food case[14] was filed in 2001 in response to the failure of the federal and state governments to address acute hunger and starvation deaths in villages in Rajasthan, at a time when surplus grain was being stored. The case expanded over the next 17 years to include all states and oversight of national and local programs by court-appointed Commissioners to ensure food security as a fundamental human right.	The right to food case represented a historic advance for economic, social, and cultural rights litigation. It recognized that food security is a fundamental right derived from the right to life and that courts must enforce it as such. The wide-ranging remedial orders, including the appointment of Commissioners to monitor and oversee implementation, set a new standard for effective remedies, recognizing the need for progressive implementation and engagement with affected communities with accountability to courts, supplemented by monitoring by an independent agency.
ARGENTINA	
In *ACIJ v. Government of the Autonomous City of Buenos Aire*s (2011), plaintiffs argued that the City of Buenos Aires failed to provide equal access to quality education and had failed to direct maximum available resources to poorer neighbourhoods.	The Argentinian Supreme Court found in the plaintiffs' favour and ordered the construction of additional schools in affected areas.
In *Q.C., S.Y. v. Government of the Autonomous City of Buenos Aires*, a homeless mother with a disabled son challenged the local government for failing to provide adequate shelter.	In this case, the Court found in favour of the plaintiff, noting that there should be a minimum guarantee of access to housing for those facing situations of extreme vulnerability.

14 *People's Union for Civil Liberties v. Union of India & Ors, In the Supreme Court of India, Civil Original Jurisdiction, Writ Petition (Civil) No.196 of 2001*. Accessed at https://www.escr-net.org/caselaw/2006/peoples-union-civil-liberties-v-union-india-ors-supreme-court-india-civil-original

3. Emergence of human rights cities

While cities and municipalities have an obligation to protect and fulfill human rights, their specific role and responsibilities have been largely overlooked. In spite of this, the past couple of decades have seen a remarkable amount of initiative and innovation by cities to localize human rights, giving rise to the Human Rights Cities Movement.

The term "human rights city" is broadly applicable to local governments that base some of their policies on international human rights laws and principles. It refers to cities that rely on human rights to both understand local issues and develop appropriate rights-based solutions in response. Since the early 2000s, a number of cities across the world – including Seoul, Mexico City, Barcelona, and Montreal – have adopted the concept and in some cases officially self-designated as a human rights city.

Because there is no widely accepted definition or threshold for becoming a human rights city, and given the vastly different legal and political settings in which they exist, it is difficult to accurately estimate their precise number or systematically assess them. If going by self-designation only, for example, just a few dozen cities might qualify. This would not capture the many localities undertaking meaningful human rights implementation without explicitly designating themselves as a "human rights city."

Still, though local approaches to human rights take various forms, some commonalities among cities do exist. In particular, they often tend to share a combination of the following elements:

- **Local recognition of human rights** through an ordinance, declaration, or charter, often drawing on international human rights documents, which includes a statement of rights, the city's obligations and responsibilities, how these will be met, and – crucially – how local authorities will be held to account;
- **Mainstreaming of rights**, such as rights-based audits of policies, plans, and budgets, setting aside adequate staff and financial resources to embed a culture of rights, and providing relevant training to municipal staff;
- **Participatory governance and co-production**, through close collaboration with residents and civil society in the development of local strategies and monitoring of progress; and

- **Accountability mechanisms**, such as human rights ombudspersons, local human rights commissions, and citizen juries, which empower local residents to claim their rights.

The majority of human rights cities initiatives are far from comprehensive however, both in terms of the rights they recognize, and the mechanisms in place to realize them. Nevertheless, the level of local engagement on rights is encouraging, especially in the absence of substantive guidelines or requirements from other orders of government. What then explains the emergence of human rights cities?

First, acceleration of urbanization over the past few decades has cemented cities as engines of economic growth, innovation, and creativity, thus elevating the status of local government. This has given rise to heightened local engagement on global challenges, a trend that has positioned cities as "doers" and effective problem solvers. Today, international city-led movements like the C40 or Resilient Cities are emblematic of local capacity to drive impact and agreement on issues where state-level action and cooperation have lagged.[15] The human rights arena, traditionally the domain of national governments, is now witnessing a similar rise in participation of municipal governments.

Second, the evolution of human rights cities also aligns with a broader decentralization movement of the last few decades, during which national governments seeking cost-savings and efficiency gains have downloaded more responsibility to local authorities, often without corresponding financial supports. This expanding scope of responsibility opened the door to more possibilities for what local governments were positioned to deliver and achieve, though adequate resourcing remains an on-going issue.

Further, following the Work Conference on Human Rights in Vienna in 1993, the 1990s saw a renewed commitment to the implementation of human rights. There was a new focus on economic and social rights, and on bringing rights closer to home, providing a launching point for initiatives such as the People's Decade for Human Rights Education (see box 2).[16]

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15 C40 is a network of the world's megacities committed to addressing climate change. Resilient Cities was an initiative of the Rockefeller Foundation to support 100 cities around the world become more resilient to physical, social, and economic shocks and stresses.

16 Oomen, B. 2016. Introduction: the promise and challenges of human rights cities. In B.Oomen, M.F. Davis, M. Grigolo (Ed.), *Global Urban Justice: The Rise of Human Rights Cities*. Cambridge University Press.

Box 2: A brief history of the Human Rights Cities Movement

The term "Human Rights City" was first conceived in 1997 by the People's Movement for Human Rights Education (later the People's Decade for Human Rights and Education, PDHRE), a non-profit organization that sought to raise awareness of human rights and modify local power relations. As PDHRE's programming wound down in the early 2000s, other organizations took up the mantle. United Cities and Local Governments (UCLG), a global advocate for local authorities, has been a force for establishing the vital role of local government in the realization of human rights since 2004. In 2012, it launched the Global Charter-Agenda for Human Rights in the City.

The term "Human Rights City" was further defined through the adoption of the Gwangju Declaration on Human Rights City at the 2011 World Human Rights Cities Forum in Gwangju, South Korea. The declaration defines a human rights city as "both a local community and socio-political process in a local context where human rights play a key role as the fundamental values and guiding principles."

The Gwangju Guiding Principles for a Human Rights City, below, were adopted at a subsequent Forum in 2014:

- The right to the city*
- Non-discrimination and affirmative action
- Social inclusion and cultural diversity
- Participatory democracy and accountable governance
- Social justice, solidarity, and sustainability
- Political leadership and institutionalization (i.e., long-term continuity through institutionalization of adequately resourced programs and budgets)
- Human rights mainstreaming (i.e., integrating rights into local policies)
- Effective institutions and policy coordination (e.g., establishing human rights office, local action plan, indicators, and impact assessment)
- Human rights education and training
- Right to remedy (i.e., mechanisms and procedures, including the ombudsperson or municipal human rights commissions for redress)

*The "right to the city" acknowledges the central importance of community and co-creation in tackling urban inequality. Though human rights law emphasizes empowerment and inclusion, it does not recognize a specific "right" to the city.

Third, there has also been growing recognition of human rights as a helpful normative framework to guide cities toward the realization of major 21st century goals of economic, social, and environmental sustainability. For instance, the New Urban Agenda, which sets out standards and guidance for operationalizing the Sustainable Development Goals within cities, is grounded in the UDHR and other international human rights treaties.[17] The Agenda was adopted by world leaders and endorsed by the UN General assembly in 2016.

Finally, cities have invoked human rights as a way of justifying and pursuing more progressive local policies than those of other orders of government. For example, the case of Utrecht in the Netherlands, part of the Sanctuary City movement for the protection of undocumented migrants, highlights how far local efforts can go in affirming rights ignored or violated by national governments (see box 3).

Cities and Indigenous peoples' rights

The colonization and dispossession of Indigenous peoples has driven many households from their traditional lands and communities into precarious lives in cities. More than half of Indigenous people in Canada now live in cities, disproportionately experiencing homelessness and poverty.

Although a fundamental reshaping of the relationship with Indigenous communities remains a distant goal, cities offer "a glimmer of hope" toward establishing more productive partnerships and furthering truth and reconciliation.[18] Local and Indigenous governments have worked together on a variety of issues over the past few decades, including provision of municipal services to Indigenous communities and better engagement in local decision-making.[19] Urged by the Truth and Reconciliation Commission, some cities have also gone on to adopt the UNDRIP, including Vancouver, Montreal, Toronto, and Surrey. The Federation of Canadian Municipalities has also endorsed UNDRIP and works with its municipal members to incorporate reconciliation into local government policies and practices.[20]

17 United Nations, Habitat III. 2017. *New Urban Agenda*. Accessed at http://habitat3.org/wp-content/uploads/NUA-English.pdf. The UN's Sustainable Development Goals (SDGs) "recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change."

18 Alacantra, C. and Nells. J. August 8, 2016. "Cooperation between municipalities and Indigenous people is transforming life in Canada for the better." Policy Options. Accessed at https://policyoptions.irpp.org/magazines/august-2016/indigenous-communities-and-local-governments-are-powerful-partners/

19 ibid

20 Federation of Canadian Municipalities. *Pathways to Reconciliation: Cities respond to the Truth and Reconciliation Commission Calls to Action*. Accessed at https://data.fcm.ca/documents/tools/BCMC/Pathways_to_reconciliation_EN.pdf

Box 3: Utrecht challenges national policy

In 2011, the Netherland's national government declared that rejected asylum seekers would not be entitled to emergency shelter, a service delivered by local authorities. Utrecht – as self-designated Human Rights City – objected to the policy and continued to provide undocumented migrants with housing services, citing duty of care, issues of public health, and the European Social Charter to which Netherlands is party.

Seeking clarity on the on-going policy clash, the city of Utrecht worked with NGOs to initiate two cases at the European Committee of Social Rights, alleging that the denial of shelter to undocumented migrants by the Netherlands was in violation of the right to housing under the European Social Charter.[21] The Committee held that the Netherlands was in violation of the Social Charter and that coordination between the responsible municipalities had been insufficient for the purposes of protecting the right to housing.

The national government protested the decision but eventually relented somewhat, allowing five cities to provide emergency shelter, but only on the condition that rejected asylum seekers comply with their expulsion. The Dutch Association of Municipalities found the proposal "impossible to implement," with the Mayor of Utrecht adding that a more humane and practical response was needed.[22] While the challenge remains unresolved, the national government and local authorities have agreed to work together in a pilot program to develop a better approach.

In Canada, similar initiatives have been devised by local governments to provide access to social services. For example, by declining to collect data on immigration status, community health centres were able to provide services to undocumented migrants, even as the federal government continued to bar access to federal health benefits. The national government's position was in defiance of a UN Human Rights Committee ruling, which stated that federal policy violated the right to life and non-discrimination under international human rights law.[23]

The continued evolution of local government participation in human rights has garnered increasing support from the United Nations. In a number of reports published since 2014, the UN has commended the work of leading cities as

21 *Conference of European Churches (CEC) v. the Netherlands*. Complaint No. 90/2013 (European Committee on Social Rights) Decision on the Merits; *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands*. Complaint No. 86/2012

22 Baumgartel, M. 2019. "Pulling human rights back in? Local authorities, international law, and the reception of undocumented migrants." *The Journal of Legal Pluralism and Unofficial Law* v 51 iss 2

23 United Nations Human Rights Committee. 2018. *Toussaint v. Canada* (2018) CCPR/C/123/D/2348/2014, 2018.

critical human rights intermediaries and concluded that local government should be involved more closely in the human rights policies devised by other orders of government. In doing so, it has also advised national governments to work with cities and ensure they are "equipped with both financial and non-financial resources to effectively address challenges to the realization of human rights."[24]

The emergence of human rights cities provides useful insights for Canadian cities and municipalities, a number of which have embarked on their own efforts to bring human rights closer to home in recent years. For instance:

- Montreal adopted a local Charter of Rights and Responsibilities in 2003. The Charter was developed through a participatory process and also installs a local ombudsperson (see box 5 on page 23).
- Edmonton's 2015 five-year poverty reduction strategy includes a goal to become a "human rights city" by initiating a local statement of human rights and reviewing policies and bylaws for consistency with it. The plan also includes justice initiatives to decriminalize poverty.
- In 2019, Toronto recognized the right to adequate housing in its ten-year housing plan. The new plan calls for a review of relevant policies, programs, and by-laws to assess compliance with the right to adequate housing, and includes plans to install a housing commissioner for oversight (see box 10 on page 32).
- The City of London, Ontario, has acknowledged housing as a human right as one of four fundamental principles guiding its 2019-2024 homelessness and housing strategy.
- In early 2020, Winnipeg established a human rights committee of council whose membership includes the Mayor and an expert with lived-experience of poverty and homelessness. The committee serves as an advisory body to the Mayor and City Council and to monitor local adherence to human rights.

The next section provides an overview of strategies and mechanisms to localize human rights, employed by municipal government across North America, Europe and Asia. It outlines areas of good practice and innovation, as well as important gaps and challenges, which offer useful lessons for local human rights initiatives in Canada.

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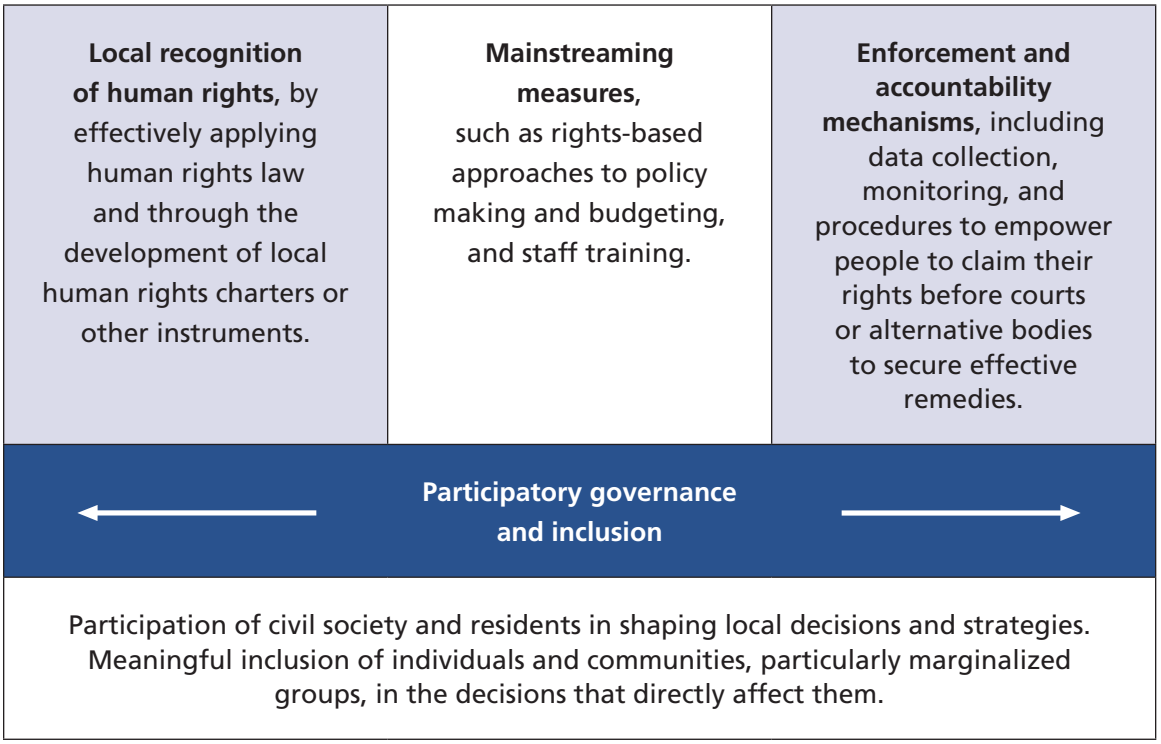
24 United Nations Human Rights Council. July 2, 2019. *Local government and human rights – Report of the United Nations High Commissioner for Human Rights*. A/HRC/42/22. Accessed at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/22

4. Implementing human rights locally – strategies and lessons

While human rights cities do not fit into any one mold, their diverse approaches can be grouped under four key areas, described in the "Local human rights implementation framework" (see graphic 1). Taken together, the four component parts of the framework represent a systematic approach to implementing human rights locally, as encouraged by the Gwangju Guiding Principles for Human Rights Cities. It is therefore useful in both assessing the breadth of local initiatives, as well as conceiving of a more robust approach to local implementation of human rights.

Graphic 1: Local human rights implementation framework



As the following sub-sections will make clear, there are many interactions and dependencies across the four components. In particular, "Participatory governance and inclusion" underpins a cross-section of activities, and is therefore discussed in relation to the other three components, rather than on its own.

4.1. Local recognition of human rights

Local recognition of human rights in the form of a city charter, ordinance, declaration, or resolution – often drawing on an existing human rights treaty – is a common starting point for many places. It is typical, though not always the case, that such documents are crafted with at least some input from the public or through more robust participatory processes. This has served to provide both legitimacy and raise public awareness and expectations of local human rights efforts.

While approaches vary, stronger articulations of local commitments to human rights tend to include a statement of rights, the city's obligations and responsibilities, how these will be met, and how local authorities will be held to account. On the weaker end, local commitments have often appeared as more aspirational principles or goals, backed by few operational details.

Given the sheer breadth of international human rights law, it is common for cities to recognize a single treaty or a sub-set of rights in response to local priorities and capacities. In the case of San Francisco (see box 4), a focused effort on promoting women's rights through a local CEDAW ordinance has allowed the city to surpass federal commitments and create a chain-reaction of similar municipal ordinances across California.[27]

City declarations against racism

As of September 2020, 50 cities across the United States have passed resolutions declaring racism as a public health issue. Such declarations signify important public recognition of systemic discrimination and inequality, but often lack substantive commitments or plans. Los Angeles serves as a more promising example. Relying on its recently established Civil and Human Rights Commission, the city has committed to conduct an assessment of internal policy and procedure, beginning with the budget process, "to ensure racial justice is a core element of city government."[25]

Long before COVID-19, UNESCO also established the Coalition of Cities Against Racism, with networks across the globe, including in Canada. Cities in the Coalition commit to a ten-point action plan, including initiatives to ensure fair access to housing and to challenge racism through education. The initiative has not, however, engaged extensively in violations of economic and social rights linked to systemic racism.[26]

25 City of Los Angeles. June 9, 2020. *Resolution.* Accessed at https://clkrep.lacity.org/onlinedocs/2020/20-0715_reso_06-09-2020.pdf

26 European Coalition of Cities Against Racism. "Welcome to ECCAR." Accessed at https://www.eccar.info/en/welcome-eccar

27 CEDAW stands for Convention on the Elimination on all Forms of Discrimination Against Women.

Box 4: San Francisco's CEDAW ordinance

The United States became signatory to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) in 1980 but has yet to ratify the treaty. Local governments pressed for ratification for years, eventually opting to integrate CEDAW principles in their own jurisdictions. In 1998, San Francisco was one of the first to do so, passing an ordinance to recognize CEDAW.

A gender assessment is the principle mechanism the ordinance puts into place, which tasks departments with analyzing budgets, service delivery, and other practices to identify discrimination or barriers to equality. As a result, more women have been hired as technical staff, and flexible work policies to support caregivers have been implemented. Assessments conducted by the Public Works department have also influenced spacing of street lighting to ensure women feel safer, while other departments have begun to collect data in ways that help them understand challenges through a gender lens. Today, many cities across California and in other states have passed CEDAW legislation based on San Francisco's approach.

But picking and choosing from an indivisible and interconnected set of rights also comes with risks. Primarily, a piecemeal approach could privilege rights favoured by a majority over less popular ones. For instance, the self-designated Human Rights City of Graz in Austria has struggled with the application of its local human rights charter to the city's undocumented migrant population.[28] Too narrow a focus may also fail to acknowledge important connections between rights, as was made obvious during the fight against COVID-19 in overcrowded city shelters across Canada, where the interdependence of the right to health and the right to adequate housing became clear.

Overall, though local recognition of human rights through charters, ordinances, and other instruments represents a significant step, it is but a starting point. The potential to generate measurable change comes down to how commitments are operationalized, the depth of engagement with civil society and the public, and the quality of enforcement and accountability measures.

The case of Montreal is instructive on this point. Since 2006, the city has had in place a Charter of Rights and Responsibilities, which references the UDHR among other international and domestic human rights instruments, sets out social and economic rights of residents, and installs an ombudsperson to monitor compliance with the Charter.

28 Oomen, B. 2016. "Introduction: the promise and challenges of human rights cities."

While this approach guarantees a level of oversight and accountability, low public and civil society awareness of the Charter and a lack of reporting requirements on departmental compliance have limited overall impact (see box 5).

Box 5: Montreal's Charter of Rights and Responsibilities

In the lead-up to Montreal's amalgamation in 2002, two citizen summits were held during which an idea emerged to "develop a proposal that would focus on the rights and responsibilities of citizens drawing on the European Charter of Human Rights in the City."[29] Soon after, the city unveiled a draft charter and public hearings on the project were conducted by the City's new public consultation body. On January 1, 2006, The Montreal Charter of Rights and Responsibilities became an official city by-law.

Montreal's Charter affirms a broad range of human rights, including economic and social rights, and commits the City to take "appropriate measures" to ensure components of rights to housing, water, and freedom from poverty. The Charter provides for the submission of complaints to an ombudsperson who reports annually to council. The Charter also provides for a "Right of Initiative," which "empowers citizens to propose new and constructive solutions or innovative and mobilizing projects in order to meet the issues and challenges of their city by obtaining a public consultation following a petition." Furthermore, provincial legislation requires city council to maintain a Charter of Rights and Responsibilities, ensuring long-term commitment.

However, while awareness of the Charter among city staff and officials has grown over the years, compliance has been more difficult to gauge. A recommendation for the city to produce implementation reports detailing how departments have complied with their obligations, put forward in a periodic review of the Charter, has not been implemented. Public awareness of the Charter also appears low, though civil society organizations have been making more effective use of the right of initiative mechanism recently (for example by forcing a public consultation on systemic racism and discrimination), which could prove promising in the areas of social and economic rights.[30]

29 Frate, B. 2016. "Human Rights at the Local Level." In B.Oomen et al. (Ed.) *Global Urban Justice: The Rise of Human Rights Cities*. Cambridge University Press.

30 Interview conducted by authors with Benoît Frate.

4.2. Mainstreaming of human rights

Mainstreaming implies that municipalities will undertake a range of activities to embed human rights across the planning, implementation, monitoring, and evaluation phases of policies and programs.

The city budget is the most significant local policy and planning tool, and thus an essential mechanism for improving compliance with human rights. While few examples of comprehensive rights-based budgeting exist, the experience of a recent initiative of the Swedish Association of Local Authorities and Regions (SALAR) provides some insight. Under a larger collaborative project with the national government to localize human rights, SALAR encouraged human rights strategists to work with controllers and others involved in the local budget process to promote rights-based outcomes. Since the project began some ten years ago, it has become more common for local budgets to mention human rights as overall and specific goals.[31]

A more common approach for cities has been to use human rights standards and norms as benchmarks to assess departmental budgets, policies, programs, and other activities. Barcelona, a self-designated Human Rights City, has spent years building up institutional capacity and developing extensive guidance for local officials.

For example, Barcelona's Citizen Rights and Diversity Department is charged with working across departmental lines to improve understanding of the city's obligations with respect to international and domestic human rights law, and help clarify how high-level concepts and principles translate to everyday decision making and operations. It has produced a number of tools and methodologies for applying a human rights-based approach, which the city has begun to implement when proposing and rolling out individual policies.[32] Barcelona's approach is also notable for the emphasis placed on staff training and education, a key implementation gap highlighted in numerous analyses of human rights cities.

A variety of audit, review and checklist type tools have been developed by other human rights cities to mainstream rights and promote compliance. An often cited example is Eugene, Oregon's Triple Bottom Line Tool (see box 6). While highly innovative, a key issue is the extent to which the voluntary nature of the tool limits

31 Swedish Association of Local Authorities and Regions (SALAR). September 27, 2017. *Human Rights in Governance and Management*. Accessed at https://webbutik.skr.se/sv/artiklar/human-rights-in-governance-and-management.html

32 Barcelona Citizen Rights and Diversity Department. 2018. *Methodology Guide: City of Human Rights- The Barcelona Model*. Accessed at https://ajuntament.barcelona.cat/dretsidiversitat/sites/default/files/Guia%20ENG.pdf

its overall impact.[33] In all, inconsistent or sporadic application of similar types of human rights assessments is a challenge that extends to many human rights cities.

Box 6: Mainstreaming human rights in Eugene, Oregon

In 2011, Eugene's Human Rights Commission in partnership with the City Manager arranged for training of executives, department heads, and key city staff on implementing a human rights framework in their daily operations. Following these awareness and education initiatives, two principal approaches were developed:

- **Departmental Diversity and Equity Strategic Plans**: Originally a five-year plan to implement a human rights framework, it evolved into individually tailored departmental plans to reflect more specific goals. Members of the Commission and civil society partners were instrumental in helping departments to translate high-level principles into locally relevant objectives and actions.
- **Triple Bottom Line Tool (TBL)**: Eugene has incorporated the full range of civil, political, social, economic, and cultural human rights into the TBL tool, which is structured as a set of questions and guidelines to help make program and budget decisions. For example, the tool has been used to justify a greater focus on health and fitness, particularly for low-income families.[34]

33 Neubeck, K.J. (2016) "In a State of Becoming a Human Rights City: The Case of Eugene, Oregon." In B.Oomen et al. (Eds) *Global Urban Justice: The Rise of Human Rights Cities*. Cambridge University Press.

34 Kamuf Ward, J. December 2012. *Bringing Human Rights Home: How State and Local Governments Can Use Human Rights to Advance Local Policy*. Columbia Law School, Human Rights Institute. Accessed at https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/Bringing%20Human%20Rights%20Home.pdf

4.3. Enforcement and accountability mechanisms

Human rights cities' approaches to enforcement and accountability range from non-existent to comparatively robust. On the weaker end, examples are widespread of cities that have passed human rights resolutions containing no specific timetables, targets, evaluation, or implementation plans in their public commitments. On the other hand, cities like Seoul or Barcelona (see box 7) have built multi-level accountability structures backed by strong data collection efforts. Mostly, local initiatives tend to fall somewhere in between.

Box 7: Barcelona's Discrimination Observatory

Following a steep rise in immigration, Barcelona's Office of Non-Discrimination (OND) was established in 1998 with a mandate to protect human rights in the city. Over the years, its role has evolved to provide mediation, psychological support, legal assistance, and training on human rights. In 2018, in collaboration with more than a dozen organizations serving victims of discrimination, the OND launched the Discrimination Observatory, a data collection initiative to measure the magnitude, typology, and severity of discrimination, as well as the actions taken to resolve it.

The Observatory reports annually on key indicators such as the type of right infringed, location of incident, who discriminates, and the targets of discrimination. The data is highly disaggregated, making it possible to capture important differences in experiences of discrimination faced by, for instance, people of Roma origin versus those of North African descent. In addition to reporting on better known causes of discrimination, including racism (accounting for 33 per cent of cases), sexual orientation, and disability, the Observatory also tracks discrimination based on poverty, in particular homelessness.[35] The work of the Observatory supports decision-making within the city and a wider collaborative of NGOs serving marginalized communities.

In some instances, local governments have participated in the international treaty body review process, by making direct submissions or sending delegations to the United Nations in Geneva. For example, the City of Berkley, California, conducts departmental compliance assessments for submission to the US Department of States and UN committees. This has increased awareness of human rights inside local governments, and led to a state-wide resolution requiring the California

35 Human Rights Resources Centre, Office for Non-Discrimination, Barcelona City Council (Eds.) 2019. *Barcelona Discrimination Observatory Report*. Accessed at https://ajuntament.barcelona.cat/oficina-no-discriminacio/en/discrimination-observatory

Attorney General to publicize treaties and prepare guiding materials for cities to report compliance.[36]

Engagement with international processes is important, but accountability mechanisms that are closer and more accessible to local interests and communities are required, for example through the creation of local ombuds offices and municipal human rights commissions. The latter are usually constituted by experts and practitioners from civil society, academia, and government, and may be embedded within local government or at arm's length. Both mechanisms provide a degree of monitoring and oversight of local initiatives and can support institutional stability for longer range human rights goals. More participatory approaches have also been devised. For example, the city of York's Human Rights City Network reports yearly on the local council's human rights progress, based on indicators jointly developed through a participatory project with residents (see box 8).

Box 8: York UK's participatory monitoring approach

The mission of the York Human Rights City Network (YHRCN) is to encourage practitioners and policy-makers at the city level to use human rights law and principles to guide their work, raise public awareness about human rights issues, and provide protection for vulnerable people. The Network is made up of diverse members and is managed by a steering group, which includes a permanent seat for city council.

YHRCN launched its first major initiative in 2013, a participatory indicator project. The project was designed in two phases, with the first surveying citizens on rights they felt were a priority (the selected rights were equality, health, adequate standard of living, housing, and education). During the next phase, it identified indicators linked to the selected priorities through community focus groups. Later, in 2014, the Network secured a grant to embed the indicators in three member organizations, including the York Council, the local police department, and York's main voluntary services organization. Finally, in 2016, training took place inside these organizations, and they formally agreed on the indicators. YHRCN now reports on a yearly basis on progress.

The city of Seoul boasts one of the most comprehensive frameworks for local enforcement and accountability, blending a number of institutional and participatory mechanisms. For example, the city's accountability architecture includes a citizen jury, which provides an opportunity for local residents to weigh in on decisions made by the local ombudsperson (see box 9).

36 Kamuf Ward, J. 2012.

One outcome of this process has been the creation of improved guidelines on evictions, including more stringent legal protections for tenants, which were initiated by a complaint filed with the ombudsperson.[37]

Box 9: Seoul's accountability architecture

Human Rights Division	Develops and monitors the city's Human Rights Action Plan in conjunction with the Committee on Human Rights. Also carries out education programs and builds cooperation with civil society. Staffed by 18 persons and with nearly a US$ 1 million annual budget.
Committee on Human Rights	Protects and promotes rights, empowered to give policy recommendations to the mayor. To carry out its duties, the Committee can request a hearing and documents for review and may refer cases to the Human Rights Ombudsperson. The committee is made up of 15 appointed members from academia, civil society, and government organizations.
Ombudspersons	Operates to remedy violations brought forward by citizens. There are three Ombudspersons, appointees from civil society and the public sector. Ombudspersons conduct investigations, make a final decision, and notify the mayor and relevant institutions of their results.
Citizen Jury	A panel of 200 jurors – 150 citizens and 50 experts. For each case considered by the Ombudsperson, 12 jurors are randomly drawn to reach a decision the Ombudsperson considers when making their final decision.

The diversity exemplified by human rights cities is a testament to local creativity, ambition, and leadership. Their continued emergence suggests that local authorities and communities are finding useful ways to tackle complex challenges through rights-based approaches. Still, work remains to be done to ensure that rights-holders are empowered to claim their rights, and that human rights are deeply and systemically embedded into the work of local authorities to deliver meaningful change.

37 United Cities and Local Governments. January 1, 2019. "Seoul's quest to bring human rights closer to citizens' lives: Interview with the Human Rights Department of Seoul's Metropolitan Government." Accessed at https://www.uclg-cisdp.org/en/news/latest-news/seoul%E2%80%99s-quest-bring-human-rights-closer-citizens-lives-interview-human-rights

5. Intergovernmental considerations

While cities may forge ahead with their own initiatives to strengthen human rights, ultimately, collaboration and resources are needed from other orders of government to ensure the fulfillment of rights. A coordinated, multi-level approach involving the three orders of government is required to fully realize economic and social rights in Canada. The protection of these rights should not depend on which city or municipality one lives in.

Currently, however, very little collaboration on human rights takes place. 2017 marked the first time in nearly 30 years that the federal government hosted a Federal-Provincial/Territorial meeting on human rights implementation. At that time, ministers committed to enhanced collaboration and a modernization of intergovernmental mechanisms, as well as to strengthening Canada's implementation of social and economic rights.[38] Regrettably, there has been little follow-up to these commitments or engagement with municipalities.

The UN Committee on Economic, Social and Cultural rights has expressed concern that funding agreements among different orders of government in Canada "do not establish responsibilities for the implementation of Covenant rights at the different levels" and recommended that "economic, social and cultural rights be incorporated into intergovernmental agreements and enabling legislation for municipalities, and that transfer of payments take into due account compliance with Covenant rights."[39]

This is an approach that is being developed in Europe, where funding of housing or social programs in cities is being designed to support and encourage local human rights initiatives, with conditions or incentives linked to fundamental rights, social integration, and the "European pillar of social rights."[40] Even in the United

38 Canadian Intergovernmental Conference Secretariat, Federal-Provincial-Territorial Meeting of Ministers Responsible for Human Rights: News Release, (December 12, 2017) Gatineau, QC. Accessed at https://scics.ca/en/product-produit/news-release-federal-provincial-and-territorial-ministers-from-across-the-country-gather-to-discuss-human-rights/

39 UN Committee on Economic, Social and Cultural Rights (CESCR). March 23, 2016. UN Committee on Economic, Social and Cultural Rights: Concluding Observations, Canada. E/C.12/CAN/CO/6 para 8. Accessed at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW4yzVsFh%2Fjl1u%2Ft0KVExfQT6EfAENdSjJTaz3raPv3QWT3Y59q3zadXvBYMpLNW5%2FsveoBdxLZoVN%2Fzz31c7YEgqRm0DpoVivqHo2yN5iIam

40 The European Pillar of Social Rights is an initiative launched by the European Commission in 2017. The Social Pillar is intended to deliver new and improve existing social rights for EU citizens and to serve achieve better working and living conditions in Europe. It consists of 20 principles to support fair and well-functioning labour markets and social welfare systems, divided into three chapters: Equal opportunities and access to the labour market; Fair working conditions; and, Social protection and inclusion.

States, conditions of funding for cities have been adjusted to reflect human rights norms. After the UN Human Rights Committee raised concerns about widespread criminalization of homelessness in municipal by-laws, the federal Department of Housing and Urban Development adopted a points-based municipal funding formula that provided less funding to municipalities that continued to criminalize homelessness.[41]

Provincial/territorial and municipal governments have been resistant to conditional cost-sharing in recent years when it is seen as intruding into areas of policy that are within their jurisdiction or local competencies. Municipalities are likely to be particularly resentful if they appear to be shouldered with human rights obligations that are not being met by other orders of government. However, funding for social programs is invariably linked to agreed conditions, and rights-based conditionality and incentives tied to shared values and commitments may be seen as more acceptable than policy restrictions imposed by another level of government. Municipalities are also more likely to be committed to human rights compliance that is incentivized through funding mechanisms if it is something to which they themselves have committed, rather than something that has been imposed from on high.

Cities should certainly encourage and promote co-ordination and support from other orders of government based on shared human rights commitments, but they cannot afford to wait for formal intergovernmental agreements or adherence by all governments to economic and social rights before acting. As detailed in section 4, there are many human rights initiatives that cities can take to improve the enjoyment of human rights within cities, even in the absence of co-operation and support from other orders of government. Such actions can only enhance cities' ability to promote enhanced compliance by other orders of government, including through providing necessary resources to cities.

One possible starting point for the development of a more coordinated approach to the realization of human rights in Canada may be for different orders of government to affirm, in their own jurisdiction, commitments to human rights that are shared with other orders of government, and to allow these initiatives spread by osmosis. Leadership by one level of government or one municipality can lead to similar initiatives elsewhere.

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41 National Law Center on Homelessness and Poverty. September 18, 2015. "The Cost of Criminalizing Homelessness Just Went Up by $1.9 Billion – HUD Funding Requirement Building on Department of Justice Enforcement." Accessed at https://nlchp.org/wp-content/uploads/2018/12/2015.09.18_HUD_NOFA_criminalization.pdf

This is what appears to have occurred with the adoption of the historic National Housing Strategy Act 2019 (NHSA) by the federal government in July, 2019. It provides a hopeful example of how independent action at different orders of government may lead to greater collaboration around shared human rights commitments.

The NHSA establishes the right to housing as a fundamental human right and affirms the federal government's commitment to its progressive realization. It establishes institutional mechanisms, including a Federal Housing Advocate, a National Housing Council, and a Review Panel, through which compliance with the right to housing is to be monitored, and systemic issues identified by affected communities, investigated, and brought to hearings. Findings and recommendations by the Advocate or the Review Panel must be considered and responded to by the government, through a designated minister. The commitments to the human right to housing that are contained in the NHSA are explicitly described as those to which Canada has committed under international law.

Thus, while the NHSA only applies to federal jurisdiction, the commitments it references are shared with all governments. Even with respect to the federal government, the NHSA does not impose binding, judicially enforceable orders. Rather, it relies on the power of affirming commitments to, and establishing meaningful accountability for, human rights as core values and indispensable elements of democratic governance in Canada.

The NHSA's reliance on human rights allows any other level of government to adopt the same kind of legislation, applying international commitments to their own programs, strategies and policies. Indeed, within five months of the NHSA becoming law, the City of Toronto adopted its Housing Charter and an Action Plan, following almost identical wording in order to affirm the right to housing as a fundamental human right and establishing parallel accountability mechanisms at the municipal level (see box 10). A number of Canada's biggest cities have also signed a Municipal Call to Action, acknowledging that housing must be treated as a human right, and calling for enhanced coordination across all orders of government, as well as enabling legislation for cities to address homelessness and housing.[42]

42 Making the Shift. September 21, 2020. "Right to Home Call to Action." Accessed at https://www.make-the-shift.org/wp-content/uploads/2020/09/Right-to-Home-Call-to-Action-Full-Letter-09212020.pdf

Box 10: Toronto's Housing Charter

The City of Toronto's Housing Charter's key policy objective is to move "deliberately to further the progressive realization of the right to adequate housing as recognized in ICESCR."[43] It features the following essential elements:

- A housing strategy to further progressive realization of the right to adequate housing, which is to also contain measurable goals and timelines for reducing and ending homelessness.
- A requirement that any future decisions, policies, programs, or services that impact housing are screened and assessed for impact on the Housing Charter.
- The establishment of a Housing Commissioner to provide independent monitoring of the city's housing strategy goals and progressively realization of housing rights.
- A review of policies, programs, and by-laws to evaluate those which penalize, criminalize, or displace homeless people without offering appropriate services and housing options.
- The participation by members of affected communities (e.g., individuals with lived experience of homelessness) in decision-making related to housing.

43 City of Toronto. *HousingTO 2020-2030 Action Plan*. Accessed at https://www.toronto.ca/wp-content/uploads/2020/04/94f0-housing-to-2020-2030-action-plan-housing-secretariat.pdf

6. Way forward: considerations for human rights in Canadian cities and municipalities

We have known for some time that our cities do not work for everyone. The systemic weaknesses accentuated by the COVID-19 pandemic, which has disproportionately affected racialized communities and people living in poverty, have contributed to a growing sense that a new foundation is necessary to build back better. Human rights are the bedrock needed to ensure recovery plans are inclusive and equitable, leaving no one behind.

Cities and municipalities are exceptionally well positioned to champion human rights. The pandemic has, in particular, highlighted the important role local government plays in advancing economic and social rights. Ensuring these rights are situated at the core of urban governance can help prevent and eliminate the inequities that have disenfranchised so many in the past.

In this paper, we attempt to begin a substantive discussion on the role of Canadian cities as critical human rights actors. We have noted that while local governments in Canada have an obligation to fulfill human rights, specific obligations and responsibilities need clarification. At the same time, despite this lack of clarity, cities here and around the world are proceeding with implementing human rights locally, though at times falling short on accountability measures. Much can be learned from these models and how rights-based approaches can drive solutions to long-standing and systemic challenges.

We have also raised important considerations with respect to intergovernmental cooperation and coordination, which is required to ensure rights-holders benefit from consistent protections, no matter where they reside. Still, cities cannot afford to wait for formal intergovernmental agreements and strategies to emerge before acting. As outlined throughout, there are many actions local governments can take to improve the enjoyment of human rights within cities, at the same time as urging co-operation and support from other orders of government.

As we look to build our understanding of what a human rights city in the Canadian context should look like, we propose the following key considerations for further discussion and exploration:

1. **Drawing on international human rights for the content of human rights in cities:** While some human rights cities have focused on the "right to the city" and others have emphasized civil and political rights, cities in Canada will

likely wish to embrace a more holistic approach, consistent with Canada's international human rights obligations. Doing so would affirm the equal importance of economic and social rights. Additionally, by focusing on international human rights, Canadian cities may identify themselves as global actors, establish links to other cities, and provide leverage with other orders of government to insist that they too must meet their obligations.

2. **Bringing human rights into local governance**: Although human rights are universal and articulated in international covenants, they must be claimed and understood from the ground up, through local action by marginalized groups and communities. Municipalities must establish institutional mechanisms that empower people to apply human rights to their local circumstances and to achieve effective change.

   Though a one-size-fits-all model is unlikely to work for municipalities of varying sizes and capacities, some guidance around key institutional measures may be useful. A lesson that emerges from the global experiences of human rights cities is that simply affirming that a city recognizes human rights accomplishes little. It is crucial to avoid "window-dressing" initiatives that further position human rights as aspirational nice-to-haves rather than real obligations. Also, while courts must invariably have a role in ensuring compliance with human rights, alternative mechanisms for hearings and remedies may often be more accessible and could be critical to creating a stronger human rights culture within cities. Cities may also explore means to engage more directly with international bodies to ensure that human rights are responsive to their issues.

3. **Working with civil society**: Virtually every analysis on the role of local government in fulfilling human rights identifies the participation of civil society as crucial to success. Whether providing training and education, helping to engage rights-holders, advising on the design of rights-based solutions, or supporting monitoring and oversight activities, civil society engagement is essential on many fronts. But while much of the required know-how, experience, and relationship capital resides within the sector, civil society organizations in Canada suffer from significant resource constraints. A Canadian approach to human rights cities must recognize and address this reality accordingly.

4. **Engaging with other human rights protections and mechanisms**: Protections of human rights within local charters will overlap with protections in provincial human rights legislation, the Canadian Charter of Rights and Freedoms, and other legislation. Rights-holders will frequently have choices about whether to

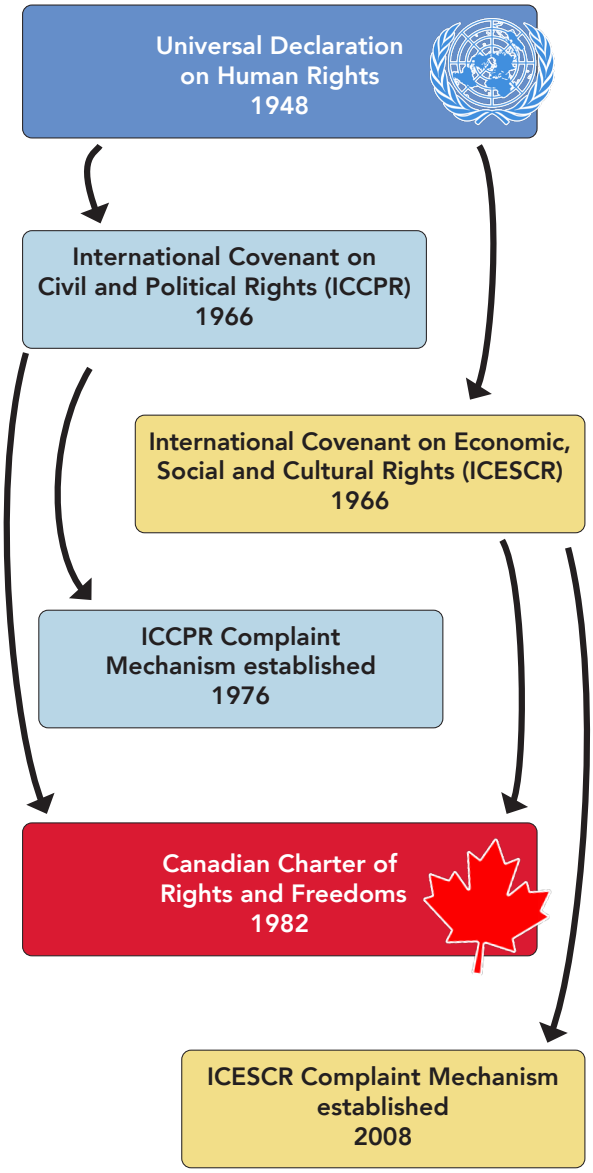
seek remedies through accountability mechanisms established within cities or to pursue cases before human rights tribunals or courts. It is important that human rights cities promote access to justice before courts and tribunals as well as provide alternative means of protection. As noted, courts elsewhere have played an important role in protecting social and economic rights in cities, and it is particularly important in Canadian that human rights cities recognize the importance of access to justice for economic and social rights.

5. **Empowering municipalities as human rights actors:** Local government must have a seat at the table for a coherent multi-level human rights approach to emerge in Canada. The implementation of economic and social rights in particular is premised on local governments playing a central role. The commitment made by first ministers at the Federal-Provincial/Territorial meeting on human rights in 2017 to strengthen the implementation of economic and social rights, and the decision at the recent 2020 meeting to establish a permanent Federal Provincial/Territorial Forum on human rights, as well as the adoption of a stakeholder engagement strategy, must include engagement with municipalities as central actors. But municipalities will likely have to claim their seat at the human rights table in Canada, rather than waiting to be invited to it.

By identifying themselves as human rights cities and adopting the mechanisms necessary to implement human rights in areas of municipal authority, local government can play an important leadership role in advancing economic and social rights and ensuring that cities are transformed into inclusive, sustainable, and vibrant communities. We hope this paper serves as a catalyst for on-going discussion with diverse organizations and rights-holders to develop deeper understanding and shape the future of human rights cities in Canada.

Appendices

Appendix 1: Chronology of human rights law in Canada



1948

The UDHR affirms a unified architecture of human rights, which are **"interdependent, indivisible, interrelated and universal."**

It includes "**civil and political rights**," such as freedom of religion, expression and association and protection from discrimination, and "**economic, social and cultural rights**," which refer to an adequate standard of food, housing, education, medical care and social services.

A number of covenants securing greater personal safety and additional protection for specific groups – all underpinned by the UDHR – emerge over the next few decades, a number of which are ratified by Canada.

1966

The unified architecture of human rights is fractured by the cold war. The UDHR - meant to be codified into a single human rights treaty - is separated into ICCPR and ICESCR to provide the option of ratifying only one covenant.

1976

ICESCR AND ICCPR are ratified by Canada.

A hierarchy of rights emerges globally, with civil and political rights deemed fundamental and social and economic rights perceived as more aspirational.

1982

The Canadian Charter of Rights and Freedoms is enacted and becomes the primary vehicle through which international human rights achieve a domestic effect.

The Charter affirms the unified architecture of rights under the UDHR, in particular through Section 15, the commitment to substantive equality, and Section 7, which guarantees "the right to life, security and liberty of the person."

2008

The UN adopts a complaints procedure for economic and social rights equivalent to the procedure in place since 1976 for ICCPR. This allows victims of violations under ICESCR to present complaints at the international level when they cannot access justice at home. Canada has yet to ratify this treaty.

Today, those seeking access to justice relating to issues of poverty, hunger, homelessness and other kinds of social and economic deprivation, continue to face resistance from the judicial system.

Other human rights treaties ratified by Canada:

- Convention on the Prevention and Punishment of the Crime of Genocide (1952)
- International Convention on the Elimination of All Forms of Racial Discrimination (1970)
- Convention on the Elimination of All Forms of Discrimination Against Women (1981)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987)
- Convention on the Rights of Persons with Disabilities (2010)

Appendix 2: What does "good faith" compliance mean?

The concept of "good faith" is central to assessing compliance with international human rights law. Article 26 of the Vienna Convention on the Law of Treaties states that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." And article 27 clarifies that: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Jurisdictional limitations on what the federal government can do to implement economic and social rights that fall largely within provincial/territorial jurisdictions (or for which responsibility has been delegated to municipalities) cannot, therefore, be invoked under international law to justify non-compliance with human rights treaties. The federal government will generally seek the formal support of provinces and territories "to ensure effective domestic implementation of Canada's international obligations."

The Committee on Economic, Social and Cultural Rights (CESCR) has also emphasized that the federal government is obliged to use "all appropriate means" to encourage compliance by other orders of government, such as by promoting interpretations of the Canadian Charter that would protect economic and social rights in all jurisdictions, making cost-sharing agreements and program expenditures conditional on compliance with the ICESCR, or negotiating inter-governmental framework agreements that incorporate accountability for social rights.

The CESCR has further emphasized that provinces and territories are also required to adopt necessary legislative and other measures to implement economic, social, and cultural rights within the areas of their jurisdiction.

See section *5* for a more complete discussion on intergovernmental considerations.

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