

A Preliminary Human Rights-Based Analysis of Winnipeg's Municipal Budget

By

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Abstract

Each year, the City of Winnipeg formulates an operating and capital budget for municipal-run services, including Water and Waste, Fire Paramedic Services, Community Services, Property and Development, City clerks, and the Police Service. The two departments that receive the most money in the tax-supported operating budget are the police services and public works despite community demands in Winnipeg for more resources towards libraries, public washrooms, transit, and housing due to its declining conditions. The continued prioritization of these services poses a question: are economic, social, and cultural rights (ESCR) priorities of the City of Winnipeg? Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) obliges States to use its maximum available resources to progressively realize ESCR. Using the ICESCR's Article 2(1) framework, the study conducts a preliminary human rights-based budget analysis of Winnipeg's municipal budget from 2020 to 2024. The findings reveal that, in addition to the disproportionate allocation of resources between services benefitting civil and political rights (CPR) and ESCR that prioritizes the former than the latter, the City of Winnipeg is failing to utilise its maximum available resources to progressively realize the ESCR under Community Services by underspending resources already adopted for the department.

Table of Contents

Table of Figures	iv
Dedication	v
Acknowledgements	vi
Introduction	1
Legal Orientation.....	2
Methodology and Outline.....	3
Thesis and Findings.....	4
Relevance of the Study.....	5
Why “Preliminary?”	6
Chapter 1: Human Rights in Winnipeg’s Budget	8
1.1 An Overview of Winnipeg’s Tax-Supported Operating Budget.....	8
1.2 From Services to Human Rights	11
<i>From the Police Service to Civil and Political Rights</i>	11
<i>From Community Services to Economic, Social, and Cultural Rights</i>	12
1.3 Whose Responsibility are ESCR?	17
Chapter 2: The City of Winnipeg as a Human Rights Duty Bearer	18
2.1 Economic, Social, and Cultural Rights in Canada	18
2.2 Winnipeg as a Human Rights City	20
2.3 International Human Rights Law and the Municipal Budget	23
Chapter 3: Winnipeg’s Human Rights Obligations Under the International Covenant on Economic, Social, and Cultural Rights	23
3.1 Article 2(1) Obligations	24
<i>“International Assistance and Cooperation”</i>	24
<i>“Maximum Available Resources”</i>	26
<i>“Progressive Realization”</i>	28
<i>“Undertake to Take Steps... By All Appropriate Means, Including Particularly the Adoption of Legislative Measures”</i>	32
3.2 Article 2(1) and Government Budgets	33
Chapter 4: Human Rights Budgeting	34
4.1 Why Human Rights Budgeting?	35
4.2 Human Rights Budgeting Methods and Steps.....	36

<i>Human Rights Budgeting Methods</i>	37
<i>Conducting a Human Rights-Based Budget Analysis</i>	39
4.3 A Guide to Conduct a Human Rights-Based Budget Analysis	45
Chapter 5: A Preliminary Human Rights-Based Analysis of Winnipeg’s Municipal Budget	46
5.1 Policy Efforts.....	47
5.2 Resources	49
<i>Revenues</i>	50
<i>Expenditures</i>	52
5.3 Human Rights Indicators.....	54
<i>Recreation</i>	56
<i>Libraries</i>	57
<i>Arts, Entertainment, and Culture</i>	58
<i>Community Liveability</i>	59
5.5 Findings.....	60
5.6 Challenges and Limitations.....	62
Conclusion	64
Bibliography	67

Table of Figures

Table 1. Overview of Winnipeg's Tax-Supported Operating Budget (2020-2024)..... 9

Table 2. Difference Between the Mill Rate Support for the Community Services' Adopted and Actual Budget (2020-2022) 52

Table 3. Difference Between the Adopted and Actual Mill Rate Budget for Community Services and the Police Service (2020-2022)..... 61

Dedication

This thesis is fulfilled and fueled by the love, care, support, and solidarity of the community organizers in Winnipeg. It is dedicated to the work of grassroots organizations who are constantly resisting, fighting, and building.

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Introduction

If budgets represent the human rights priorities of a government,¹ then economic, social, and cultural rights (ESCR) are not the priorities of the City of Winnipeg. The municipal government has long grappled with resource allocation for programs and services benefitting ESCR.² The continued allocation of tax revenue to roads and policing neglects needed infrastructure and programming for community services.³ Winnipeggers are not immune to the effects of these policy decisions as they observe the continued effects of inadequate support for social services in the city, including an unsheltered woman dying in a bus shelter,⁴ the death of sixteen-year-old Eishia Hudson,⁵ lack of support for public library workers,⁶ and shortened public washroom hours.⁷ The city's automatic response to address these social issues is traceable to their budget decisions to fund the Winnipeg Police Service (WPS) despite demands to reallocate money funnelled into the WPS to social programs and services.⁸

A gloomy future looms over the City of Winnipeg without improved investments in social services. New perspectives on public policy must be developed to hold the City of Winnipeg accountable for its economic decisions that fail social services. Government budgets

¹ OHCHR, *Realizing Human Rights Through Government Budgets*, UN Doc HR/PUB/17/3, 2017 at 47.

² Jim Silver and Owen Toews write how resources meant for community centres, playgrounds, and daycares were spent by the municipal government on routine public works, such as street repairs and streetlights, during the Neighbourhood Improvement Program between 1973 to 1978. See Jim Silver & Owen Toews, "Combating Poverty in Winnipeg's Inner City, 1960s-1990s: Thirty Years of Hard-Earned Lessons" (2009) 18:1 *Canadian Journal of Urban Research* 107–108. See also Niall Harney, ed, *Winnipeg at a Crossroads: Alternative Municipal Budget* (Winnipeg: Canadian Centre for Policy Alternatives-Manitoba, 2022), 5. "... for decades Winnipeg's municipal leaders have dragged their feet on issues like climate change, poverty, and housing, instead choosing to keep taxes low and direct new funding to roads and policing."

³ Harney, *Ibid*, 5.

⁴ Mason DePatie, "Family of Woman Found Dead in Winnipeg Bus Shelter Calling For More Resources", *CTV News* (11 December 2022), online: <<https://winnipeg.ctvnews.ca/family-of-woman-found-dead-in-winnipeg-bus-shelter-calling-for-more-resources-1.6190339>>.

⁵ Rachel Ferstl, "Teen Killed by Winnipeg Police Needed More Support From Government, Schools, Report Says", *CBC News* (22 June 2023), online: <<https://www.cbc.ca/news/canada/manitoba/eishia-hudson-manitoba-advocate-report-1.6884746>>.

⁶ Darren Bernhardt & Cameron MacLean, "3 Youths Arrested After Fatal Stabbing at Millennium Library in Downtown Winnipeg", *Canadian Broadcasting Corporation* (12 December 2022), online: <<https://www.cbc.ca/news/canada/manitoba/millennium-library-winnipeg-stabbing-1.6682493>>.

⁷ Cameron MacLean, "Public Washrooms in Downtown Winnipeg Could Have Hours Cut After Use Exceeded Budget Plans", *Canadian Broadcasting Corporation* (28 February 2023), online: <<https://www.cbc.ca/news/canada/manitoba/winnipeg-public-washrooms-downtown-1.6763582>>.

⁸ See Owen Toews, Abby Stadnyk & Serenity Joo, "'Defund the Police' Means Re-Fund the Community" *Canadian Dimension* (7 March 2021), online: <<https://canadiandimension.com/articles/view/defund-the-police-means-re-fund-the-community>>.

are not simply about spending and allocating but also includes the human rights commitments, and indeed obligations, of the City of Winnipeg.

Legal Orientation

The municipal budget is the most critical policy document facilitating rights realization at the municipal level.⁹ Rights holders cannot access their legal entitlements without resources dedicated to economic, social, cultural, civil, and political rights. For instance, fulfilling Article 25, the right to participate freely in public affairs, of the International Covenant on Civil and Political Rights (ICCPR) requires governments to create an adequate public participation infrastructure, including funding for staff, voting stations, and other similar materials.¹⁰ The right to a fair trial is also a civil and political right (CPR) that requires many resources, including judges, courts, and legal aid. Yet, governments routinely question the resources required for ESCR realization.¹¹ States exhibit less willingness to contribute more resources directed towards housing, education, or health, and the costs of implementing and protecting CPR are rarely questioned to the same extent as ESCR.¹²

While *all human rights* require realization through budget allocations, the obligation towards resources is specifically provisioned under Article 2(1) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which requires:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.¹³

What is important to note provisionally in this Article is the inclusion of a legal obligation to use resources towards the progressive realization of ESCR.

⁹ OHCHR, *supra* note 1 at 7.

¹⁰ *Ibid* at 23.

¹¹ Aoife Nolan, Bruce Porter & Malcolm Langford, *The Justiciability of Social and Economic Rights: An Updated Appraisal* (New York: NYU School of Law, 2007) [Center for Human Rights and Global Justice Working Paper No 15] 8.

¹² *Ibid*.

¹³ *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 2(1) (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

Evolved from the ICESCR's Article 2(1) is the concept of human rights budgeting. Human rights budgeting is the practice of assessing government budgets using human rights standards. It is a potentially helpful tool that municipalities can use to demand a more just allocation of the city's resources. Rights holders (Winnipeggers) must demand accountability from duty bearers (City of Winnipeg) following these human rights obligations. When applied a human rights-based approach to the budget, the demands for increased resources towards social services and programs are, in fact, demands to uphold the legal human rights obligations of the City of Winnipeg.

Methodology and Outline

This research proposes to determine whether the City of Winnipeg's steps towards the progressive realization or legal obligations towards ESCR are adequate, with an exclusive focus on the "maximum of its available resources" element of Article 2. The inclusion of this expression within the architecture of Article 2 functions as a gateway for legal scrutiny of the municipal government's economic and financial policies. To determine whether the City of Winnipeg's allocations for ESCR improves ESCR realization by rights holders, the research asks:

1. What are the human rights priorities of the City of Winnipeg in the tax-supported operating budget?
2. How can the ICESCR's Article 2(1) obligations improve the City of Winnipeg's budget for social services?
3. What does a preliminary human rights-based analysis of the City of Winnipeg's budget between 2020 to 2024 indicate about ESCR realization in the city?

The work is rooted in legal research methods, including doctrinal and non-doctrinal research, and is organized around five chapters. The first chapter determines the human priorities of the City of Winnipeg by linking specific municipal services with ESCR and CPR. It provides an overview of Winnipeg's tax-supported operated budget between 2020 and 2024 to signal the need for a human rights-based budget analysis.

The second and third chapters address the benefits of using the ICESCR's Article 2(1) framework to improve the City of Winnipeg's budget for social services. Chapter two discusses

the legal orientation applied to the City of Winnipeg's budget, which is the ICESCR's Article 2(1). The choice of using international human rights law as the legal framework for the research is explained through the City of Winnipeg's status as a duty bearer under international human rights law.

A fundamental research component is elucidating the obligations underlined within Article 2(1) through doctrinal research by reviewing legislation and drafting histories, jurisprudence, legal precedents, and case law. The paper discusses the ICESCR's Article 2(1) Obligations in Chapter Three. The third chapter clarifies the municipal government's human rights obligations and explains the obligations' historical development and substantive content of under the ICESCR's Article 2(1).

The remaining chapters focuses on a human rights-based analysis of Winnipeg's budget. Chapter four summarizes the human rights budgeting framework used to apply a human rights-based analysis to the City of Winnipeg's budget. Drawing upon the ICESCR's Article 2(1) obligations and civil society's human rights budget work, the chapter generates a framework that analyzes policy efforts, rights enjoyment, and dedicated resources.

The research is also intrinsically linked to public policy because government budgets are political and economic decisions made by duty-bearers. Non-doctrinal or socio-legal research using primary and secondary methods was used to study how Winnipeggers realize ESCR outside the ambit of the law. Primary methods included attending the City of Winnipeg's committee meetings and reviewing previous budget meetings available online on YouTube. Secondary methods included analyzing and summarizing academic and grey literature released by the CCPA, Social Planning Council of Winnipeg (SPCW) and other non-governmental organizations on Winnipeg's budget, which revealed concerns about ESCR realization in the city. A summary of the data and findings is in Chapter Five. This chapter applies a human rights-based approach to Winnipeg's budget by looking at Winnipeg's tax-supported operating budget for community services between 2020 and 2024.

Thesis and Findings

Using these methods and applying a human rights framework to the municipal budget, the trajectory and argument of the research follow. As rights holders flag limited access to ESCR

programs, it is evident that there are problems associated with services and programs benefitting ESCR in Winnipeg's municipal budget following a comparison of resources dedicated to CPR versus those allocated to ESCR. However, the City of Winnipeg is a duty bearer of human rights through its obligations under the ICESCR. Therefore, it has an obligation under the ICESCR to ensure that the maximum available resources are dedicated to ESCR realization. A method to assess Winnipeg's compliance with its ICESCR obligations is human rights budgeting. Thereby, this study conducts a preliminary human rights-based analysis of the budget.

While Winnipeggers have been flagging the disproportionate allocation of resources between services and programs benefitting ESCR and CPR in the overall tax-supported budget, a further human rights-based analysis of the community services department shows the City of Winnipeg's routine underspending of ESCR resources between 2020 and 2024. These findings show that Winnipeg's city budget prioritizes the resourcing of CPR versus ESCR, raising concerns that Winnipeg is not using its maximum available resources to realize ESCR progressively.

Relevance of the Study

The study contributes to municipal budget advocacy for social services in Winnipeg and the improved justiciability of ESCR in Canada. The role and relevance of the above arguments intend to add legality to the advocacy around increased resources for life-sustaining services in the city. Rather than *simple* demands to raise expenditures for ESCR, a human rights-based budget analysis refers to these demands as efforts by and pressure from civil society to hold governments accountable to their human rights obligations. Community members advocating around the budget can leverage demands to increase resources for ESCR when delegating to public officials by referring life-sustaining services as human rights obligations. This reminds municipalities the responsibilities Canada signed and ratified under international human rights law. This is also particularly relevant given that the City of Winnipeg prides its status as a human rights city.¹⁴

Ideally, rights holders should be concerned with something other than maximum available resources, progressive realization, or international assistance and cooperation to access

¹⁴ For a discussion of human rights city, see Chapter Two.

human rights inalienable to them. Governments should adhere to these obligations without pressure from civil society. However, the unfortunate reality is that many States lack accountability regarding their human rights obligations – especially ESCR. Therefore, the study does not only attempt to leverage the work of community members working around the municipal budget but also increase the municipal implementation of ESCR.

Why “Preliminary?”

While the potential contributions of a human rights-based approach to the municipal budget are noted, it is also equally essential to note the study's limitations. The research is a preliminary human rights-based analysis, not a complete human rights-based analysis. In many ways, it attempts to understand the strengths and weaknesses of applying a human rights-based approach to municipal budgets. It also questions whether a full human rights-based budget analysis is possible for future research.

The first limitation is that the human rights-based analysis focuses on the City of Winnipeg's tax-supported budget. Therefore, the analysis cannot account for Winnipeg's entire budget since some services are not supported through taxes. Funding from the provincial and federal governments is absent when analyzing Winnipeg's maximum available resources, such as service revenues and special operating agencies (SOAs). Analyzing the City of Winnipeg's entire budget between 2020 and 2024 requires more time, financial resources, and quantitative data that is unfortunately limited as a part of this study. As will be demonstrated in Chapter 5, audited data for the years 2023 to 2024 remain publicly unavailable at the time of the research.

Second, developing human rights indicators is outside the study's scope. Instead, the research compiles and summarizes the existing online data to measure Winnipeggers' ESCR enjoyment between 2020 and 2024 through the community services department. While quantitative data would benefit the assessment in this preliminary human rights-based analysis, indicators are usually measured at the federal or provincial level for ESCR in Canada, and there is limited data at the municipal level. Even so, the data available from local organizations is outdated. For instance, the Winnipeg Public Library's last annual report was in 2022.¹⁵ Even the province's annual health statistics were last updated in 2021. Therefore, since measuring the City

¹⁵ *Winnipeg Public Library Annual Report 2022*, by Winnipeg Public Library (Winnipeg: Winnipeg Public Library, 2022).

of Winnipeg’s human rights outcomes will mostly be qualitative, this analysis cannot account for a whole outcome assessment of Winnipeggers’ ESCR realization. Hence, why this is a preliminary human rights-based analysis.

The third limitation is determining which municipal services benefit ESCR. Winnipeg’s budget has no budget lines specific for housing, education, health, and other ESC services unlike the provincial government which maintains departments explicitly realizing ESCR. However, the absence of specific budget lines does not mean the absence of a human rights responsibility because sub-services benefitting ESCR enjoyment include property and development, libraries, and recreation. This will be shortly discussed in Chapter One. Determining which of the 41 municipal services fall under ESCR is out of the scope of the research. For this reason, the study only focuses on a human rights-based analysis of four sub-services under the Community Services department in Chapter Four, but it recognizes that there are more ESCR services in the municipal budget.

The final limitation is the temporal scope of the research. The analysis begins with the year 2020, when the COVID19 pandemic began, and ends with the year 2024 even when investments towards ESCR have been low over the past few decades.¹⁶ As a result of the pandemic, many municipal services shut down.¹⁷ Therefore, analyzing the years 2020 to 2024 considerably limits the extent to which ESCR are fully realized by Winnipeggers. Still, the research recognizes the merits of the temporal scope. Rights holders can see from the budget what the city prioritizes the most as the municipal government recovers from the pandemic. Unsurprisingly, even with the detriment of economic and social services, their priorities remain the same as before the pandemic – roads and policing.¹⁸ The prioritization of CPR services will be evident in the analysis of Winnipeg’s tax-supported operating budget in the next chapter.

¹⁶ See Harney, *supra* note 2.

¹⁷ “City of Winnipeg’s response to Critical (Red) status”, (30 October 2020), online: *The City of Winnipeg* <<https://www.winnipeg.ca/news/2020-10-30-city-winnipegs-response-critical-red-status>>. See also Manitoba, City of Winnipeg, *2021 Adopted Budget: Operating and Capital Volume 2* (Winnipeg: City of Winnipeg, 2020) 1-10 <<https://legacy.winnipeg.ca/finance/files/2021AdoptedOperatingCapitalBudget.pdf>> accessed 27 April 2024.

¹⁸ See also Harney, *supra* note 2 at 6.

Chapter 1: Human Rights in Winnipeg's Budget

Canadian municipal services undertake a substantial role in advancing human rights. Municipal governments hold an advantageous position to promote human rights due to their proximity to rights holders.¹⁹ Cities administer day-to-day services – including zoning permits, water, recreation, and libraries – that benefit ESCR.²⁰ Therefore, it is essential to clarify how municipal services become an instrument through which rights holders access human rights.

This chapter is committed to unpacking human rights in the municipal budget, emphasizing ESCR, and is separated to three sections. It begins with an allocation-based analysis of Winnipeg's tax-supported operating budget to demonstrate the discrepancy between the resources dedicated to municipal services. Over the past decade, community organizations have scrutinized the City of Winnipeg's lack of fiscal commitment to Community Services while austere prioritizing police services and road maintenance.²¹ The result of the allocation-based analysis is consistent with the critiques of the organizations in that services and programs benefitting CPR reign over ESCR. Following Winnipeg's tax-supported budget overview, the second section identifies specific human rights in the municipal budget. It aligns the police service with CPR and community services with ESCR. Specific ESCR examined through community services are the right to health, education, and cultural life. The chapter ends by alluding to the City of Winnipeg's responsibilities as a duty bearer of human rights.

1.1 An Overview of Winnipeg's Tax-Supported Operating Budget

An overview of the tax-supported budget over the last five years shows the continued prioritization of the Police Service and Street System (See Table 1. Overview of Winnipeg's Tax-Supported Operating Budget (2020-2024)) to the detriment of a range of services directly benefitting ESCR. Between 2020 and 2024, the police service secured an overall increase of \$24.8 million, and the street system received an additional \$61.2 million. The Winnipeg Fire

¹⁹ See Cynthia Soohoo, "Human Rights Cities: Challenges and Possibilities" in Barbara Oomen, Martha Davis & Michele Grigolo, eds, *Global Urban Justice: The Rise of Human Rights Cities* (Cambridge: Cambridge University Press, 2015) 7.

²⁰ Dragicevic and Porter writes, "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." See Nevena Dragicevic & Bruce Porter, *Human rights cities: the power and potential of local government to advance economic and social rights* (Toronto, ON, Canada: Maytree, 2020) 1.

²¹ See *A Citizen's Guide to Understanding Winnipeg's City Budgets: Public Services for Public Good* (Winnipeg, MB, CA: Canadian Centre for Policy Alternatives, 2008) 28-29.

Paramedic Services also received a \$24.8 million increase. Organizational support increased by \$62.4 million. Transit secured a significant increase of \$47.6 million. City clerks received a \$4.5 million increase. Property and development decreased by \$5.2 million and community services saw a decrease in funding of \$5.4 million. Almost all tax-supported services received increases, with the street system increasing by 20.7% and the police services obtaining a 9.3% increase. Community Services are left behind with a 4.7% decrease, alongside Property and Development with a 11.3% decrease. While the range of funding increases in all these tax-supported services is notable, the police service and roads remain the City Council’s top priorities over the past five years.

Table 1. Overview of Winnipeg's Tax-Supported Operating Budget (2020-2024)

Service	Tax-Supported Budget*				
	2020	2021	2022	2023	2024
Police Service	\$304.1	\$312.7	\$319.7	\$326.6	\$332.5
Street System, Solid Waste Collection, Street Lighting, and Open Spaces	\$295.1	\$302.4	\$302.1	\$356.9	\$356.3
Fire Paramedic	\$209.0	\$216.3	\$221.1	\$226.2	\$233.8
Community Services	\$115.0	\$114.9	\$116.3	\$120.0	\$109.6
Organizational Support	\$86.3	\$65.6	\$80.9	\$107.8	\$148.7
Transit Subsidy	\$67.4	\$104.3	\$97.6	\$102.1	\$115.0
Property and Development	\$45.9	\$43.1	\$35.7	\$37.3	\$40.7
City Clerks	\$21.7	\$21	\$21.2	\$23	\$26.2

*In millions and rounded to the nearest tens.
 Sources: City of Winnipeg, 2020 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.
 City of Winnipeg, 2021 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.
 City of Winnipeg, 2022 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.
 City of Winnipeg, 2023 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.
 City of Winnipeg, 2024 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

However, the allocation of resources in the tax-supported operating budget does not mean it represents the human rights priorities of Winnipeggers. Feedback from the City of Winnipeg’s review of its development plan revealed rights holders’ dissatisfaction with the range of services

and programs benefitting ESCR in Winnipeg. 39.2% of respondents shared that the City is doing poorly regarding good health and well-being, which involves policies covering health equity, affordable housing, healthy food, community safety, inclusive public spaces, transportation safety, digital communications, and equitable service access.²² An additional 22.5% commented very poorly.²³ Specific comments echoed the lack of mental health support, inadequate active transportation infrastructure, a car-centric culture, and closures of libraries and recreation centres.²⁴ Many suggested investments in mental health supports, walkable neighbourhoods, transit, basic income, public washrooms, and community centres to improve the city's capacity and ability regarding health and well-being.²⁵ The review also demonstrated a desire for a high value on the quality of life and improving health and safety. The feedback prioritized affordable housing, community spaces, natural areas and green space, reconciliation, and arts and culture.²⁶ The public engagement summary even indicated how:

Budget redistribution is considered important with respect to increased investment in green space, parks and recreation, community centres, composting, public art, affordable housing, active transportation amenities, especially in low-income neighbourhoods. Divestment in the police budget and wealthier neighbourhood amenities should be considered to fund these investments.²⁷

This position is consistent with community organizations' calls for government investment directed toward addressing the root causes of poverty, systemic discrimination, addictions, and racism in the city.²⁸

Rights holders repeat recommendations to divest from the police budget to increase resources for social services in Winnipeg.²⁹ While the study affirms community concerns about the bloated budget for the police service, a human rights perspective acknowledges that these too are actions to hold governments accountable to their human rights obligations towards ESCR.

²² Manitoba, City of Winnipeg, *OurWinnipeg Review: Phase 3 Public Engagement Summary*, (Winnipeg: City of Winnipeg, 2021) 72 <<https://www.winnipeg.ca/media/2806>> accessed 27 April 2024.

²³ *Ibid.*

²⁴ *Ibid* at 72-93.

²⁵ *Ibid.*

²⁶ *Ibid* at 18.

²⁷ *City of Winnipeg, supra* note 18 at 10.

²⁸ Police Accountability Coalition, *Community Based Organizations Call for Police Accountability and the Reallocation of Resources* (Winnipeg: Police Accountability Coalition), 3.

²⁹ Defund the Winnipeg Police Service, "Call for Action: Defund the Winnipeg Police Service", (4 June 2020), online: *Change* <<https://www.change.org/p/mayor-brian-bowman-and-winnipeg-city-council-call-for-action-defund-the-winnipeg-police-service>>.

1.2 From Services to Human Rights

Winnipeggers' demands for more social services resources are demands to access their ESCR, which are legal entitlements under international human rights law. While human rights are interdependent insofar that socioeconomic disparities ultimately lead to CPR violations,³⁰ the substantiation of specific human rights in certain municipal services are more explicit than others. This is evident in the materialization of CPR in the police service and ESCR in community services.

From the Police Service to Civil and Political Rights

With the police service consistently occupying Winnipeg's top expenditures in the tax-supported operating budget, understanding which human rights it respects, protects, and fulfills is valuable to understanding the City of Winnipeg's human rights priorities. Previously alluded in the preceding chapter is the status of the police service as a service that benefits CPR, but how does it supposedly benefit CPR?

The police, as an operating organ of the State, are subject to international human rights law.³¹ The Office of the United Nations High Commissioner for Human Rights (OHCHR) has developed training manuals outlining human rights standards and practice for law enforcement. They determine CPR violations concerning the police include prevention of genocide; torture; enforced or involuntary disappearance; extralegal, arbitrary, or summary executions; arbitrary arrest and detention; and racial discrimination.³² Additionally, the preamble to the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* notes the "vital role in the protection of the right to life, liberty, and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the ICCPR."³³

³⁰ See Megan Manion et al., "Budget Analysis as a Tool to Monitor Economic and Social Rights: Where the Rubber of International Commitment Meets the Road of Government Policy" (2017) 9:1 Journal of Human Rights Practice 146–158, online: <<https://academic.oup.com/jhrp/article-lookup/doi/10.1093/jhuman/hux002>> 147.

³¹ United Nations, *Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police*, Professional training series / Office of the United Nations High Commissioner for Human Rights 5,3 (New York, N.Y.: United Nations, 2004) 1.

³² United Nations, *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police*, Professional training series / Office of the United Nations High Commissioner for Human Rights 5,2 (New York, N.Y.: United Nations, 2002) 15.

³³ Office of the High Commissioner for Human Rights, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990).

However, the implication that law enforcement *respects* and *protects* CPR is challenged, given the evolving situations of police violence across North America. The police have shown disregard for the lives of marginalized communities, including racialized minorities, unhoused peoples, sex workers, and persons with disabilities.³⁴ As non-discrimination is necessary to uphold the human rights of all peoples,³⁵ then it is already clear how the police services fail its human rights obligations. Eishia Hudson,³⁶ Jason Collins,³⁷ Stewart Andrews,³⁸ Afolabi Oposo,³⁹ and Dustin Hatcher⁴⁰ are only a few of the names of the people whose lives were taken away by the WPS in Winnipeg. Therefore, despite the implication that the police respects and protects CPR, the continued disproportionate use of lethal force against Indigenous and Black communities in Canada and the rest of the world must be reiterated.⁴¹

From Community Services to Economic, Social, and Cultural Rights

Winnipeggers' attention to the lack of resources available for community services is justifiable, given that the department facilitates most ESCR realization at the municipal level. The service comprises Recreation, Community Liveability, Libraries, and Arts, Entertainment, and Culture, which enhances Winnipeggers' access to ESCR. This section links community services to specific rights under the ICESCR. As will be argued shortly, the department promotes and facilitates the realization of the right to health (Article 12), the right to take part in cultural life (Article 15), and the right to education (Article 13) under the ICESCR.⁴²

³⁴ See Shiri Pasternak, Abby Stadnyk & Kevin Walby, eds, *Disarm, Defund, Dismantle: Police Abolition in Canada* (Toronto: Between the Lines, 2022).

³⁵ *ICESCR*, *supra* note 13 at Art. 2(2), “the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³⁶ James Wilt, “When Winnipeg Police Caused Harm in 2020”, (12 November 2020), online: *Winnipeg Police Cause Harm* <<https://winnipegpolicecauseharm.org/blog/when-winnipeg-police-caused-harm-in-2020/>>.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ Fadi Ennab, “Anti-Black Racism and International Students: The Police Killing of Afolabo Oposo”, (15 January 2024), online: *Winnipeg Police Cause Harm* <<https://winnipegpolicecauseharm.org/blog/anti-black-racism-and-international-students/>>.

⁴⁰ Inez Hillel, “‘I’m Telling the Truth’: A Q&A with Carrie Blaydon on the WPS Killing of Dustin Hatcher”, (28 January 2024), online: *Winnipeg Police Cause Harm* <<https://winnipegpolicecauseharm.org/blog/im-telling-the-truth-carrie-blaydon-about-the-wps-killing-of-dustin-hatcher/>>.

⁴¹ For more information, see Shiri Pasternak, Abby Stadnyk & Kevin Walby, eds, *Disarm, Defund, Dismantle: Police Abolition in Canada* (Toronto: Between the Lines, 2022).

⁴² *ICESCR*, *supra* note 13.

Article 12 of the ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁴³ A common assumption regarding the scope of the right to health is that it only entails the right of a person to be free from communicable diseases.⁴⁴ However, the Committee on Economic, Social, and Cultural Rights (CESCR) clarified that its interpretation should not be limited to health care but “...embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health...”⁴⁵ They further explain how the right to health means “the enjoyment of a variety of facilities, goods, services, and conditions necessary for the realization of the highest attainable standard of health.”⁴⁶ The former Special Rapporteur of the Right to Health Dainius Pūras has clarified that access to sports and physical activities are part of the governments positive obligations to fulfill the right to health.⁴⁷

Services and programs encouraging physical activity improve the socioeconomic factors contributing to a healthy life for Winnipeggers, and recreation provides access to a wide range of recreational programming and facilities that encourage physical activity. The benefits of physical activity to improve health are reiterated by the World Health Organization (WHO), which explains how regular physical activity is beneficial in preventing and managing noncommunicable diseases.⁴⁸ WHO recommends that States invest in policies promoting an active lifestyle through walking, sport, cycling, and recreation.⁴⁹

The City of Winnipeg’s recreation provides access to pools, gym equipment, and splash pads and offers free and paid programming that includes public skating, swimming lessons, gym access, and skateboarding. Various programming is available for children, youth, older active

⁴³ *Ibid* at Art. 12.

⁴⁴ The CESCR explains how “...good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health.” See CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd Sess, adopted 11 August 2000, UN Doc E/C.12/2000/4, online: <undocs.org/en/E/C.12/2000/4> at para 9.

⁴⁵ *Ibid* at para 4.

⁴⁶ *Ibid* at para 9.

⁴⁷ HRC, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, 32nd Sess, 4 April 2016, UN Doc A/HRC/32/33, online: <undocs.org/en/A/HRC/32/33>.

⁴⁸ World Health Organization, “Physical Activity”, (5 October 2022), online: *World Health Organization* <<https://who.int/news-room/fact-sheets/detail/physical-activity>>.

⁴⁹ World Health Organization, *Global action plan on physical activity 2018–2030: more active people for a healthier world* (Geneva: World Health Organization, 2018) 7.

adults, persons with disabilities, adults, and kids in preschool.⁵⁰ Linking the right to health with the positive outcomes of public programming dedicated to promoting an active lifestyle, recreation improves the realization of the right to health in the City of Winnipeg by providing rights holders of all ages access to a wide range of recreational programming and facilities that encourage physical activity.

In addition to the positive health benefits associated with recreational programming, the Committee on the Rights of the Child (CRC) also noted the importance of children engaging in age-appropriate and accessible recreational activities as a part of the right to participate in cultural life which is Article 15(1)(a) of the ICESCR.⁵¹ Indeed, the CESCR has defined cultural life to encompass:

...ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sports and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, [and] customs and traditions...⁵²

Therefore, sports and games through recreation benefit not only the right to health by encouraging physical activity for rights holders but also the right to cultural life following comments by the CESCR.

Another subservice under community services advancing the right to culture includes the Arts, Entertainment, and Culture which encompasses grants, events, and museums. As of 2024, the service no longer belongs to Community Services, but its benefits towards ESCR realization between 2020 to 2023 must be recognized. Through the funding provided by the subservice, the Winnipeg Arts Council allowed Winnipeggers to enjoy public art, oral and written literature, and music and song, amongst the other cultural manifestations and processes outlined by the CESCR above. While the City of Winnipeg does not recognize the social impacts benefitting ESCR of the subservice,⁵³ a survey commissioned by the Winnipeg Arts Council indicates that 90% of Winnipeggers acknowledge the contribution of arts and culture to a good quality of life in

⁵⁰ See City of Winnipeg. Community Services. Leisure Guide: Spring-Summer 2024. Winnipeg: Community Services, 2024, 3.

⁵¹ UNCR 90th Sess, 2630th Mtg, UN Doc CRC/C/KHM/CO/4-6 (2022) at para. 43(a). Article 15(1)(a) of the ICESCR “recognizes the right of everyone to take part in cultural life.” *Supra* note 11 at art (15)(1)(a).

⁵² UNECOSOC 43rd Sess, UN Doc E/C.12/GC/21 (2009) at para. 13(a).

⁵³ The City of Winnipeg only acknowledges the economic impacts of Arts, Entertainment, and Culture. This will be discussed in Chapter 5.

Winnipeg.⁵⁴ From a human rights perspective, the study maintains the assertion that the subservice benefits the right to cultural life.

On top of the right to cultural life, arts facilities further promote the right to education. Article 13(1) of the ICESCR states that the aims of the right to education obliges State Parties to:

... agree that education shall be directed to the full development of the human personality and the sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.⁵⁵

The language used in Article 13(1) and the CESCR's General Comment 13 is not limited to schooling or primary, secondary, and higher education. Instead, it uses a broader term of "educational institutions and programmes," which can be interpreted to include other programs and services that realize the right to education.⁵⁶ Indeed, in its recommendation to Zimbabwe, the CRC advised that there should be adequate budgetary allocation by the State towards the improvement of school infrastructure that includes "sports, recreational and arts facilities, and increasing children's access to school materials and textbooks."⁵⁷

Public libraries also achieve the aims written under Article 13 through the goods, services, and programs provided to rights holders. Under Article 13(2)(d) of the ICESCR is the right to fundamental education, which states that "fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education."⁵⁸ The CESCR refers to the normative content of this provision to include the definition of basic education under the World Declaration on Education For All.⁵⁹ Included in the Declaration is the recognition of libraries as a vital link to provide educational resources in school and non-school settings.⁶⁰

⁵⁴ *Culture to the Core: The Economic and Social Impact of the Arts in Winnipeg*, by Probe Research (Winnipeg: Probe Research, 2019) 1.

⁵⁵ *ICESCR*, *supra* note 13 at art 13(1).

⁵⁶ CESCR, *General Comment No. 13: The Right to Education (Art. 13)*, 21st Sess, adopted 8 December 1999, UN Doc E/C.12/1999/10, online: <undocs.org/en/E/C.12/1999/10>.

⁵⁷ UNCRC 71st Sess, 2104th Mtg, UN Doc CRC/C/ZWE/CO/2 (2016) at para. 69(c).

⁵⁸ *Supra* note 13 at art 13(2)(d).

⁵⁹ *Supra* note 56 at para. 22-24.

⁶⁰ *Ibid.*

The Winnipeg Public Library (WPL) contributes social value to the community with a range of services offering educational materials, necessary crisis response, harm reduction services, and overall community support.⁶¹ For example, the Millennium Library offers support with resumes, rent forms, referrals, and information on “affordable housing, shelters, and free food programming.”⁶² WPL programs range from adult literacy programs to programming for newcomers to Indigenous resource collections to access to computers and the internet.⁶³ Innovative programming is also available in the form of literary walks, walking book clubs, historical walks, and garden tours.⁶⁴ Given the range of programming and services available within WPL, the correlation the CCPA makes between librarians and public educators who “foster a lifelong love of learning and help create an informed public better equipped to engage with their government and fellow community members”⁶⁵ cannot be denied. With these programs and initiatives, it is evident how public libraries allow full development of the human personality and sense of its dignity, strengthen human rights and fundamental freedoms, enable public participation, and promote cross-cultural understanding, tolerance, and a sense of belonging.

The final subservice under Community Services, which benefits ESCR, is Community Liveability, which manages vacant building enforcement, community by-law enforcement, bicycle recovery, community crisis response, community grants, and community development.⁶⁶ However, the subservices that advance the right to health, education, and cultural life were reclassified under the City Clerks Department in 2024. Still, it is worth mentioning how community grants and community development provided funding for community-based organizations working on youth and arts programming, providing immigrant and refugee services, operating public washrooms and harm reduction services, and managing homelessness support.⁶⁷ These initiatives undertaken by community organizations advanced a variety of ESCR,

⁶¹ Daisy Woelk, “Winnipeg Millennium Library, More Than a Library, Might Close Sundays”, *Global News* (13 March 2024), online: <<https://globalnews.ca/news/10356497/millennium-library-sundays/>>.

⁶² *Ibid.*

⁶³ *Harney, supra* note 2 at 87.

⁶⁴ Kirsten Wurmman, “Take a Walk! Innovative Programming from Winnipeg Public Library” (2016) 11:1 Partnership, online: <<https://journal.lib.uoguelph.ca/index.php/perj/article/view/3631>>.

⁶⁵ *Imagine a Winnipeg: Alternative Municipal Budget Winnipeg 2018* (Winnipeg, MB, CA: Canadian Centre for Policy Alternatives, 2018) 46.

⁶⁶ *2023 Adopted Budget: Operating and Capital Volume 2* (Winnipeg: City of Winnipeg, 2023) 222.

⁶⁷ *Supplement to the 2023 Adopted Budget* (Winnipeg: The City of Winnipeg, 2023) 273.

from the right to education to health to housing. The study does not agree that community by-law enforcement, vacant building enforcement, and bicycle recovery are services benefitting ESCR, given that most of these subservices do not facilitate ESCR realization but rather protect property.

Following these examples, it is clear how ESCR is manifested in community services. From the community grants distributed through Arts, Entertainment, and Culture and Community Liveability to programming facilitated by Libraries and Recreation, these social services advance ESCR realization at the municipal level.

1.3 Whose Responsibility are ESCR?

The discrepancy between resources dedicated to roads and policing and those dedicated to community services in Winnipeg's overall tax-supported operating budget preliminarily reveals the prioritization of services and programs benefitting CPR. However, municipal governments should not choose which human rights to respect, protect, and fulfill. From a human rights perspective, funding programs and services benefitting CPR cannot be at the expense of those benefitting ESCR and vice versa. Yet, what often happens is the former, as Canadian municipal budgets have consistently shown its hierarchization of CPR over ESCR.⁶⁸

Echoing community demands for more resources for ESCR, the role of municipal governments as human rights "duty bearers" must be stressed to understand the possibility of increasing the resources for social services in Winnipeg through the proposed method of human rights budgeting.⁶⁹ While the City Council is the political body ultimately responsible for approving the operating and capital budget under *The City of Winnipeg Charter Act*,⁷⁰ these political actors must not be solely seen as responsible for the budget under provincial legislation but also under international human rights law.

⁶⁸ Tom Cardoso & Molly Hayes, "Canadian Cities' Police Spending Ranges from One-10th to Nearly a Third of Total Budgets, Globe Analysis Finds", *The Globe and Mail* (16 August 2020), online: <<https://www.theglobeandmail.com/canada/article-canadian-cities-police-spending-ranges-from-one-10th-to-nearly-a/>>.

⁶⁹ But see Samantha Besson, "The Bearers of Human Rights' Duties and Responsibilities For Human Rights: A Quiet (R)evolution?" (2015) 32:1 Soc Phil Pol 244–268, online: <https://www.cambridge.org/core/product/identifier/S0265052515000151/type/journal_article>.

⁷⁰ See Bill 39, *The City of Winnipeg Charter*, 3rd Sess, 37th Leg, Manitoba, 2002 (assented to 9 August 2002), SM 2002, 2. 53(1)(b).

Chapter 2: The City of Winnipeg as a Human Rights Duty Bearer

ESCR are manifested within the Community Services department. However, without the recognition that local governments are responsible for respecting, protecting, and fulfilling human rights, Winnipeggers' demands for improved access to municipal services benefitting ESCR might mistakenly appear as superfluous.⁷¹ Rights holders must expect accountability from their elected representatives regarding the human rights obligations and commitments they undertake. This chapter explains how these obligations and commitments towards human rights realization apply to the City of Winnipeg.

The chapter is separated into three sections and begins by examining ESCR enforcement and realization in Canada with a discussion of the *Canadian Charter of Rights and Freedoms* and its non-justiciability in Canadian courts. Lacking ESCR protection in national legislation, the section draws on international human rights law and its applicability to the municipal government. It rejects the argument of Canada's jurisdictional divide as a reason for lacking political will and commitment to implement ESC services at the municipal level. Indeed, with Winnipeg's declared goal of becoming a human rights city,⁷² the localization of international human rights law is even more pertinent, as discussed in the second section. The City's recognition of its responsibility as a duty bearer of human rights must be emphasized. Becoming a human rights city entails localizing international human rights law into municipal governance. Examples of initiatives from other human rights cities justify the need for action by the City of Winnipeg. After discussions of the applicability of international human rights law to the City of Winnipeg, the chapter concludes by linking Winnipeg's status as a human rights duty bearer with responsibilities toward municipal budgets.

2.1 Economic, Social, and Cultural Rights in Canada

The Canadian Charter of Rights and Freedoms, adopted in 1982, enshrines the human rights granted to Canadians. This bill of rights protects the right to participate in public affairs (Article 3), the right to life, liberty, and security of the person (Article 7), equality rights (Article

⁷¹ For a discussion of the respect, protect, and fulfill framework, see Henry Shue, "The Interdependence of Duties" in Philip Alston & Katarina Tomaševski, eds, *The Right to Food* (Boston: M. Nijhoff Publishers, 1984) 83.

⁷² *Human Rights Committee of Council 2023-2026 Strategic Plan* (The City of Winnipeg, 2022) 5.

15) and others.⁷³ What is missing from the Canadian Charter of Rights and Freedoms (Canadian Charter) are ESCR.⁷⁴ For decades, the United Nations Economic and Social Council (UNECOSOC) has called upon Canada to establish legal mechanisms to protect ESCR in Canada through litigation and improved access to justice.⁷⁵ Under the Canadian Charter, one may argue – as many successfully have in ESCR jurisprudence – that the bill of rights does not impose positive obligations regarding the fulfillment of ESCR.⁷⁶ Yet, this assumption is misinterpreted, as other legal instruments Canada ratified indeed imposes a positive obligations towards ESCR on the State.

Considering the non-justiciability of ESCR in the judicial branch of the government, the legislative branch receives more attention regarding the positive obligations attached to ESCR. Bruce Porter explains how ESCR are often inaccurately referred to as “second generation” rights, which are “described as aspirational goals to be realized through social policy and legislation rather than as justiciable rights to be adjudicated by courts.”⁷⁷ Yet, even with this hierarchy attached to ESCR, the legislative branch often neglects ESCR implementation. A recurring reason given by duty bearers for their limited efforts or reluctance to fulfill ESCR realization is the jurisdictional divide in Canada.⁷⁸ Instead of assuming responsibility for the realization of ESCR, the different levels of government deflect responsibility and point fingers at other levels

⁷³ See Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

⁷⁴ Miriam Cohen & Martin-Olivier Dagenais, “The Implementation of Economic, Social and Cultural Rights in Canada: Between Utopia and Reality” (2021) 7:1 CONSREV 26, online: <<https://consrev.mkri.id/index.php/constrev/article/view/712>> 7. See also examples of Charter-related cases that focus on civil and political rights, Government of Canada, “Examples of Charter-Related Cases”, (5 April 2022), online: *Government of Canada* <<https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/cases.html>>.

⁷⁵ See UNECOSOC 57th Sess, 20th Mtg, UN Doc E/C.12/CAN/CO/6 (2016) at para 6, “the Committee recommends that the State party implement its commitment to review its litigation strategies in order to foster the justiciability of the economic, social, and cultural rights.”

⁷⁶ But see *Gosselin v. Québec (Attorney General)*, 2002 SCC 84 (CanLII), [2002] 4 SCR 429 at 441, <<https://canlii.ca/t/1g2w1>>, retrieved on 2024-06-23. Justice Arbour implies a positive claim under Section 7 of the Canadian Charter. Porter also notes how economic and social rights are “primarily within the framework of rights to equality and non-discrimination.” See also Bruce Porter, “Inclusive Interpretations: Social Rights and Judicial Accountability” in Helena Alviar García, Karl Klare & Lucy A Williams, eds, *Social and Economic Rights in Theory and Practice: Critical Inquiries* (London and New York: Routledge, 2014) 217.

⁷⁷ Bruce Porter, “Social Policy and Social Rights in Canada: Historical Reflections” (2016) 4 *The Philanthropist Journal* (Poverty and Human Rights in Canada), online: <<https://thephilanthropist.ca/2016/06/social-policy-and-social-rights-in-canada-historical-reflections/>>.

⁷⁸ For instance, Prime Minister Trudeau indicated that housing is primarily a provincial and territorial responsibility. See e.g. Richard Raycraft, “Trudeau Says Feds Aren’t Primarily Responsible For Housing, But How Responsible Are They?”, *Canadian Broadcasting Corporation* (2 August 2023), online: <<https://www.cbc.ca/news/politics/trudeau-housing-responsible-feds-provinces-1.6924290>>.

of government. The difficulty of recognizing ESCR at all government levels complicates ESCR realization at the municipal level.⁷⁹ However, despite the lack of political will to assume responsibility for ESCR realization, the municipal government's obligations towards ESCR realization will not cease to exist as these are attached to Canada's ratification of the ICESCR.⁸⁰

Canada's ratification of the ICESCR effectively establishes all levels of government—federal, provincial, territorial, and municipal – as human rights duty bearers.⁸¹ When Canada signed and ratified international human rights law instruments, the legal obligations attached to its ratification permeates into all orders of government. Article 28 is explicit: “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”⁸² International human rights law as a legal avenue does not mean improved access to justice for ESCR. For example, Canada's obligations under the ICESCR are routinely diminished in ESCR jurisprudence.⁸³ However, at minimum, the ICESCR recognizes ESCR as legal rights equal to CPR.

With the lack of access to justice for ESCR in the judicial branch through courts and its routine neglect in the legislative branch through policymakers, the full realization of ESCR appears quixotic. However, another avenue to hold the State accountable for its human rights obligations emerged out of grassroots efforts: the emergence of human rights cities.⁸⁴

2.2 Winnipeg as a Human Rights City

Human rights cities are designated titles local governments use to declare their commitment to human rights realization. O'Flaherty explains that the title requires “explicitly linking ... (government) activities to human and fundamental rights obligations.”⁸⁵ Some

⁷⁹ *Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada*, by Alex Neve, 90 (Montreal: Institute for Research on Public Policy, 2023), 9.

⁸⁰ *Supra* note 12 at Art. 28, “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”

⁸¹ “Canada's Appearance at the United Nations Committee on Economic, Social, and Cultural Rights”, (24 October 2017), online: *Government of Canada* <<https://www.canada.ca/en/canadian-heritage/services/canada-unesco-unesco-system-reports-united-nations-treaties/commitments-economic-social-cultural-rights/canada-appearance.html>>.

⁸² *ICESCR*, *supra* note 78.

⁸³ See, for example, Government of Canada, *Response of the Government of Canada to the Views of the Human Rights Committee Concerning Communication No. 2348/2014 Submitted by Ms. Nell Toussaint* (Government of Canada, 2023) which challenges the justiciability of the right to health under the ICESCR.

⁸⁴ Barbara Oomen & Moritz Baumgärtel, “Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law” (2018) 29:2 *The European Journal of International Law* 616.

⁸⁵ European Union Agency for Fundamental Rights, *supra* note 20 at 3.

examples of these activities include ordaining international human rights law instruments,⁸⁶ applying a human rights-based approach to budgets,⁸⁷ and creating committees dedicated to addressing human rights issues.⁸⁸

Winnipeg recognizes its role as a human rights actor when it declared its commitment towards becoming a human rights city through the initiatives of the Human Rights Committee of Council (HRCC) whose purpose is to serve “as an advisory body to the Mayor and City Council on human rights, equity, diversity, immigration, age-friendly, access and disabilities, and peace-related issues.”⁸⁹ The decision to undertake the steps to achieve the title came from sociologist Jackie Smith who encouraged the City of Winnipeg to formally commit to human rights due to Winnipeg being an ideal model of a human rights city.⁹⁰

This human rights title allows human rights frameworks to be applied at the municipal level. In theory, this self-declared title should imply that Winnipeg is already implementing the necessary steps to actualize its human rights city title. In reality, the obligations attached to localizing human rights in Winnipeg need to be clarified. Of course, the HRCC’s efforts to determine the obligations attached to a human rights city are worth noting. For example, the committee recruited Nathan Derejko, who provided a brief on forward strategies for Winnipeg as a human rights city.⁹¹ Indicated in the brief is the local recognition of human rights following existing international human rights treaties.⁹² Still, the application of international human rights treaties to local governance remains avoided. This confusion was apparent when a Winnipeg councillor referred to social services as a provincial responsibility.⁹³ However, local governments

⁸⁶ Heidi Nichols Haddad, “When Global Becomes Municipal: US Cities Localizing Unratified International Human Rights Law” (2020) 31:4 *European Journal of International Law* 1379–1399, online: <<https://academic.oup.com/ejil/article/31/4/1379/6156655>>. Haddad points to the initiatives of Richmond, California in the United States.

⁸⁷ *Ibid.*

⁸⁸ As with the example of Winnipeg’s Human Rights Committee of Council. See “Human Rights Committee of Council”, online: *The City of Winnipeg* <<https://legacy.winnipeg.ca/clerks/boards/HumanRightsCommittee/default.stm>>.

⁸⁹ *Supra* note 71.

⁹⁰ *Ibid* at 9.

⁹¹ Nathan Derejko, “Briefing Note: Forward Strategies for Winnipeg as a Human Rights City”, (12 May 2023), online: *Decision Making Information System* <<https://clkapps.winnipeg.ca/dmis/ViewDoc.asp?DocId=23815&SectionId=&InitUrl=>>.

⁹² *Ibid.*

⁹³ Quoted in Cameron MacLean, “Winnipeg Draft Budget Must Address Big Questions”, *CBC* (5 February 2024), online: <<https://www.cbc.ca/news/canada/manitoba/winnipeg-2024-budget-priorities-1.7104016>>. But see the Mayor of Winnipeg, Scott Gillingham, implying that municipal departments must work together to improve housing.

are not exempt from adhering to Canada’s human rights obligations that include social rights, especially when Canada signed and ratified the ICESCR.⁹⁴

With Winnipeg’s obligations under the international human rights treaties and its additional status as a human rights city, applying international human rights law into municipal governance, especially policies, programs, and budgets, is an inherent step the City of Winnipeg must undertake. The City can easily follow the steps of other municipal governments, integrating human rights principles and legal obligations into local ordinances. The *Montreal Charter of Rights and Responsibilities* provides an exceptional example of this integration in Canada.⁹⁵ The language of human rights pervades in Montreal’s municipal charter as it recognizes international and inter-American human rights conventions Canada ratified.⁹⁶ When residents assume violation of the rights listed under the *Montreal Charter* and has exhausted available remedies, they can make a complaint to an ombudsman whose role and mandate is to intervene in potential violations enacted by the municipal government under the municipal ordinance.⁹⁷

Other human rights cities outside Canada also implement human rights laws into local governance. Haddad pointed to the localization of the Convention on the Elimination of Discrimination Against Women (CEDAW) in San Francisco, California – the first city to develop a municipal CEDAW ordinance.⁹⁸ The Barcelona model uses international human rights standards, principles, and values in public policy.⁹⁹ The City of York in the United Kingdom develops human rights indicators rooted in international human rights law to assess rights realization of residents.¹⁰⁰ Indeed, the municipal implementation of international human rights law is a legal obligation following human rights treaties that Canada signed and ratified.

Daisy Woelk, “Winnipeg Mayor’s State of City Address Looks to Tackle Affordable Housing Crisis”, *Global News* (9 February 2024), online: <<https://globalnews.ca/news/10285891/winnipeg-mayors-state-of-city-address-affordable-housing-crisis/>>.

⁹⁴ *Supra* note 80.

⁹⁵ The Montreal City Council, by-law, 05-056, *By-Law Concerning the Montreal Charter of Rights and Responsibilities* (2006).

⁹⁶ Montréal City Council, *The Montréal Charter of Rights and Responsibilities*, 5th ed (Montréal: Service du Greffe, 2021) at 4.

⁹⁷ “History, Role, and Mandate”, (2011), online: *Ombudsman de Montreal* <<https://ombudsmendemontreal.com/en/about-us/history-role-and-mandate>>.

⁹⁸ Haddad, *supra* note 30 at 13.

⁹⁹ Citizen Rights and Diversity Department, *Methodology Guide: City of Human Rights, the Barcelona Model* (Barcelona: Barcelona City Council, 2018) at 21.

¹⁰⁰ *Human Rights in York: Moving Forward with Stronger Foundations*, by Fionn Toland (York: The City of York, 2023).

However, the application of human rights into municipal governance is also a necessary step for Winnipeg to actualize its human rights city title.

2.3 International Human Rights Law and the Municipal Budget

Winnipeggers must know that access to ESCR is a legal entitlement, especially with their growing concerns about the unequal distribution of resources between services and programs benefitting CPR and those benefitting ESCR. Of course, one does not need to turn to international human rights law to acknowledge their inherent human rights. However, the advantage of referring to social services as human rights adds legality to Winnipeggers' claims regarding the need to invest in programs and services benefitting ESCR. It centres on the individual as a rights holder rather than a service user and the government as a duty bearer.

This chapter proved that the legal obligations under the ICESCR apply to the City of Winnipeg, but what is the link between Winnipeg's budget for ESCR and international human rights law? To this end, the discussion continues in the next chapter with the City of Winnipeg's specific obligations under the ICESCR's Article 2(1).

Chapter 3: Winnipeg's Human Rights Obligations Under the International Covenant on Economic, Social, and Cultural Rights

The City of Winnipeg's obligations under the ICESCR's Article 2(1) include a specific obligation towards resource allocation. If Winnipeg, as a signatory to the ICESCR and as a human rights actor through its recognition as a human rights city, recognizes its obligations towards ESCR, then it should be clear to the City of Winnipeg that they are not exempt from ensuring that they are progressively realizing ESCR using its maximum available resources.

With the applicability of human rights law to Winnipeg recognized, the goal of this chapter is to elucidate exactly the specific obligations towards ESCR under the ICESCR. Article 2(1) of the ICESCR states that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.¹⁰¹

The substantive interpretations provisioned within Article 2(1), specifically “maximum available resources” and “progressive realization,” will be discussed using the drafting history of the Article, academic literature, case law, and comments by the Committee on Economic, Social, and Cultural Rights (CESCR). The chapter ends by explaining how municipal budgets fall under an assessment of State compliance with Article 2(1) of the ICESCR.

3.1 Article 2(1) Obligations

Article 2 (1) is the keystone of the ICESCR architecture. It is the Article that imposes legal obligations on State parties to the ICESCR because it functions to measure State compliance with the Covenant. This is particularly true for maximum available resources and progressive realization, which are often used as the criteria to determine whether a State is effectively implementing ESCR.¹⁰² However, we cannot reduce the scope of Article 2(1) to the obligations of States parties to progressive realization and maximum available resources. There are other obligations outlined in the Article, including international assistance and cooperation, taking immediate steps, adopting legislative measures and other appropriate means, and meeting minimum core obligations.

“International Assistance and Cooperation”

International assistance and cooperation establish the responsibilities of States Parties in assisting each other when enacting their human rights obligations.¹⁰³ Magdalena Sepúlveda

¹⁰¹ *Supra* note 13.

¹⁰² Lillian Chenwi, “Unpacking “Progressive Realization,” Its Relation to Resources, Minimum Core, and Reasonableness, and Some Methodological Considerations for Assessing Compliance” (2013) 46:3 *De Jure* 742.

¹⁰³ For an in-depth discussion of international cooperation and assistance, see Magdalena Sepúlveda, “Obligations of International Assistance and Cooperation in an Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights” (2006) 24:2 *Netherlands Quarterly of Human Rights* 271–303.

separates these responsibilities according to the tripartite typology of human rights obligations under international law.¹⁰⁴ The author argues that obligations under international assistance and cooperation demand States to refrain from undertaking measures negatively impacting ESCR realization in other countries (respect),¹⁰⁵ ensure accountability for private actors or non-State entities (protect),¹⁰⁶ and facilitate programs that improves access to ESCR outside a State's territory and jurisdiction (fulfill).¹⁰⁷

While the Canadian federal government is generally responsible for global affairs, the local government shows potential to assume considerable obligations related to international cooperation. The Sister City Friendship Agreement between Winnipeg and Lviv, Ukraine, is a clear example of how State parties can seek and access available resources within the international community for their respective ESCR progression.¹⁰⁸ The City of Winnipeg notes how “the cities have fostered a collaborative connection and a range of cultural, educational, recreational, and economic benefits and opportunities.”¹⁰⁹ Included in these opportunities are economic ones wherein the City of Winnipeg supported and encouraged donations to a chosen project by Lviv City Council that provides Ukrainians affected by war access to “comprehensive qualified medical care and robotic prosthetics.”¹¹⁰

Of course, the municipal government cannot fulfill this responsibility alone. For the State to provide “every form of international assistance,”¹¹¹ as the drafters intended, human rights obligations require intergovernmental cooperation in Canada. As Odello and Seatzu indicate, available financial funds for international assistance vary on the willingness of a State to dedicate its resources to international development.¹¹² Unfortunately, a largely unmet recommendation by developed countries is to dedicate 0.70 percent of their GNP to international cooperation.¹¹³

¹⁰⁴ *Ibid* at 280.

¹⁰⁵ *Ibid*.

¹⁰⁶ *Ibid* at 282.

¹⁰⁷ *Ibid* at 285.

¹⁰⁸ *Ibid* at 752

¹⁰⁹ “Lviv Sister City”, online: *The City of Winnipeg* <<https://www.winnipeg.ca/city-governance/mayor-council/lviv-sister-city>>.

¹¹⁰ *Ibid*.

¹¹¹ UNGA 17th Sess, 1204th Mtg, UN Doc A/C.3/SR.1204 (1962) at para 14.

¹¹² Marco Odello & Francesco Seatzu, *The UN Committee on Economic, Social and Cultural Rights: The Law, Process and Practice* (Abingdon, Oxon: Routledge, 2014) at 19.

¹¹³ *Ibid*.

For several members, obliging the international community to assist other States in implementing ESCR mitigates the pressure applied to economically “underdeveloped countries,” especially given that the obligation to “international cooperation and assistance” will immediately be followed by the obligation to use maximum available resources to implement ESCR.¹¹⁴

“Maximum Available Resources”

Under the doctrine of maximum available resources, a State must generate and allocate resources dedicated to ESCR realization.¹¹⁵ A government’s policy choices must reflect its dedication and ability to generate the maximum resources that is available within the State and made available to the State.¹¹⁶ The CESCR further affirms this explanation in its General Comment 3.¹¹⁷ *The Limburg Principles on the Implementation of the International Covenant on Economic, Social, and Cultural Rights* and the *Vienna Declaration* both repeat the role of domestic resources and resources coming from the international community in explaining maximum available resources.¹¹⁸ While these comments bring further clarity towards potential sources of available resources, less clear is the type of resources that should be generated to progressively realize ESCR.

While the drafting history of the ICESCR shows that “resources” include “both financial and *other resources* available to the State,”¹¹⁹ economic resources through budgetary appropriations remain prominent indicators to assess State compliance with Article 2(1).¹²⁰ Matthew Craven further exemplifies the work of the CESCR in using economic indicators, such as a State’s gross domestic product (GDP) and gross national income (GNI), to evaluate whether they used their maximum available resources for ESCR realization.¹²¹ The strict use of economic benchmarks poses challenges to ESCR realization because it overlooks that resources extend

¹¹⁴ UNECOSOC 7th Sess, 237th Mtg, UN Doc E/CN.4/SR.237 (1951) at 7.

¹¹⁵ See generally Radhika Balakrishnan, *Maximum Available Resources & Human Rights: Analytical Report* (New Brunswick, NJ: Rutgers, The State University of New Jersey, Center for Women’s Global Leadership, 2011).

¹¹⁶ See UNECOSOC 7th Sess, 231st Mtg, UN Doc E/CN.4/SR.231 (1951).

¹¹⁷ CESCR, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, 5th Sess, adopted 14 December 1990, UN Doc E/1991/23, online: <<https://www.refworld.org/pdfid/4538838e10.pdf>>. See also *The Limburg Principles*, UNECOSOC 43rd Sess, UN Doc E/CN.4/1987/17 (1987).

¹¹⁸ UNECOSOC 24th Sess, UN Doc E/C.12/2000.13 (2000).

¹¹⁹ See also UNECOSOC 8th Sess, 271st Mtg, UN Doc E/CN.4/SR.271 (1952).

¹²⁰ Matthew C R Craven, *The International Covenant on Economic, Social, and Cultural Rights: A Perspective on Its Development*, Oxford monographs in international law (Oxford: Oxford University Press, 1995) at 136.

¹²¹ *Ibid* at 137.

beyond economic availability. Skogly summarizes that much of the work done around resources uses a quantitative approach, wherein monetary funds are prioritized over other available resources.¹²² The author argues that concentrating on money enables a loophole for States to excuse poor human rights realization on the lack of available money, all the while having other resources at their disposal to potentially advance human rights.¹²³ Skogly provides the examples of minerals, oils, and other natural resources that are often privately owned and exploited due to lack of legislation protecting them.¹²⁴ As a result, rather than an exclusive quantitative approach, a qualitative approach would further include natural, human, educational, cultural, and scientific resources.¹²⁵

The doctrine of maximum available resources unlocks possibilities for the justiciability of resource availability in ESCR litigation.¹²⁶ A significant case recognizing fiscal constraints in Canada is *Eldridge v. British Columbia*, which questioned the constitutionality of resource constraints in the Ministry of Health's failure to provide sign language interpreter services.¹²⁷ Despite finding the Government of British Columbia's failure to provide sign language interpreter services unconstitutional under the Charter,¹²⁸ the Supreme Court denied an injunction. It refused to interfere in resource decisions by the executive branch of the government.

In the case of T-025 of 2004 in Colombia, the Constitutional Court considered and analyzed "the insufficiency of available resources and its impact upon the implementation of public policy"¹²⁹ for the assistance of the displaced population. Recognizing the obligation to appropriate necessary resources for the realization of the fundamental rights of displaced

¹²² Sigrun Skogly, "The Requirement of Using the 'Maximum of Available Resources' for Human Rights Realisation: A Question of Quality as Well as Quantity?" (2012) 12:3 Human Rights Law Review 404, online: <<https://academic.oup.com/hrlr/article-lookup/doi/10.1093/hrlr/ngs022>>.

¹²³ *Ibid* at 420.

¹²⁴ *Ibid* at 406.

¹²⁵ *Ibid* at 404. See also Robert E Robertson, "Measuring State Compliance with the Obligation to Devote the 'Maximum Available Resources' to Realizing Economic, Social, and Cultural Rights" (1994) 16:4 Human Rights Quarterly 697, online: <<https://www.jstor.org/stable/762565?origin=crossref>>.

¹²⁶ See *A Rights-Based Approach Towards Budget Analysis*, by Maria Socorro Diokno (Quezon City, 1999).

¹²⁷ "A declaration, as opposed to some kind of injunctive relief, is the appropriate remedy in this case because there are myriad options available to the government that may rectify the unconstitutionality of the current system. It is not this Court's role to dictate how this to be accomplished." See *Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 SCR 631, <<https://canlii.ca/t/1fqx5>>, retrieved on 2024-06-26

¹²⁸ *Ibid*.

¹²⁹ See Colombian Constitutional Court, *Decision No. T-025 of 2004*, January 22, 2004 (Colom.), para. 3.

persons, the Court called upon government branches to collaborate in ensuring that adequate resources are dedicated to assisting the displaced population in accessing their constitutional and legal rights.¹³⁰

The consideration of resources through budgets in courts does not mean judicial decisions are decided to the advantage of claimants. Rather, it speaks to the growing role of budgetary constraints in jurisprudence. Since the substance of ESCR depends on the State's available resources, courts should ensure that the executive branch of the government's budgetary decisions adhere to international human rights obligations. CPR realization also requires resources and policy implementation, yet the same arguments do not apply to their justiciability.¹³¹

Regardless of the variety of resources available to a State and its distribution, it is difficult to fulfill the effective enjoyment of ESCR over a month, year, or even a decade. Meaningful efforts from States to advance ESCR are possible, but expecting the immediate and full implementation of ESCR is quixotic.¹³² Hence, the drafters included the doctrine of progressive realization within Article 2(1).

“Progressive Realization”

ESCR cannot be immediate.¹³³ Eliminating poverty, providing social assistance, developing educational systems, or building affordable housing are impractical realities without actionable steps from States since they require time and resources impossible to obtain within a day, month, or even a year.¹³⁴ The Commission viewed the progressive nature of ESCR as a fundamental factor when respecting, protecting, and fulfilling ESCR.¹³⁵ General Comment 3 of the CESCR reflects the drafters' intention and states that:

The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be

¹³⁰ *Ibid* at para. 6.3.2

¹³¹ International Commission of Jurists, “Comparative Experiences of Justiciability” in *Courts and the Legal Enforcement of Economic, Social, and Cultural Rights 2* (Geneva: International Commission of Jurists, 2008) 9.

¹³² *UNECOSOC*, *supra* note 114 at 6.

¹³³ UNGA 17th Sess, 1181st Mtg, UN Doc A/C.3/SR.1181 (1962).

¹³⁴ Chenwi, *supra* note 102 at 749.

¹³⁵ *Ibid*.

achieved in a short period of time... Nevertheless, the fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content.¹³⁶

While progressive realization provides States with a certain degree of discretion and flexibility with their Article 2(1) obligations, it is emphasized that the Article still obliges them to move expeditiously and effectively towards the full realization of ESCR using its maximum available resources.¹³⁷ Existing case law supports this approach. For example, in *Millicent Awuor Omuya and Margaret Anyoso Oliele v. The Attorney General & 4 Others*, the respondents referred to the progressive nature of economic and social rights, specifically reproductive health care, under Article 43 of the Constitution of Kenya.¹³⁸ Despite the recourse to resource constraints by the respondents, the High Court of Kenya at Nairobi found a violation of the right to health by the Government of Kenya.

It is also important to note that the general consensus between the drafters that ESCR are progressive rather than immediate does not apply to all rights.¹³⁹ Some provisions under Article 2 (1) require implementation at once and of immediate effect regardless of a State's development or economic status.¹⁴⁰ As the Limburg Principles stress, "the application of some rights can be made justiciable immediately, while other rights can become justiciable over time."¹⁴¹ For example, as will be immediately discussed in the next section, there is no delaying the obligation to take steps, nor can non-discrimination, gender equality, workers' rights, and women's rights be delayed.¹⁴²

¹³⁶ CESCR, *supra* note 117 at para 9.

¹³⁷ See World Conference on Human Rights, UN Doc A/Conf.157/23 (1993). See also UNECOSOC, *supra* note 75 at para 21.

¹³⁸ *Millicent Awuor Omuya and Margaret Anyoso Oliele v. The Attorney General & 4 Others*, [2020] eKLR (Kenya), para. 50, "The respondents submit further that Kenya is a small, third world country with an overwhelming population, and the state is only able to implement the economic and social rights with due regard to the available resources."

¹³⁹ For example, the Bulgarian representative explains how the provisions within Article 12 includes immediate obligations to provide "free and compulsory primary education." See UNGA 17th Sess, 1182nd Mtg, UN Doc A/C.3/SR.1182 (1962).

¹⁴⁰ CESCR, *supra* note 117 at para 5.

¹⁴¹ Limburg Principles, *ibid* at para 8.

¹⁴² CESCR, *supra* note 117 at para 5.

There are additional inherent duties implied under progressive realization, the doctrine of non-retrogression and the duty to fulfill minimum core obligations.¹⁴³ Just as States are required to progressively realize ESCR, they must also refrain from taking retrogressive measures that hinder ESCR realization. In *Centre on Housing Rights and Evictions (COHRE) v. Italy*, the plaintiff alleged that the State violated the right to housing by implementing deliberate retrogressive measures discriminating against Roma and Sinti. An example of such a measure includes creating state of emergency security measures that destroyed camps where majority Roma and Sinti communities reside.¹⁴⁴ Public officials planned alternate camps for 4,000 persons when approximately 15,000 resided within the camps.¹⁴⁵ The European Committee of Social Rights found Italy to be in breach of the right to housing as there is “no evidence to establish that Italy has taken sustained positive steps to improve”¹⁴⁶ access to housing by Roma and Sinti.

The CESCR has also clarified obligations regarding non-retrogression. In General Comment 3, the Committee details how deliberate retrogressive measures “would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.”¹⁴⁷ The Maastricht Guidelines also categorizes retrogressive measures as a violation through Acts of Commission through insufficient regulation by States.¹⁴⁸

Under the doctrine of progressive realization, State parties must satisfy minimum core obligations. Minimum core obligations are minimum essential levels of the rights listed under the ICESCR relative to their development status and are of immediate effect.¹⁴⁹ But, as Leckie states, these do not represent the full realization of the rights but rather the first step;¹⁵⁰ Hence, why these are considered “minimum.”

¹⁴³ For a discussion on these concepts, see Rory O’Connell, Aoife Nolan & Colin Harvey, *Applying an International Human Rights Framework to State Budget Allocation: Rights and Resources* (Oxon: Routledge, 2016).

¹⁴⁴ *Centre on Housing Rights and Evictions (COHRE) v. Italy: Complaint* (European Committee of Social Rights, 2009) at para 98.

¹⁴⁵ *Ibid* at para 173.

¹⁴⁶ *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, Council of Europe: European Committee of Social Rights, 25 June 2010, <https://www.refworld.org/jurisprudence/caselaw/coeescr/2010/en/76471> [accessed 19 May 2024] at para 86.

¹⁴⁷ CESCR, *supra* note 117 at para 9.

¹⁴⁸ Maastricht Guidelines, *supra* note 73 at para 14(e).

¹⁴⁹ CESCR, *supra* note 117 at para 10.

¹⁵⁰ Scott Leckie, “Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights” (1998) 20:1 hrq 81–124, online: <<https://muse.jhu.edu/article/13609>>.

Decisions made by various courts in different jurisdictions expand the definition of minimum essential levels.¹⁵¹ In *South Africa v. Grootboom*, the Court expressed difficulties in considering whether these core obligations towards the right to housing include providing land, building housing, or giving financial assistance for rights holders to access their right to housing.¹⁵² The Court concluded that they do not have adequate information to determine what would constitute minimum core levels of the right to housing.¹⁵³

While the jurisprudence on minimum core obligations is both illustrative and increasing, they do not define the full scope of minimum essential levels of ESCR. The CESCR also contributes to what can be deemed as a minimum. For instance, the minimum essential levels of the right to health amounts to ensuring access to health facilities, minimum essential food, basic shelter, and providing essential drugs, amongst others.¹⁵⁴ With respect to the right to food, States must provide “sufficient, nutritionally adequate, and safe, to ensure their freedom from hunger.”¹⁵⁵

Concerns about the substantive interpretation around progressive realization being a flexibility device are valid,¹⁵⁶ but, as evident in the immediate duty to achieve minimum essential levels, the progressive nature of ESCR does not devoid Article 2(1) of immediate obligations. The implied longevity of ESCR realization does not mean that States should neglect the duties enlisted under the ICESCR; this is why Article 2(1) also includes the immediate obligation to take steps.

¹⁵¹ Maastricht Guidelines, *supra* note 73 at para 8.

¹⁵² *Ibid* at para 33.

¹⁵³ *Ibid*.

¹⁵⁴ CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, 22nd Sess, adopted 11 August 2000, UN Doc E/C.12/2000/4, online: < undocs.org/en/E/C.12/2000/4 > at para 43.

¹⁵⁵ CESCR, *General Comment No. 12: The Right to Adequate Food (Art. 11)*, 20th Sess, adopted 12 May 1999, UN Doc E/C.12/1999/5, online: < undocs.org/en/E/C.12/1999/5 >.

¹⁵⁶ See Yvonne Donders, “The Flexibility Device in the International Covenant on Economic, Social and Cultural Rights” in Maarten den Heijer & Harmen van der Wilt, eds, *Netherlands Yearbook of International Law 2020* Netherlands Yearbook of International Law (The Hague: T.M.C. Asser Press, 2022) 283.

“Undertake to Take Steps... By All Appropriate Means, Including Particularly the Adoption of Legislative Measures”

The duty to ‘take steps’ addresses issues associated with the progressive realization of ESCR.¹⁵⁷ Since many members of the Commission critiqued Article 2 (1) as a loophole due to its progressive nature,¹⁵⁸ the obligation to “take steps” counters this criticism by imposing immediate legal duties on the State party to respect, protect, and fulfill ESCR.¹⁵⁹ Despite the flexibility given to States following Article 2(1),¹⁶⁰ the CESCR comments that deliberate, concrete, and targeted steps towards respecting, protecting, and fulfilling ESCR “must be taken within a reasonably short time.”¹⁶¹ For example, the obligation “to take steps” does not require State parties to eradicate poverty and homelessness immediately after ratifying the ICESCR. Rather, taking steps imposes an obligation on State parties to create a course of action that leads to the progressive realization of ESCR. A notable and recent example is Canada’s National Housing Strategy Act (“The Act”), which not only recognizes housing as a human right but also specifies a long-term vision for housing rights realization by establishing national goals related to housing and homelessness and assigns human and administrative resources to fulfill the contents of the Act.¹⁶²

In addition to legislative measures, the CESCR defines “all appropriate means” to include financial, administrative, social, and educational steps.¹⁶³ State parties may undertake steps ranging from policy changes to public education; this is why the obligation to undertake steps is concurrent with the duty to use “...all appropriate means, including particularly the adoption of legislative measures” to progressively realize ESCR.¹⁶⁴

We see these steps in practice in reports submitted by state parties to the CESCR’s review process. For example, in their 2015 submission, the Lebanese government presented their

¹⁵⁷ See Allison Corkery and Ignacio Saiz, “Progressive Realization Using Maximum Available Resources: The Accountability Challenge,” in *Research Handbooks in Human Rights*, ed. Jackie Dugard (Cheltenham, UK; Northampton, MA, USA: Edward Elgar Publishing, 2020), 279.

¹⁵⁸ UNECOSOC 8th Sess, 275th Mtg, UN Doc E/CN.4/SR.275 (1952).

¹⁵⁹ Leckie, *supra* note 142 at 101.

¹⁶⁰ CESCR, *supra* note 117 at para 9.

¹⁶¹ *Ibid* at para 2.

¹⁶² *National Housing Strategy Act*, SC 2019, c 29, s 313.

¹⁶³ CESCR, *supra* note 117 at para 3.

¹⁶⁴ *Ibid*, para 16 to 20.

nationwide initiative to provide “free education for all children at the stage of basic education”¹⁶⁵ by implementing a national plan to advance the right to education following Article 13(2)(b) of the ICESCR.¹⁶⁶ The CESCR commended their efforts to provide free basic education in public schools.¹⁶⁷

It is worth questioning the possibilities of actions and steps that states can undertake to reach the full realization of ESCR or whether the full realization of ESCR is even possible since the concept of full realization has yet to receive clarity from the CESCR or the Commission. After all, how do we know if these steps lead to the full realization of ESCR, and how is the impact of IHRL to be measured?

3.2 Article 2(1) and Government Budgets

Government budgets are rarely regarded as policy documents advancing human rights realization. Budget discussions often lack human rights language that makes necessary services appear as *everyday pleasures or benefits* rather than legal obligations ratified by the State. However, the ICESCR’s Article 2(1), imposing legal obligations on States to realize ESCR through its maximum available resources progressively, proves the legality of the relationship between public finance and human rights realization. This recognition is crucial to improve rights holders’ access to human rights in Winnipeg.

Answering the question of how the ICESCR’s Article 2(1) framework can potentially advance resources towards ESCR services in Winnipeg, this chapter proves how the inclusion of “resources” under Article 2(1) provides a legal gateway for rights holders to demand more money allocated to ESCR services. Therefore, rights holders can now demand accountability from governments to adhere to their human rights obligations in addition to existing budget advocacy. However, to hold governments accountable for their human rights obligations through the ICESCR’s Article 2(1) framework, rights holders must understand how to conduct the practice of human rights budgeting.

¹⁶⁵ UNECOSOC 59th Sess, 78th Mtg, UN Doc E/C.12/LBN/CO/2 (2016).

¹⁶⁶ *International Covenant on Economic, Social, and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 13(2)(b) (entered into force 3 January 1976, accession by Canada 19 May 1976) [ICESCR].

¹⁶⁷ UNECOSOC, *supra* note 118 at para 4(c).

Chapter 4: Human Rights Budgeting

Human rights budgeting is the practice of assessing government budgets to determine how duty bearers advance human rights through resource allocation.¹⁶⁸ Public goods and services necessary for rights realization – such as libraries, hospitals, housing, and educational institutions – require resources to build and fulfill the function of these institutions.¹⁶⁹ Without allocated resources towards public services, rights holders will have limited access to their human rights, especially ESCR.¹⁷⁰ Therefore, the public budget as a policy document upholds not only the

¹⁶⁸ Diokno writes, “The budget is important because it reflects what the state is doing or intends to do.” See Diokno, *supra* note 126 at 6.

¹⁶⁹ According to the Office of the High Commissioner of Human Rights, these “functions” include creating, implementing, and sustaining policies, programmes, services, procedures and systems, personnel, and infrastructures. See *supra* note 1 at 18.

¹⁷⁰ Leckie writes that the effective enjoyment of ESCR “depends to a large extent on whether they (rights holders) have access to essential services such as adequate health care or quality education, and such access largely depends on the availability of resources.” See *supra* note 150 at 403.

government's priorities but also its continued commitment and adherence to international human rights law obligations.¹⁷¹

The history and substantive interpretations of Article 2(1) of the ICESCR in the previous chapter indicate the role of resource allocation in respecting, protecting, and fulfilling human rights. As outlined in the Article, states that ratified and signed the ICESCR hold positive obligations to use their maximum available resources to promote the progressive realization of ESCR. However, how do we turn these obligations or concepts into quantifiable measures of the ICESCR's Article 2(1)?

This chapter examines the use of human rights budgeting to assess Winnipeg's ESCR advancement. The study notes that developing a one-size-fits-all method is outside the scope of the research, and the goal of the chapter is to introduce human rights budgeting as a practice that can be beneficial for ESCR realization in Winnipeg.

The chapter first explains the choice of using human rights budget analysis to assess Winnipeg's budget in Chapter Four. Following the discussion of the ICESCR's Article 2(1), the section explains how the legality of human rights law added to the municipal budget can benefit civil society by holding governments accountable for implementing ESCR. The second section continues with the methods and steps under human rights budgeting. Common themes emerge from frameworks designed by NGOs and civil society to conduct a human rights-based budget analysis; these consist of reviewing policies, resources, and rights realization. The final section, the conclusion, summarizes the steps to conduct a human rights-based budget analysis.

4.1 Why Human Rights Budgeting?

Budget analysis does not need to incorporate human rights or its legal frameworks. Civil society has conducted budget analysis without the legal language of human rights. As indicated by Radhika Balakrishnan and Diane Elson, heterodox economists committed to different conceptual approaches that promoted social justice, feminism, and ecology without the norms

¹⁷¹ Budoo remarks that international and domestic laws require actionable plans by a State Party. See Ashwanee Budoo, "Adoption of a Human Rights Approach to Budgeting as a Step to Realise the Right to Education in African Countries" in AC Anuora-Oguno, WO Egbewole & TE Kleven, eds, *Education Law, Strategic Policy, and Sustainable Development in Africa* (Switzerland: Springer Nature, 2018) 36.

and standards of human rights.¹⁷² Yet, we see human rights permeated throughout accountability demands in government budgets – in demands to address climate justice, green infrastructure, or the housing crisis. Incorporating a human rights-based approach into existing budget analysis only strengthens these demands by adding legality to these calls for action.

Rather than viewing human rights budgeting as another budget analysis method, its legal weight and significance as a method to assess State adherence to the ICESCR’s Article 2(1) must be recognized. Considering Winnipeggers’ concerns about the lack of resources for social services in the city, the status and significance of human rights budgeting and its legal weight may benefit budget advocacy in Winnipeg. Civil society in other jurisdictions has been successful in organizing advocacy campaigns to improve governance and combat poverty by influencing budget outcomes.¹⁷³ Many legal scholars specify the use of human rights budget analysis in advancing ESCR activism.¹⁷⁴ The Mexican organization Fundar alongside other groups successfully mobilized for more resources dedicated to the reduction of maternal mortality through human rights budget analysis.¹⁷⁵ The South African think tank Studies in Poverty and Inequality Institute (SPII) facilitated human rights budgeting workshops to capacitate civil society to understand fiscal decisions made by local governments regarding healthcare.¹⁷⁶ What these initiatives and campaigns show is it is feasible to pressure local governments to adhere to their human rights obligations through human rights budgeting.

4.2 Human Rights Budgeting Methods and Steps

Human rights budgeting through the Article 2(1) framework proposes to hold States accountable to their human rights obligations under the ICESCR by examining how government budgets progressively realize ESCR using its maximum available resources.¹⁷⁷ For human rights

¹⁷² Radhika Balakrishnan & Diane Elson, eds, *Economic Policy and Human Rights: Holding Governments to Account* (London: Zed, 2011) 2-3.

¹⁷³ Megan Manion et al, “Budget Analysis as a Tool to Monitor Economic and Social Rights: Where the Rubber of International Commitment Meets the Road of Government Policy” (2017) 9:1 *Journal of Human Rights Practice* 146–158, online: <<https://academic.oup.com/jhrp/article-lookup/doi/10.1093/jhuman/hux002>> 155.

¹⁷⁴ See Helena Hofbauer, Ann Blyberg & Warren Krafchik, *Dignity counts: a guide to using budget analysis to advance human rights* (Mexico City), [Washington, DC: Fundar, Centro de Análisis e Investigación ; International Human Rights Internship Program : International Budget Project, 2004). and Diokno, *supra* note 126.

¹⁷⁵ Hofbauer, *ibid* at 72.

¹⁷⁶ “Budgeting for Change - Budget Advocacy in South Africa”, online: *Studies in Poverty and Inequality Institute* <<https://spii.org.za/research-and-advocacy/the-socio-economic-rights-monitoring-tool/budgeting-for-change-budget-advocacy-in-south-africa/>>.

¹⁷⁷ *Supra* note 150 at 3.

practitioners to effectively support Winnipeggers in accessing their ESCR through the budget, it is necessary to outline the steps necessary to conduct a human rights-based budget analysis. This section is separated into two subsections. The first one focuses on types of budget analysis. The second subsection explores the steps to conduct a human rights budget analysis.

Human Rights Budgeting Methods

When conducting a human rights-based analysis, it is important for the human rights practitioner to decide which components of the budget to unpack and criticize. While the budget analyst may be informed of current issues associated with ESCR realization in a government's budget, a literature review or environmental scan of the problems can be beneficial at this early stage in the human rights budget analysis. It is not necessary but can help guide the analysis. Depending on the results of the literature review, the human rights practitioner may decide to explore different methods of human rights budget analysis based on the needs of civil society.

Some human rights budgeting methods are thematic, focusing on specific rights listed under the ICESCR. The Queen's University of Belfast (QUB) Budget Analysis Project produced a report on the right to mental health in Northern Ireland.¹⁷⁸ This included an analysis of the expenditure on mental health while discussing the international human rights law obligations by the State Party towards the realization of the highest attainable standard of mental health.¹⁷⁹ QUB found that there is geographical inequity within access to mental health in Northern Ireland.¹⁸⁰ They recommend the production of data indicating how accessible these services are to children and young adults and consultations with communities using a human rights-based approach (HRBA).¹⁸¹

Another example is the work done by the New York City Welfare Reform and Human Rights Documentation Project on the right to food.¹⁸² The project concludes that the New York

¹⁷⁸ The Queen's University of Belfast also produced a human rights budget analysis report on social housing in Northern Ireland. *Budgeting for Social Housing in Northern Ireland: A Human Rights Analysis*, by Queen's University Belfast Budget Analysis Project (Queen's University Belfast, 2010).

¹⁷⁹ See *Human Rights Obligations and Budgeting for Mental Health in Northern Ireland*, by Queen's University Belfast Budget Analysis Project (Queen's University Belfast, 2012).

¹⁸⁰ *Ibid* at 54.

¹⁸¹ *Ibid* at 55.

¹⁸² *Hunger is No Accident: New York and Federal Welfare Policies Violate the Human Right to Food*, by New York City Welfare Reform & Human Rights Documentation Project (New York: Urban Justice Center Human Rights Project, 2000).

state violated the right to food by failing to use its maximum available resources to finance New York's welfare programs.¹⁸³ The authors also note that funding for the program not only decreased by \$27 billion but was also discriminatory against legal immigrants.¹⁸⁴ The Welfare Reform and Human Rights Documentation Project produced seventeen recommendations for the municipal, state, and federal governments to follow and implement the right to food.¹⁸⁵

Other human rights budgeting methods identify how public budgets impact specific groups, emphasizing socio-economically disadvantaged groups.¹⁸⁶ Elson utilized gender budget analysis to monitor compliance with the Convention on the Elimination of Discrimination Against Women (CEDAW) by focusing on an approach that considers the impact of public budgets on women through a State's public expenditure, public revenue, macroeconomics, and budget decision-making processes.¹⁸⁷ Aligning CEDAW obligations to budget decision-making processes led to Elson's conclusion that the process still lack women's participation.¹⁸⁸ The author recommends to increase the presence and capacity of women and to increase transparency and participation in budget decisions.¹⁸⁹

Streak refers to the Convention on the Rights of the Child (CRC) framework to perform a child rights-based analysis by discussing budgeting methods to profile aspects of child poverty.¹⁹⁰ The author uses quantitative and qualitative data – such as indicators, budget allocations, survey data, and child poverty rates – to create a child poverty profile that can effectively become a “child rights advancement tool” disseminated to the government.¹⁹¹

¹⁸³ *Ibid* at 42.

¹⁸⁴ *Ibid* at 10.

¹⁸⁵ *Ibid* at 53.

¹⁸⁶ Budgets should be rooted in non-discrimination because those most affected by austerity in economic policies are often the impoverished, unhoused, women, Indigenous peoples, or persons with disabilities. See, O'Connell, Nolan, & Harvey, *supra* note 135 at 59, “Do certain programmes benefit people depending on their wealth or income, their sex, their race/ethnicity, whether they are children, whether they have a disability, or where they live?”

¹⁸⁷ *Monitoring Government Budgets for Compliance With CEDAW*, by Diane Elson (United Kingdom: University of Essex and Levy Economics Institute), 5.

¹⁸⁸ *Ibid* at 14.

¹⁸⁹ *Ibid* at 15.

¹⁹⁰ Judith Streak, *Monitoring government budgets to advance child rights: a guide for NGO's* (Cape Town: Idasa, 2003). Article 4 of the CRC also imposes obligations to resource allocation on State Parties. See the *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 art 4 (entered into force 28 May 1990, accession by Canada 1991) [CRC].

¹⁹¹ Streak, *supra* note 183 at 97.

Aspects of the budget analyzed can vary depending on the goal of the human rights-based budget analysis. Recognizing the different goals of ESCR practitioners, Maria Diokno created several step guides to use budget analysis to progress ESCR activism.¹⁹² For instance, the steps to use budget analysis to enforce a right include studying budget allocations for services and programs benefitting ESCR, determining possible reallocations, working with communities, and participating in budget hearings and other activities in the budget cycle that allow public participation.¹⁹³ Diokno also provides other step-by-step guides to protect a right, match a State's ESCR allocations with national and international standards, and identify State priorities.¹⁹⁴ Therefore, knowing which aspect of the budget to review and scrutinize following a literature review of the demands of civil society is an important first step to conduct a human rights-based budget analysis.

Conducting a Human Rights-Based Budget Analysis

After deciding which component(s) of the budget to analyze, the human rights practitioner begins assessing the State's adherence to its human rights obligations under the ICESCR. There is no ubiquitous step guides defining the requirements of a human rights-based analysis. However, many proposed frameworks share similar themes, summarized below in this section. Specifically, Hannah Dawson proposes a three-step methodology to monitor the progressive realization of socio-economic rights in South Africa that reflects the similarities across human rights budgeting practices.¹⁹⁵ These guidelines require an alignment of the State's policy efforts with international human rights standards,¹⁹⁶ an examination of the government's resources,¹⁹⁷ and the monitoring of human rights realization.¹⁹⁸ Though the steps involved in Dawson's methodology are not original, the framework's summary of these steps into one coherent step guide is worth noting. The human rights budget analysis applied to Winnipeg's budget in the following chapter reflects Dawson's methodology, but the questions are not derived from it.

¹⁹² Diokno, *supra* note 126 at 3.

¹⁹³ *Ibid* at 9.

¹⁹⁴ See *Ibid*.

¹⁹⁵ *A Framework for Monitoring and Evaluating the Progressive Realization of Socio-Economic Rights in South Africa*, by Hannah Dawson (South Africa: Studies in Poverty and Inequality Institute, 2014).

¹⁹⁶ *Ibid* at 14.

¹⁹⁷ *Ibid* at 15.

¹⁹⁸ *Ibid* at 16.

Policy Efforts. Aligning policy efforts with international treaty obligations requires looking at the State’s existing policies and legislation.¹⁹⁹ To assess whether the State’s commitment and efforts can adequately fulfill ESCR, the CESCR’s Outcomes, Policy Efforts, Resources, and Assessment (OPERA) Framework suggests identifying the human rights commitments of the State and evaluating whether its constitutional and legislative provisions reflect these commitments.²⁰⁰ Assessing a State’s policy efforts require researching the international instruments the State has ratified and corresponding them with its legal and policy commitments. Hofbauer et al. refer to this step as a “rights frame of mind.”²⁰¹ A rights frame of mind encourages the application of a human rights lens before identifying a particular case, situation, or sector dedicated to ESC rights realization.²⁰²

In addition to policies, applying a human rights-based approach to budgets also means incorporating human rights principles in all stages of the budget process. From its formulation to assessment, budgets require what the Scottish Human Rights Commission (SHRC) abbreviate as the PANEL principles, which translates to participation, accountability, non-discrimination, empowerment, and legality.²⁰³ Budgets must involve the meaningful participation of civil society. It must monitor human rights realization and provide appropriate remedies for violations. It must not discriminate against protected groups or communities. It must encourage and empower civil society to participate in fiscal decisions. And, finally, human rights must be recognized in the State’s legislation. These principles incorporated into the budget are also human rights inherent in the ICCPR – namely, the right to access of information (Article 19)²⁰⁴ and the right to participate freely in public affairs (Article 25).²⁰⁵ Without ICCPR and PANEL principles incorporated into the budget process, government budgets cannot adequately represent the priorities of civil society.

¹⁹⁹ *The OPERA Framework: Assessing Compliance with the Obligation to Fulfill Economic, Social, and Cultural Rights*, by Center for Economic and Social Rights (2015) 17.

²⁰⁰ *Ibid.*

²⁰¹ Hofbauer, Blyberg & Krafchik, *supra* note 167 at 6.

²⁰² *Ibid.*

²⁰³ See Scottish Human Rights Commission, *Human Rights Based Approach: A Self-Assessment Tool* (Scotland: Scottish Human Rights Commission, 2018).

²⁰⁴ *International Covenant on Civil and Political Rights*, 16 December 1966, 993 UNTS 3 art 19 (entered into force 23 March 1976, accession by Canada 23 March 1976) [ICCPR].

²⁰⁵ *Ibid* at Art 25.

Of course, policy efforts may respect and protect human rights. It may even incorporate human rights principles into the budget cycle. However, without its fulfillment, policies are futile and becomes lip service from duty bearers. Hence, an assessment of the resources dedicated to upholding these policies are necessary to conduct a human rights-based budget analysis.

Resources. After analyzing the State’s policy efforts, the next step requires actualization of these policies. Undoubtedly, the core of human rights budget analysis under the ICESCR framework is the assessment of its resources at the macro-level, given that a State’s use of its maximum available resources demonstrates its ESCR commitments. To assess resources, Manion et al. determine three types of budget analysis – revenue, allocation, and expenditure analyses.²⁰⁶

Revenue analysis focuses on the State’s income generation. Often it involves examining the government’s primary sources of revenues.²⁰⁷ One of the most critical methods of resource mobilization is through taxation.²⁰⁸ Taxation allows rights holders to have access to goods, services, and programs that benefit their human rights, including libraries, educational institutions, hospitals, and others.²⁰⁹ However, generating revenue through taxes is not equivalent to improved human rights realization as not all fiscal policies are rights consistent.²¹⁰ Aligning tax policies with human rights principles is necessary for rights realization. Olivier de Schutter argues that four key norms should be incorporated to align tax policies with human rights standards. This includes 1) expanding the tax base to support ESCR realization,²¹¹ 2) ensuring sufficiently progressive tax policies to reduce poverty,²¹² 3) addressing tax evasion and,²¹³ 4) incorporating participation and accountability within tax policies.²¹⁴

Conducting revenue-based analysis should also consider other forms of revenue other than taxation, such as borrowing, international assistance and aid, sales of goods and services,

²⁰⁶ Manion et al, *supra* note 27.

²⁰⁷ For an in-depth discussion of taxation and human rights, see Philip Alston & Nikki Reisch, eds, *Tax, inequality, and human rights* (New York, NY: Oxford University Press, 2019).

²⁰⁸ Radhika Balakrishnan, “Taxation and Economic and Social Rights in the USA” in Radhika Balakrishnan & Diane Elson, eds, *Economic Policy and Human Rights: Holding Governments to Account* (London: Zed, 2011) 153.

²⁰⁹ Anna Bulman, “Let’s Talk About Tax, Baby” (2020) 45:2 *Alternative Law Journal* 135–139, online: <<http://journals.sagepub.com/doi/10.1177/1037969X20913651>>.

²¹⁰ *Ibid.*

²¹¹ Olivier de Schutter, “Taxing for the Realization of Economic, Social, and Cultural Rights” in Nikki Reisch & Philip Alston, eds, *Tax, Inequality, and Human Rights* (New York: Oxford University Press, 2019) 60.

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ *Ibid.*

and others.²¹⁵ For instance, in Winnipeg’s context, resources generated from the provincial and federal governments may be analyzed in addition to taxes. Limiting a government’s resources to taxes ignores the other available resources for ESCR realization. More importantly, failing to utilize other forms of resources disregards the obligation to a State’s use of its maximum available resources under the ICESCR’s Article 2(1).

An analysis of the maximum available resources available to a State is significant when conducting a human rights-based budget analysis. However, Eitan Felner notes that it is often its distribution that hinders the progress of ESCR rather than the availability or insufficiency of resources.²¹⁶ Thus, assessing State compliance to maximum available resources is not simply a matter of evaluating resources available at their disposal but the allocation of resources towards services and programs benefitting ESCR. This is where allocation-focused analysis becomes beneficial to resource analysis.

Allocation-focused analysis compares resources between different services, groups, or sectors in the budget.²¹⁷ As discussed in the previous subsection, human rights budgeting may be thematic and focus on specific rights or specific groups. As such, the resources dedicated to specific rights varies in a government budget. For instance, Magdalena Sepúlveda criticizes the discrepancy between resources invested in addressing the root causes of poverty and those invested in the criminal legal system, stating that:

if resources dedicated to policing, surveillance, and detention were instead invested in addressing the causes of poverty and improving access to public services, including social housing, States could drastically improve the lives of persons living in poverty and ensure that the maximum available resources are dedicated to increasing the levels of enjoyment of ESCR.²¹⁸

Municipal budgets in Canada reflect the criticisms by Sepúlveda with the police services representing “the top operating expenditure for 60% of the municipalities in 2019.”²¹⁹ This

²¹⁵ *Ibid.*

²¹⁶ E Felner, “Closing the ‘Escape Hatch’: A Toolkit to Monitor the Progressive Realization of Economic, Social, and Cultural Rights” (2009) 1:3 *Journal of Human Rights Practice* 431, online: <<https://academic.oup.com/jhrp/article-lookup/doi/10.1093/jhuman/hup023>>.

²¹⁷ Manion et al, *supra* note 27 at 151.

²¹⁸ UNGA, Extreme Poverty and Human Rights, 66th Sess, 4 August 2011, UN Doc A/66/265, online: <undocs.org/en/A/66/265> at para 23.

²¹⁹ Mélanie SS Seabrook et al, “Police Funding and Crime Rates in 20 of Canada’s Largest Municipalities: A Longitudinal Study” (2023) 49:4 *Canadian Public Policy* 394, online: <<https://utpjournals.press/doi/10.3138/cpp.2022-050>>.

appreciation also holds significance when evaluating Winnipeg’s budget allocation in Chapter Four.

Finally, expenditure analysis examines the actual use of these resources.²²⁰ Budget allocations indicate how resources are distributed across different sectors and rights, but expenditures reveal the actual spending. Matthews and McLaren explain that discrepancies between preliminary budgets and annual financial reports frequently occur for different reasons, including poor planning, slow disbursement of funds, budget shortfalls, unanticipated costs, poor effective oversight on privatized services, and unexpected increases in debt repayment obligations.²²¹ A notable reason for discrepancies between budget allocation and actual spending is the COVID19 pandemic which negatively impacted government budgets.²²²

Human Rights Monitoring. After examining the State’s generation and allocation of its maximum available resources, the human rights practitioner must now analyze how these resources are accessed by rights holders. Budget increases do not necessarily mean increased human rights realization,²²³ so an examination of how rights holders access human rights is necessary to conduct a budget analysis. Monitoring human rights realization is possible through human rights indicators, benchmarks, and targets.

The most common monitoring tool used by practitioners are human rights indicators. The OHCHR describes indicators as a:

Specific information on the state or condition of an object, activity, or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.²²⁴

The types of indicators the OHCHR discusses include quantitative and qualitative indicators, fact-based and judgment-based indicators, performance and compliance indicators, and indicators and benchmarks.²²⁵

²²⁰ Manion et al, *supra* note 27.

²²¹ Matthews & McLaren, *supra* note 144 at 10.

²²² See William B P Robson & Nicholas Dahir, *Fiscal COVID: The Pandemic’s Impact on Government Finances and Accountability in Canada* (Toronto, Ontario: C.D Howe Institute, 2023).

²²³ O’Connell, Nolan & Harvey, *supra* note 135 at 57.

²²⁴ OHCHR, *Human Rights Indicators: A Guide to Measurement Implementation*, UN Doc HR/PUB/12/5, 2012 at 18.

²²⁵ For a full discussion of the OHCHR’s categories, see *Ibid*, 16-20.

While a variety of human rights indicators are available, quantitative and qualitative indicators are the most prevalent tools to measure the progressive realization of ESCR. They are effective if available, accessible, and reliable.²²⁶ Quantitative indicators are characterized by numbers, including but not limited to, percentages, numbers, or indices.²²⁷ Most human rights practitioners find quantitative data available on national statistical agencies. For example, *Statistics Canada* releases publicly available data on the Canadian economy, society, and environment which can be helpful in assessing ESCR realization. Another example is Fundar's use of national available data on maternity-related deaths,²²⁸ availability of doctors in a specific state or area,²²⁹ and the number of hospital beds in their human rights budget analysis on the right to health in Mexico.²³⁰ However, numerical data alone cannot determine rights realization because access to rights cannot be reduced to numbers. Qualitative data focusing on textual analysis strengthens quantitative data by providing text-based information of rights enjoyment focusing on rights holders' narratives and experiences.²³¹ Qualitative data can be gathered through interviews, archived material, and others.

Benchmarks, performance indicators, and targets are also used to assess the progressive realization of ESCR.²³² Government commitments stated in policies and legislation are useful quantifiable data that can be used to assess their compliance with progressive realization²³³ and minimum core obligations.²³⁴ A relevant example of these indicators are municipal performance measurements presented in Winnipeg's budget. However, the OHCHR warns against the isolated use of performance indicators as these targets are often not aligned with human rights standards.²³⁵

²²⁶ See Dawson, *supra* note 188 at 17.

²²⁷ *Ibid*, 17.

²²⁸ Hofbauer, Blyberg & Krafchik, *supra* note 146 at 55.

²²⁹ *Ibid*, 64.

²³⁰ *Ibid*, 65.

²³¹ Rhona Smith & Lorna Smith, "Qualitative Data" in Lee McConnell & Rhona Smith, eds, *Research Methods in Human Rights* (Oxon and New York: Routledge, 2018) 71.

²³² Diokno, *supra* note 126 at 32.

²³³ Dawson, *supra* note 188 at 18.

²³⁴ O'Connell, Nolan & Harvey, *supra* note 143 at 158.

²³⁵ OHCHR, *supra* note 225 at 20.

One of the challenges of monitoring through human rights indicators is that these are often reliant on data available. As will be discussed in Chapter Four, data is specifically harder to collect at the municipal level since most data is collected at the federal or provincial level.

4.3 A Guide to Conduct a Human Rights-Based Budget Analysis

To assist human rights practitioners in conducting a budget analysis, the chapter ends with a summary of the steps listed in the previous sections. Following Dawson's three-step methodology, there are three steps to the guide, starting with 1) a review of policy efforts; 2) an evaluation of resources; and 3) an analysis of human rights realization.

Before the analysis begins, an optional preliminary step is to conduct a literature review of the government budget. Most practitioners might already be familiar with the problems associated with the budget, but examinations of the problems associated with it might be beneficial to the practitioner. Once or if the human rights practitioner is familiar with the demands of civil society in the budget, a review of the policy efforts by the State is necessary to determine where the problems with the budget start. Without protection in legislation and policies, rights holders cannot hold duty bearers accountable to their human rights obligations. Referring to the previous chapter, a review of the State's policy efforts is also consistent with the duty of the government to "take steps" following the ICESCR's Article 2(1). After reviewing the relevant policies and procedures, actualizing these policies through resources requires evaluation to determine how the government is generating resources, allocating its maximum available resources, and spending these resources. The final step analyzes how increased or decreased resources impact human rights realization. To this end, the next chapter replicates the steps under this guide and applies it to Winnipeg's municipal budget.

Chapter 5: A Preliminary Human Rights-Based Analysis of Winnipeg’s Municipal Budget

The City of Winnipeg’s prioritization of services and programs benefitting CPR over ESCR is evident to those who frequently access municipal services.²³⁶ When confronted regarding the service cuts, duty bearers explain the same rationale – budget shortfalls, financial pressures, and internal cuts.²³⁷ Yet, the same budget cuts are not applied to CPR services. The *Winnipeg Free Press* finds that between 2011 and 2020, the police budget increased by 50.4% and the fire paramedic by 46.4%.²³⁸ Of course, the argument here is not that CPR should not require resources. As discussed in Chapter One, CPR services demand financial resources as well. Rather, the imbalance of resources between these two sets of rights is alarming, especially with the human rights obligation of governments to ensure adequate resources are dedicated to ESCR advancement.

²³⁶ See Bronwyn Dobchuk-Land, “The Brutality is in the Budget”, *Canadian Dimension* (14 March 2023), online: <<https://canadiandimension.com/articles/view/the-brutality-is-in-the-budget>>.

²³⁷ Cameron MacLean, “Confidential Budget Briefing Paints Grim Financial Picture, Winnipeg Councillor Warns”, *CBC News* (6 January 2024), online: <<https://www.cbc.ca/news/canada/manitoba/winnipeg-council-budget-briefing-1.7076321>>.

²³⁸ Ryan Thorpe, “The High Price of Protection: Safety First, Everything Else Last”, *Winnipeg Free Press* (20 August 2021), online: <<https://www.winnipegfreepress.com/breakingnews/2021/08/20/the-high-price-of-protection-safety-first-everything-else-last>>.

Noting the discrepancy between resources dedicated to ESCR and CPR in Winnipeg’s budget, a human rights-based budget analysis of Winnipeg’s budget can be beneficial to determine whether rights holders (Winnipeggers) are progressively realizing ESCR. Following the framework established in the previous chapter, this chapter analyzes Winnipeg’s budget through three lenses: 1) policy efforts; 2) resources (expenditures) and; 3) progressive realization. The chapter begins by examining the City of Winnipeg’s policy efforts to progressively realize Winnipeggers’ ESCR enjoyment. The section looks at the inclusion of human rights norms and standards in the city’s development plans and policies, particularly *OurWinnipeg 2045*. Following an assessment of the policy efforts by the municipal government, the chapter aligns these priorities with the budget as a second step by measuring and comparing these efforts with the tax-supported expenditures for ESC rights between 2020 and 2024. The last step monitors human rights realization. Compiling these findings together, the chapter ends with a human rights-based analysis of Winnipeg’s municipal budget by identifying if and how ESCR are realized within the budget.

5.1 Policy Efforts

Adopting rights-enabling policy at all levels of government is one of the “appropriate means” envisioned by Article 2(1) for the progressive realization of ESCR. The *City of Winnipeg Charter Act* directs the City Council to adopt a development plan specifying Winnipeg’s long-term plans.²³⁹ Following provincial legislation, the municipal government set its future vision adopted through *OurWinnipeg 2045*.²⁴⁰ This by-law and policy document is superior to other plans adopted by the municipal government to the effect that it aligns “all other statutory and strategic City documents such as shorter-term Corporate Strategic Plans, Council policy, budgets, and implementation tools on specific issues and areas.”²⁴¹ A fundamental component of *OurWinnipeg 2045* is the Sustainable Development Goals (SDG) framework decided and adopted by the city council and the mayor. The goals include leadership and good governance, environmental resilience, economic prosperity, good health and well-being, social equity, and city building.²⁴² Of particular importance to the discussion at hand is the objective to uphold

²³⁹ *Ibid* at para 224.

²⁴⁰ The City of Winnipeg, by-law, 120/2020, *OurWinnipeg By-law* (2022).

²⁴¹ *Ibid* at 5 of Appendix 1.

²⁴² *Ibid* at 13 of Appendix 1.

human rights under social equity.²⁴³ Also worthy to note is the city’s recognition that “a healthy city supports the provision of basic needs, social determinants of health, and *human rights* through equitable access to food, water, housing, income, employment, transportation, recreation, literacy, and social inclusion.”²⁴⁴ In practical terms, *OurWinnipeg* is an important policy gateway for embedding human rights across all municipal policies and programs.

Along with *OurWinnipeg 2045*’s entry into force is the *Complete Communities Direction Strategy 2.0*.²⁴⁵ There are notable goals within the strategy, including to guide more investment in parks and recreation to “facilitate and promote active living, build capacity and sustainability, ensure inclusion and access, create supportive environments, and promote natural connections.”²⁴⁶ Housing is another example – with goals by the City to encourage more diverse housing stock, liaise with non-profit housing organizations, and improve public education around housing rights.²⁴⁷

Finally, the *2023-2026 Strategic Priorities Action Plan* (SPAP) represents the key priorities of the mayor and the fifteen councillors elected to council, and, concurrent with *OurWinnipeg 2045*, it guides the multi-year balanced budget process.²⁴⁸ The key themes shared by city council are: the downtown; a strong economy; a livable, safe, healthy, and happy city; a green and growing city with sustainable renewal of infrastructure; and a city that works for residents through improved customer service.²⁴⁹

Recognizing the applicable legislation, policies, and plans facilitates understanding of the policy efforts intended to guide human rights realization in Winnipeg, including the municipal budget. At the municipal level, only *OurWinnipeg 2045* acknowledges human rights under social equity,²⁵⁰ leadership and good governance, and good health and well-being. One notable objective under social equity is for the City of Winnipeg to uphold human rights and “achieve a safe, resilient, inclusive community by eliminating systemic barriers that result in discrimination,

²⁴³ *Ibid* at 29 of Appendix 1.

²⁴⁴ *Ibid* at 16 of Appendix 1.

²⁴⁵ The City of Winnipeg, by-law, 119/2020, *Complete Communities Direction Strategy 2.0* (2022).

²⁴⁶ *Ibid* at 137 of Appendix 1.

²⁴⁷ *Ibid* at 148 of Appendix 1.

²⁴⁸ Manitoba, City of Winnipeg, *Council’s Strategic Priorities Action Plan 2023-2026*, (Winnipeg: City of Winnipeg, 2024) 14 < <https://www.winnipeg.ca/media/2623>> accessed 27 April 2024.

²⁴⁹ *Ibid*.

²⁵⁰ *Supra* note 9 at 29 of Appendix 1.

and creating opportunities for social, economic, and political inclusion.”²⁵¹ These development goals are significant because they can potentially advance ESCR realization in the city and hold the municipal government accountable to its human rights commitments. For example, under good health and well-being is the city’s recognition of improving “access to food, water, housing, income, employment, transportation, recreation, literacy, and social inclusion” as a compulsory action to advance human rights.²⁵² However, policies alone cannot advance ESCR realization. In fact, many of the policies passed by the city council still lack resources. For instance, the *Newcomer Welcome and Inclusion Policy*²⁵³ was passed in the Human Rights Committee of Council, Executive Policy Committee, and City Council in 2020 but resources for the policy remain scarce.²⁵⁴ As discussed in Chapter Three, policies require implementing positive actions effectively, including adequate resource allocation.

5.2 Resources

Problems with resource generation and allocation are familiar to Winnipeg. Unsustainable taxation – including business tax cuts, municipal tax freezes, and property tax freezes – between 1998 and 2012 under the leadership of former mayors Glen Murray and Sam Katz left Winnipeggers facing service cuts affecting social programs.²⁵⁵ Once Winnipeg started to recuperate from these initiatives, inadequate resources led to shortened library hours and closures of pools, wading pools, and splash pads.²⁵⁶ Such policy decisions by Winnipeg are concerning given the deteriorating state of these services.

The City of Winnipeg’s municipal budget encountered precarious situations between 2020 to 2024. Challenged by the COVID-19 pandemic, the municipal government faced negative financial impacts in 2021 caused by decreased transit ridership revenues, municipal facilities

²⁵¹ *Ibid.*

²⁵² *Ibid* at 16 of Appendix 1.

²⁵³ The City of Winnipeg, policy, CO-015, *Newcomer Welcome and Inclusion Policy* (2020).

²⁵⁴ Daisy Woelk, “Winnipeg Newcomers ‘Disappointed’ Says City Budget Needs Cash for Welcoming Immigrants”, *Global News* (21 February 2024), online: <<https://globalnews.ca/news/10309058/winnipeg-newcomers-budget/>>.

²⁵⁵ Harney, *supra* note 3. See Molly McCracken, “What to Know Before You Vote: Implications of Winnipeg Mayoral Candidate Platforms”, (6 October 2022), online: *Canadian Centre for Policy Alternatives* <<https://policyalternatives.ca/publications/commentary/what-know-you-vote-implications-winnipeg-mayoral-candidate-platforms>>. See also *Cold Cuts: The Impact of Cuts to the City of Winnipeg’s Business Tax*, by Ian Hudson & Andrew Buchel (Winnipeg: Canadian Centre for Policy Alternatives Manitoba Office), 5.

²⁵⁶ Millennium for All reinstates how the underfunding of library workers is the effect of the tax cuts from the early 2000s in Winnipeg. See *Millennium for All Report on Securitization of the Millennium Public Library*, by Millennium for All (Winnipeg, 2019).

closures, and business closures.²⁵⁷ These resource constraints faced by the municipal government during the COVID-19 pandemic are uncertain realities experienced by governments that undoubtedly affects the city’s resources. While the shortage of revenue sources affected the City of Winnipeg’s allocation and expenditures, property taxes remain the main revenue source for the operating budget.²⁵⁸

Revenues

Since an allocation-based analysis was already conducted in Chapter One for tax-supported services,²⁵⁹ this section concentrates on expenditure analysis. The revenues for the tax-supported operating budget comes from property taxes and frontage taxes.²⁶⁰ Examining other sources of revenue – including provincial and federal transfers, licenses and fees, and sale of goods and services – in the overall budget is outside the scope of the tax-supported operating budget.²⁶¹ From 2020 to 2024, property taxes were maintained at a 3.5% increase.²⁶² Property tax increases were usually initiated to renew roads, streets, and sidewalks rather than specific ESCR services.²⁶³ The business tax rate is at 4.84%²⁶⁴ and has been declining.²⁶⁵ Finally, the frontage levy is at \$6.95 per foot in 2024.²⁶⁶

The CCPA cautioned the unideal reliance of the municipal government on property taxes for three reasons. First, property taxes do not increase the same rate as income or sales taxes which limits revenue growth until property reassessment.²⁶⁷ Policymakers then apply a mill rate

²⁵⁷ See Manitoba, City of Winnipeg, *2021 Adopted Budget Operating and Capital* (Winnipeg: City of Winnipeg, 2020) 1-9 <<https://legacy.winnipeg.ca/finance/files/2021AdoptedOperatingCapitalBudget.pdf>> accessed 1 July 2024.

²⁵⁸ Harney, *supra* note 2 at 12.

²⁵⁹ See Chapter 1 for details.

²⁶⁰ *2024-2027 Multi-Year Budget: Operating, Reserves, and Capital* (Winnipeg: The City of Winnipeg, 2024) 65.

²⁶¹ For budget revenues, see *Ibid*, 84.

²⁶² *Ibid*, 37.

²⁶³ “Item No. 7 Executive Policy Committee - Preliminary 2020-2023 Multi-Year Operating and Capital Budget - Final Recommendation”, (19 March 2020), online: *City of Winnipeg* <<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=19610&SectionId=&InitUrl=>> at 7. See *Supra* note 65 at 6. The CCPA writes, “the other problem with property taxes is that they do not fulfill any obvious policy objective. While the income that is earned from property taxes is used for a wide variety of important public services from roads to the fire department, the tax itself does not create economic incentives that move people in a desired policy direction.”

²⁶⁴ *Supra* note 260.

²⁶⁵ Harney, *supra* note 2 at 15.

²⁶⁶ *Supra* note 260 at 237.

²⁶⁷ *Supra* note 65 at 5.

to ensure gradual and modest increase to prevent sudden skyrocketed property taxes.²⁶⁸ Second, property taxes are connected to the value of property.²⁶⁹ However, this disregards situations in which individuals with modest income reside in expensive houses.²⁷⁰ Lastly, property taxes do not create incentives for specific policy objectives.²⁷¹ While revenue from property taxes are allocated to municipal services, it is not aligned with specific policies. They give the example of a carbon tax as an alternative form of taxation that “raises money and fulfills public policy goals.”²⁷² The CCPA proposes forms of taxes that can potentially alleviate the financial shortages in the budget, including increased property taxes, new impact fees, commuter fees, parking lot levy, and platform fees on short-term rental housing.²⁷³

These possible alternative forms of taxes described by the CCPA are particularly important when analyzing a State’s use of its maximum available resources for ESCR. Here, the concept and practice of “taxing for human rights” is significant, although beyond the scope of the current research.²⁷⁴ Harry Kitchen and Enid Slack map common forms of taxes from other cities in various States and identify potential new taxes and fees for Canadian cities. The list includes a surtax on personal income tax, municipal sales tax, dedicated fuel tax, parking sales tax or levy, high occupancy toll lanes, highway tolls, vehicle registration levy, and hotel and motel tax.²⁷⁵ These recommendations are not all applicable to the City of Winnipeg, but it implies possibilities for other forms of taxation beyond property taxes.

However, even with other possible forms of resource generation, determining an ideal “number” for maximum available resources is impossible. In other words, it is impossible to say that \$8 billion or \$100 billion is the target budget for the community services department, as there is no specific number of resources that will promote ESCR realization in every respect. Rather, instead of determining the *ultimate* budget for ESCR, it is possible to explore what can possibly be the maximum available resources by looking at other municipal jurisdictions.

²⁶⁸ *Supra* note 65.

²⁶⁹ *Ibid.*, 6.

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ *Harney, supra* note 2 at 24-33.

²⁷⁴ See Alston and Reisch, *Supra* note 208.

²⁷⁵ Harry Kitchen & Enid Slack, *More Tax Sources for Canada’s Largest Cities* (Toronto, ON, CA: Institute on Municipal Finance and Governance, Munk School of Global Affairs, 2016) 27.

Winnipeg ranks second lowest in terms of municipal residential property taxes across major Canadian cities.²⁷⁶ Halifax and Victoria, cities with a lower population as of 2021,²⁷⁷ generated more property taxes than Winnipeg in 2024.²⁷⁸ Of course, this is by no means to imply that other Canadian local governments are respecting, protecting, and fulfilling ESCR through their property tax generation. More resources do not necessarily entail improved human rights realization.

Expenditures

An expenditure-based analysis of Winnipeg’s municipal budget revealed the discrepancies between Winnipeg’s adopted and actual budget for community services from 2020 to 2022 (See Table 2. Difference Between the Mill Rate Support for the Community Services’ Adopted and Actual Budget (2020-2022)). Specific numbers for each of the subservice are found in the City of Winnipeg’s adopted budget.²⁷⁹ To differentiate the adopted and actual budget, the method required involved gathering the numbers located in Winnipeg’s budget books from 2020 to 2024. The total represents the added total of the resources dedicated to the subservices under the Community Services department. The numbers are rounded to the nearest thousand. Current data for the actual budget is unavailable for the years 2023 to 2024. Therefore, the expenditure-based analysis consisting of audited financial data is limited to the first three years of the temporal scope of the study, with the years 2023 to 2024 utilizing unaudited data that are not part of Table 2.

Table 2. Difference Between the Mill Rate Support for the Community Services’ Adopted and Actual Budget (2020-2022)

Subservices	Total Expenses*					
	2020 Adopted	2020 Actual	2021 Adopted	2021 Actual	2022 Adopted	2022 Actual
Recreation	43.416	40.347	50.501	41.435	48.282	44.187
Community Liveability	7.644	7.103	6.482	5.674	7.530	2.362
Libraries	28.958	25.675	29.526	26.568	29.950	28.388

²⁷⁶ *Supra* note 261 at 65.

²⁷⁷ Statistics Canada, “Census Profile, 2021 Census of Population,” Statistics Canada Catalogue no. 98-316-X2021001, table, Ottawa, released November 15, 2023, accessed August 19, 2024, <https://www12.statcan.gc.ca/census-recensement/2021/dp-pd/prof/index.cfm?Lang=E>.

²⁷⁸ *Supra* note 276.

²⁷⁹ See, for example, *2020 Adopted Budget: Operating and Capital* (Winnipeg: The City of Winnipeg, 2020) 176.

Arts, Entertainment, and Culture	23.843	23.889	20.916	21.011	5.988	5.773**
Total***	103.861	97.014	107.425	94.688	91.75	80.71

*In millions

**Amount is rounded to the nearest thousand.

*** Assiniboine Park Conservancy was reclassified to the Parks department in 2024 where the 2022 actual budget reflected only three subservices.

Sources: City of Winnipeg, 2020 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2021 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2022 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2023 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2024 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

The expenditure-based analysis yielded significant results in assessing the City of Winnipeg’s use of its maximum available resources to progressively realize ESCR. Upon examining the adopted budget for the department's subservices, most subservices between 2020 and 2022 underspent their allocated resources (See Table 2. Difference Between the Mill Rate Support for the Community Services’ Adopted and Actual Budget (2020-2022)). In practical terms, some available resources under the tax-supported operating budget meant for Community Services were not used for ESCR programs. For example, in 2020, recreation used 92.9% of their budget. In 2021, 82%. In 2022, 91.5%. Libraries reflect the same pattern, with 88% to 94% spending levels. Community Liveability varied from 87% to 92%. Spending levels significantly differ in 2023 due to the loss of three subservices: community crisis response, grants, and development. Arts, Entertainment, and Culture is the only subservice that consistently overspent by a variance of 0.2% in 2020 and 0.5% in 2021. To account for the reclassification of Assiniboine Park Conservancy to Parks in 2022,²⁸⁰ resources for Assiniboine Park Conservancy were retracted from the 2022 adopted budget, leaving the adopted budget at \$5.98 million. Arts, Entertainment, and Culture underspent at 96.4% of the adopted budget in 2022.

²⁸⁰ *Supra* note 261 at 256. Assiniboine Park Conservancy is no longer a subservice under Arts, Entertainment, and Culture unlike previous years.

In total, community services underspent at 93.4% in 2020 and 88.1% in 2021. The spending level between the actual and adopted budgets in 2022 was at 88%. The audited number for Community Services in 2023 still needs to be made available at the time of the study. However, the unaudited financial status report indicates that the department overspent by \$783,000 in 2023, which is a 1% variance from the adopted budget.²⁸¹ Surprisingly, the overspending of resources in 2023 was not due to increased salaries and benefits for Community Services workers nor was it dedicated to community grants. Over expenditures were approved for Community Services to *enhance* library safety and security improvements by hiring Winnipeg police special duty officers, security guards, community connections space full-time equivalent (FTE) positions, and community safety hosts and facilitating staff safety and personal security training.²⁸² Finally, the financial status report and forecast for the first three months of 2024 indicates that community services will underspend by \$295,000.²⁸³

The percentages in this section may appear minimal, given that the actual budgets still account for more than 50% of the allocated budget. In other words, community services still spent \$97 million out of the \$103 million allocated for the department in 2020. It still spent \$94 million out of the \$107 in 2021. Finally, it still spent \$80 million out of the \$91 million in 2022. However, the results of the next section will show the need to use the city’s maximum available resources for ESCR.

5.3 Human Rights Indicators

Developing human rights indicators specific to ESCR under the community services department is beyond the scope of the study. This process of developing indicators requires participation of civil society through meetings and interviews which were not conducted. Instead,

²⁸¹ The City of Winnipeg, “The City of Winnipeg - General Revenue Fund Financial Status Report and Forecast”, (8 March 2024), online: *Decision Making Information System*

<<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=24539&SectionId=&InitUrl=>> 5.

²⁸² The City of Winnipeg, “Over-Expenditure Authorization for the Community Services Department 2023 Operating Expenditure Budget”, (1 December 2023), online: *Decision Making Information System*

<<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=24302&SectionId=&InitUrl=>>.

²⁸³ The City of Winnipeg, “Financial Status and Forecast Report to March 31, 2024”, (14 June 2024), online: *Decision Making Information System*

<<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=24781&SectionId=&InitUrl=>>.

this study utilizes performance indicators defined by the municipal government within Winnipeg's budget.²⁸⁴ There are challenges when using these performance indicators.

An overall challenge with the use of human rights indicators for the years 2020 to 2024 is the effects of the COVID-19 pandemic on human rights realization. Since the pandemic forced community services – such as libraries, community centres, and other facilities – to close, access to certain ESCR services were reduced and thereby limited the extent to which ESCR are accessible to rights holders.

Furthermore, there are three challenges specific to the use of performance indicators within Winnipeg's budget. First, the OHRHC explains that performance indicators often overlook human rights norms and standards.²⁸⁵ However, the performance indicators found in the budget measures Winnipeg's progress on goals related to social equity and good health and well-being under *OurWinnipeg 2045*. While these performance indicators do not fully incorporate human rights norms and standards, the data may still be useful to assess how Winnipeggers are progressively realizing ESCR.

Another challenge in using the performance reporting in Winnipeg's budget is the inconsistency of the city's reporting. In 2023, the municipal budget aligned the city's performance with the goals under *OurWinnipeg 2045*.²⁸⁶ In 2024, they decided to align the performance with SPAP priorities. The frequent reclassification of services and priorities makes it tricky to analyze Winnipeg's service performance despite the same goals between the two years. To solve this complication, the study used the goals found in the 2023 adopted budget and aligned it with the data available on the 2024 preliminary budget.

The final challenge in using these performance indicators is the availability of data. Actual data are only available between 2020 to 2022, and they miss two years within the temporal scope of the research. To compensate for data unavailability, qualitative data is also collected from online budget meetings (delegation submissions, budget agendas and minutes, Hansard, and budget meeting videos) in addition to statistical data. Combining findings from

²⁸⁴ See for example, *2022 Adopted Budget: Operating and Capital* (Winnipeg: The City of Winnipeg, 2022) 186.

²⁸⁵ OHCHR, *supra* note 225.

²⁸⁶ City of Winnipeg, *supra* note 65.

these sources can hopefully provide a snapshot of ESCR realization under community services in Winnipeg's budget, specifically regarding the right to health, education, and culture.²⁸⁷

Recreation

The City of Winnipeg's Recreation and Parks Strategies Public Engagement Report in 2021 revealed Winnipeggers' positive perception of recreation and parks facilities and services.²⁸⁸ Of notable importance in the findings is the survey respondents' priority of making recreation facilities, park amenities, and programs accessible regardless of age, needs, and abilities.²⁸⁹ Remarks echoed the importance of recreation for Winnipeggers with 95% agreeing and strongly agreeing on the necessity of recreation and its benefits for the community.²⁹⁰

With the correlation between the right to health and recreation,²⁹¹ a useful indicator in Winnipeg's performance reporting to measure the right to health through recreation is the number of registered programs delivered by the City of Winnipeg. These programs include physical literacy, aquatic services, outdoor sports, indoor recreation, and leisure centres. An increased number of registered programs means more recreational opportunities for rights holders in Winnipeg and may be an advantage in determining the right to health realization in the city.

Aligning the budget for recreation and the number of registered programs delivered between 2020 and 2022, registered programs delivered decreased to 4,465 from 5,454 in 2021 despite a \$7.1 million increase in the budget.²⁹² One of the factors that should be considered regarding the decrease in registered programs delivered is the COVID-19 pandemic. By January 2022, Manitoba still had 15,213 active cases of COVID-19 patients.²⁹³ Recreational facilities were not fully operational at this time, thereby limiting Winnipeggers' access to registered

²⁸⁷ See Chapter 1 for a discussion of the relationship between ESCR and municipal services.

²⁸⁸ See *Winnipeg Recreation and Parks Strategies: Public Engagement Report*, by The City of Winnipeg (Winnipeg, 2021).

²⁸⁹ *Ibid.*, 7.

²⁹⁰ *Ibid.*

²⁹¹ See Chapter 1 for the discussion.

²⁹² *Supra* note 280 at 207.

²⁹³ *Provincial Respiratory Surveillance Report: Week 52 (December 26 - January 1)*, by Government of Manitoba (Manitoba: Public Health, 2022).

programs despite receiving more resources. Once recreational facilities started reopening in 2022, delivered programs increased by 4,666 regardless of the reduction in resources.²⁹⁴

The demographics of those accessing these services must include disaggregated data in these performance indicators. While the number of delivered programs is notable, given the limited resources dedicated to recreation, the statistical data do not account for experiences by rights holders in accessing recreational programs. Indeed, an expressed concern by Winnipeggers is the difficulty accessing aquatic services due to the lack of recreational staff in public facilities on top of neglected and deteriorated infrastructure.²⁹⁵ A notable recent example of budget cuts for recreation is the decommissioning of the Happyland pool, Eldon Ross indoor pool, and Windsor Park outdoor pool.²⁹⁶ Of course, the decommissioning of pools does not entail a human rights violation in and of itself. However, concerns restated by residents are the decommissioning of pools in low-income areas, which surfaces issues of equality and non-discrimination, given that budget cuts disproportionately affect vulnerable groups more than others.

Libraries

Libraries reflect the same pattern as Recreation between 2020 and 2022 for program availability. Programs operated by the WPL include the Writer-in-Residence program,²⁹⁷ outreach services providing free reading kits and books,²⁹⁸ early literacy programs,²⁹⁹ and summer reading clubs.³⁰⁰ From 2020 to 2021, WPL programs significantly decreased from 1,131 to 318 due to branches closing amid the COVID19 pandemic despite increased resources of \$1 million for WPL.³⁰¹ A significant improvement occurred as the WPL hosted 1,845 programs well attended by 40,821 library patrons in 2022.³⁰² This does not mean that there is improved access

²⁹⁴ *Supra* note 292.

²⁹⁵ Sandra Dupuis, “Sandra Dupuis (Delegation No. 13)”, (15 March 2024), online: *Decision Making Information System* <<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=24565&SectionId=&InitUrl=>> 1.

²⁹⁶ Sarah Petz, “Winnipeg’s Draft Budget Includes Plan to Close Several Pools, Put in Splash Pads”, *Canadian Broadcasting Corporation* (7 February 2024), online: <<https://www.cbc.ca/news/canada/manitoba/winnipeg-budget-pool-closures-splash-pads-1.7107807>>.

²⁹⁷ See *Winnipeg Public Library: Annual Report 2020*, by Winnipeg Public Library (Winnipeg: The City of Winnipeg, 2020).

²⁹⁸ *Ibid.*

²⁹⁹ *Winnipeg Public Library Annual Report 2021*, by Winnipeg Public Library (Winnipeg: The City of Winnipeg, 2021).

³⁰⁰ *Ibid.*

³⁰¹ See *supra* note 282.

³⁰² Winnipeg Public Library, *supra* note 15.

to the right to education in Winnipeg. In fact, when compared to Halifax Public Libraries who calculated 43.4 annual library uses per capita,³⁰³ Winnipeg falls short at 25.8.³⁰⁴

Again, the performance indicator in the City of Winnipeg's performance reporting and the indicators included in the WPL's annual report do not include the demographics of those who attended their programs. This is crucial given that the City of Winnipeg received criticisms before regarding their lack of prioritization to expand library services in neighbourhoods with high number of immigrants.³⁰⁵ Additionally, the latest budget remarked decreased weekend hours for the Millennium Library which primarily serves inner city and low-income communities in downtown Winnipeg.³⁰⁶ A pattern of overlooking access to public services by marginalized communities seems to be appearing in this regard, given that rights holders also expressed concerns for aquatic facilities in Winnipeg's low-income areas.

Arts, Entertainment, and Culture

The City of Winnipeg's failure to recognize Arts, Entertainment, and Culture as ESCR is apparent in that the performance indicator for the subservice only acknowledges the subservice's contribution to the city's revenue generation. However, as discussed in Chapter 1, Arts, Entertainment, and Culture facilitate access to Article 15 of the ICESCR, the right to participate in culture, which can improve rights holders' ESCR realization.

Indeed, it is perhaps the municipal government's lack of recognition of the social benefits of the subservice that it continuously experiences significant budget cuts. Community organizations dedicated to art programming are routinely discouraged with lack of sustained funding for their services, leaving them to habitually implore the City of Winnipeg to allocate resources towards the arts. In 2020, Art City critiqued the City of Winnipeg's proposed cuts for community grants, noting how this policy choice demoralizes the work of organizations who "ensure that the most underserved children and youth are given opportunities to be healthy and

³⁰³ *Budget and Business Plan 2024-2025* (Halifax: Halifax Regional Municipality) G11.

³⁰⁴ *Supra* note 261 at 250.

³⁰⁵ Hani Al-Ubeady & Kate Kehler, "Hani Al-Ubeady, Director, Immigration Partnership Winnipeg, and Kate Kehler, Executive Director, Social Planning Council of Winnipeg (See Delegation No. 10)", (18 March 2020), online: *Decision Making Information System* <<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=19613&SectionId=&InitUrl=>>.

³⁰⁶ Kevin King, "Group Rallies at Millennium Library to Save Sunday Service from Chopping Block", *Winnipeg Sun* (10 March 2024), online: <<https://winnipeg.sun.com/news/local-news/group-rallies-at-millennium-library-to-save-sunday-service-from-chopping-block>>.

use their voices.”³⁰⁷ In 2024, Art City face similar challenges with budget threats for City of Winnipeg community grant recipients.³⁰⁸

The same patterns that occurred in Recreation and Libraries continue in Arts, Entertainment, and Culture with the lack of disaggregated data identifying equitable access to public services benefitting the right to cultural life. Contrary to the other services, Arts, Entertainment, and Culture lack performance indicators demonstrating the number of programs administered by the subservice. However, rights holders flag the loss of inner-city arts programming, including program funding for Art City, Graffiti Art Gallery, and the Winnipeg Arts Council.

Community Liveability

While Community Liveability under Community Services no longer includes grants, crisis response, and community development as of 2024, its benefits towards ESCR realization must be noted in the analysis given that the service provided funding for community organizations facilitating the right to health, education, housing, and other ESCRs. Some of the organizations the service funded included Art City, Big Brothers Big Sisters of Winnipeg, Boys and girls Club of Winnipeg Inc, Broadway Neighbourhood Centre, End Homelessness Winnipeg, and Immigrant and Refugee Community Organization of Manitoba.

The number of community grants administered between 2020 and 2022 increased from 23 to 26, resulting to funding more community organizations across Winnipeg.³⁰⁹ However, in 2024, these community grants currently face funding cuts after decisions by the City of Winnipeg to propose cutting grant programs from \$3.4 million to \$1.3 million starting in 2025.³¹⁰ Once again, the budget cuts affect community services that assist low-income and inner-city communities in Winnipeg.³¹¹

³⁰⁷ Josh Ruth, Eddie Ayoub & Wanda Koop, “Submission - Josh Ruth, Managing Director, Eddie Ayoub, Artistic Director, Wanda Koop, Founder, Art City”, (13 March 2020), online: *Decision Making Information System* <<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=19595&SectionId=&InitUrl=>> 2.

³⁰⁸ The City of Winnipeg, “Proposed Grant Intake and Review Process”, (27 June 2024), online: *Decision Making Information System* <<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=24834&SectionId=&InitUrl=>>.

³⁰⁹ The City of Winnipeg, *supra* note 247 at 292.

³¹⁰ The City of Winnipeg, *supra* note 309.

³¹¹ Cameron MacLean, “Cut to City Community Grants Program ‘Dangerous,’ Winnipeg Non-Profits Say”, *CBC News* (18 June 2024), online: <<https://www.cbc.ca/news/canada/manitoba/winnipeg-community-grants-program-1.7239075>>.

5.5 Findings

A notable finding of this study is the routine underspending of the community services department despite rights holders demanding more resources for recreation, libraries, the arts, and community liveability. While Winnipeggers heed budget cuts for social services, actual budgets indicate underspending of ESCR funds. Where resources are overspent, they are surprisingly used for CPR services, such as the hiring of WPS special duty officers under the library budget.³¹² The difference between the resources under the adopted and actual budget raises the question of whether Winnipeg is using its maximum available resources to progressively realize those rights. Suppose resources were already available and dedicated to ESCR services and programs. Why are community services continuously underspending these resources, given that libraries, recreation, and the arts are already struggling with their limited resources? Would the discrepancy between the allocated and actual budget amount to a retrogressive measure undertaken by the City of Winnipeg?

According to the Standing Policy Committee on Finance and Economic Development, the consistent underspending of community services between 2020 and 2022 was caused by the COVID-19 pandemic, which resulted in temporary layoffs and delayed staff hiring.³¹³ Reduced recreational programming and program expenses resulted in lower expenses in 2021. However, it is striking that Winnipeggers indicate how resources allocated for the Community Services department continuously aggravate public services benefitting marginalized communities, particularly low-income and inner-city communities. Given that shortened library hours, pool closures, and cuts to arts and community grants and funding negatively impact inner-city communities as discussed in the previous section, it is necessary to question why unspent funds are not directed toward ensuring equitable access to public services.

Additionally, it appears that community services, as a department in the tax-supported operating budget that advances ESCR realization, is the only department that is consistently underspending in the tax-supported operating budget. For instance, comparing the actual and adopted budget for community services versus the police service, the overspending of CPR funds is routinely consistent with the underspending of ESCR funds (See Table 3). The WPS'

³¹² Refer to the section on resource expenditures in the present chapter for more information.

³¹³

overspending started small at 0.7% in 2020, but the service gradually increased overspending between a variance of 1.1% to 2.5% over the next two years. These numbers might appear small in percentage, but in numbers, the WPS required additional funding of \$1.8 to \$6.9 million all the while community services lost \$6 million to \$13 million. Specific reasons for the overspending of the WPS are related to increased costs of salaries and benefits due to overtime, increased pension expenses, and decreased net revenue in the departments.³¹⁴ The study is not suggesting that the resources meant for ESCR were reallocated to the WPS; rather, it questions why community services is routinely underspending while the police services are constantly overspending given that the City of Winnipeg has human rights obligations to both ESCR and CPR realization under international human rights law.

Table 3. Difference Between the Adopted and Actual Mill Rate Budget for Community Services and the Police Service (2020-2022)

Subservices	Total Expenses*					
	2020 Adopted	2020 Actual	2021 Adopted	2021 Actual	2022 Adopted	2022 Actual
Police Services Total	259.259	261.062	265.99	268.942	273.063	280.01
Community Services Total	103.861	97.014	107.425	94.688	87.165**	80.71

*Rounded to the nearest thousands.

**Community Services total adopted budget for 2022 minus reclassified subservices.

Source: Sources: City of Winnipeg, 2020 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2021 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2022 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

City of Winnipeg, 2023 Adopted Budget, Winnipeg, City of Winnipeg, accessed August 19, 2024.

³¹⁴ The City of Winnipeg, “Financial Status Report to December 31, 2020”, (16 February 2021), online: *Decision Making Information System* <<https://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=20752&SectionId=&InitUrl=>>>.

5.6 Challenges and Limitations

The challenges in conducting a human rights-based analysis of Winnipeg's municipal budget included the temporal scope of the research, the lack of human rights principles in the budget and its process, and the lack of human rights indicators at the municipal level. Upon planning and organizing the study, the choice to analyze the years 2020 to 2024 appeared logical because the City of Winnipeg's gradual recuperation from the financial strain of the pandemic could have resulted in new policy priorities. It is disappointing but unsurprising that priorities remained the same in roads and policing, given the need for more housing, education, health, and other ESCRs. Additionally, the temporal scope appeared sensible because analyzing the pre-pandemic years to post-pandemic years would require addressing the unforeseen economic pressures in the city budget. However, focusing on the pandemic and post-pandemic years limited the available information needed to analyze the temporal scope of the research due to the lack of human rights principles in the budget.

Indeed, the human rights principles of participation, accountability, and transparency are absent within the budget documents. Since the municipal budget is a highly complex policy document, the lack of transparency and accountability made it difficult to access relevant information about the budget. Furthermore, it was difficult to analyze data consistently due to the frequent reclassification of services. Between 2020 and 2024, the sub-services shifted from one department to another.

Finally, a massive challenge in undertaking this work is the need for more human rights indicators to hold the City of Winnipeg accountable for its human rights obligations. Data assessing health, housing, education, and other ESCRs are usually available at the provincial and federal levels. For example, quantifiable human rights indicators can align the right to health with the number of hospitals, doctors, or physicians. The right to education can be aligned with primary education. No municipal indicators align the right to health with recreation, education with libraries, or the right to participate in culture through arts programs despite the application of human rights obligations to municipal governments. Therefore, data or research on how

municipal governments respect, protect, and fulfill their human rights obligations may be beneficial in advancing ESCR budget analysis in Canada.

The challenges associated with the preliminary human rights-based analysis of the budget demonstrates the many opportunities to advance ESCR budget work in Winnipeg given the various human rights budgeting methods available to rights holders. An opportunity to leverage and advance a human rights-based budget analysis of the City of Winnipeg's municipal budget is to compare Winnipeg's budget to other comparable Canadian cities, such as Halifax, Regina, Edmonton, or Calgary. The purpose of comparing Canadian jurisdictions is to demonstrate what municipal governments can do to maximize resources for human rights realization rather than determining the normative limit of maximum available resources under international human rights law. A possible first step would be to compare Winnipeg with Edmonton, another human rights city.³¹⁵

Furthermore, a more thematic approach can also benefit a human rights-based budget analysis. Local budget practitioners may unpack different ESCR realization and align it with Winnipeg's budget using these steps. Other opportunities include aligning the right to housing through property and development or the right to a healthy environment through water and waste, riverbank management, and the environment.

³¹⁵ John Humphrey Centre for Peace and Human Rights, "Human Rights City Edmonton", online: *John Humphrey Centre for Peace and Human Rights* <<http://s411069912.onlinehome.us/our-projects/human-rights-city-edmonton>>.

Conclusion

Minimal investments in services and programs benefitting ESCR necessitate rethinking resource distribution within Winnipeg's municipal budget. Winnipeggers call for more investments in libraries, recreation, art, and green spaces, yet more money is continuously funnelled into the WPS. Fiscal decisions cannot be made at the continued expense of services, programs, and goods benefitting ESCR in Winnipeg – especially when the City of Winnipeg holds a human rights obligation to ensure that it uses available resources to advance these rights under the ICESCR.

The first chapter provided a background on the status of ESCR in the city by analyzing resource allocation for services under the tax-supported operating budget from 2020 to 2024 (See 1.1). By linking Police Services with CPR (1.2.1) and Community Services with ESCR (1.2.2), the analysis reveals that the priorities of the City of Winnipeg in the municipal budget are services that benefit CPR.

Recognizing the limited resources for Community Services, the second chapter identified the City of Winnipeg as a human rights duty bearer by rejecting the argument of jurisdictional divide as the reason for the municipal government's failure to allocate resources towards ESCR. The chapter argues that Winnipeg is responsible for the facilitation of ESCR through government budgets under international human rights law (See 2.1) and its status as a human rights city (2.2).

The third chapter discussed the City of Winnipeg's obligations to ensure that it uses its maximum available resources towards the progressive realization of ESCR under the ICESCR's Article 2(1). This chapter unpacked specific provisions under the ICESCR, with

a particular emphasis on “progressive realization” and “maximum available resources,” to reason the need for a human rights-based budget analysis of the City of Winnipeg’s municipal budget.

The fourth chapter summarized various human rights budgeting methods to determine which framework to apply to Winnipeg’s municipal budget. Common themes emerged out of existing human rights-based budget analysis step guides that require human rights practitioners to analyze government budgets through 1) policy efforts, 2) resources, and 3) human rights indicators.

The final chapter revealed the clear gaps between the policies of Winnipeg and its actual implementation through the budget through a preliminary human rights-based analysis of the municipal budget. Policies guiding the City of Winnipeg are anchored towards human rights, as evident through *OurWinnipeg 2045* wherein commitment to housing, social equity, recreation, literacy, and others are included. An expenditure-based analysis of Winnipeg’s budget for Community Services reveals the routine underspending of ESCR resources that disproportionately affects low-income Winnipeggers accessing recreation, art programming, and libraries in the city.³¹⁶

The added legality of international human rights law to Winnipeggers’ demands of budget redistribution can be beneficial in addressing the continued prioritization of CPR and the underspending of ESCR in the municipal budget. However, it is important to clarify that the study proposes and uses human rights law as a tool to hold the City of Winnipeg accountable to the human rights issues stemmed from their budget decisions, but legal solutions to social injustices are not the only tools. Rather than viewing international law as the *only* framework, the study proposes the human rights budgeting framework to engage with and amplify the work around the need to reallocate resources into life-sustaining services rather than the continued funneling of money to the police services. Such a proposal to apply human rights law to the budget is only possible due to the existing tireless efforts of grassroots and community organizations in Winnipeg, like Budget for All, Winnipeg Police Cause Harm, Millennium for

³¹⁶ See, for example, Probe Research, “Winnipeggers’ Preferences for City Infrastructure Spending” (June 2023) 4, online (pdf): < <https://probe-research.com/sites/default/files/2023-07/WFP%20June%202023%20Omni%20-%20Infrastructure%20Priorities%20.pdf>>.

All, and the Social Planning Council of Winnipeg. Without the strong presence of grassroots activism dedicated to budget reallocation in Winnipeg, legal frameworks remain theoretical and will never be able to address injustice at the grassroots level. Legal frameworks can only assist but will never be able to replicate the work of communities on the ground mobilizing, organizing, and fighting against social injustice. It is only through the labour, solidarity, love, and support of civil society that can achieve human rights realization for all.

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