

Connecting Women's Human Rights to Public Resources in Canada

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Un récent accord entre les spécialistes en économie et en droits humains et les activistes a donné des nouveaux cadres pour évaluer les réalisations des droits économiques et sociaux en utilisant une politique macroéconomique. L'article aborde l'histoire des traités relativement aux droits humains et l'écart entre les genres et fait le lien entre les droits à l'égalité des genres et l'analyse des politiques macroéconomiques. De plus elle suggère des outils potentiels tels une comptabilité et un budget responsables qui évalueront les ressources de la société et démontreront l'écart entre les budgets publics et les droits.

Recent engagements between economists and human rights scholars and activists have yielded important new frameworks for assessing the realization of economic and social rights through a scrutiny of macroeconomic policy, including fiscal policy. This article will: briefly discuss the historical context of post-war human rights treaties, and their commitments and their continued need to be realized to address Canada's gender gap; suggest some impediments to the substantive application of such commitments; link human rights principles to gender

equality goals through an analysis of macroeconomic policies that largely fail to create an enabling environment for women's rights due to narrow goals that exclude economic and social rights; suggest two potential tools for governments and women's groups—gender responsive budgeting and human rights audits—that will assist in evaluating how societal resources are raised and allocated with the goal of gender equality in mind; and conclude with some reflections and qualifiers on the disconnect between public budgets and rights.

Context

The conceptual framework of political human rights has been broadly developed since World War II. Articles 22 through 27 of the Universal Declaration of Human Rights, approved in 1948 in the United Nations, incorporated a new body of so-called second generation social and economic human rights (following an earlier phase of civil and political rights). In 1966, these articles were elaborated in the International Covenant on Economic, Social and Cultural Rights (ICESR). This body

of law expresses the values of equality, solidarity and non-discrimination, and is considered indivisible from and interdependent with civil and political rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end discrimination. The Convention defines discrimination against women as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. (Part 1, Art.1)

Countries that have ratified or ac-

ceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations. As of January 1, 2018, CEDAW has been ratified by 189 countries thereby making commitments to integrate the stated goals of this international bill of rights for women into their country's policy plans. This includes mobilizing resources and ensuring transparency and accountability of budget processes, as well as monitoring of progress toward these goals on the basis of the documented links between gender equality and broader economic and social progress. Canada has also adopted the Optional Protocol (in 2002) that entitles the CEDAW Committee to monitor progress through a country report every four years. When the review process ends, the treaty body issues a written report, Concluding Observations that identify shortcomings in the country's treaty rights implementation. Reviews of Canada by the CEDAW Committee (23 elected members who are experts on women's human rights) have commented critically about women's economic inequality in Canada and have identified a series of factors that have exacerbated that inequality including: i) women's poverty and worsening economic situation following the post-1995 budget and social service cutbacks (CEDAW Committee, paras. 351, 352); and, ii) women's inequality in the labour market and restrictions on access to employment insurance benefits (CESCR para. 22). The Canadian federal government has claimed that difficulties in federal/provincial/territorial relationships present obstacles to the fulfillment of treaty obligations but treaty bodies have thus far rejected that complications of federalism should

bar progress and have argued that the federal government has a primary responsibility for ensuring fulfillment of obligations (CESCR para. 35; CEDAW Committee paras. 348, 349, 350; Poverty and Human Rights Centre).

Despite these stated commitments in both international obligations as well as within the Charter, there remain significant gender inequalities in the life experiences and distribution of opportunities among women and men, and between women, in Canada. The World Economic Forum's Gender Gap Index in 2015 is 0.74.¹ The biggest drag on Canada's score is the paucity of women as legislators, senior officials and managers. Women make up 76 percent of part-time workers (2015 figure) a proportion that has not changed significantly over the last thirty years. The gender wage gap—related to the prevalence of part-time work for women and labour market segmentation—means that in 2011, women earned an average total income of \$32,100 compared to \$48,100 for men. The median total income for Aboriginal women over fifteen years of age stood at \$19,289, reflecting a significant gap when compared to both non-Aboriginal women and Aboriginal men.² While women in all social groups face inequalities compared to men, there are also significant differences among women with the erosion of social rights being particularly pronounced among racialized women (29 percent live in poverty), aboriginal women (36 percent in poverty) and women with disabilities (26 percent in poverty) (Statistics Canada, *Women in Canada*).

Impediments to Applying Human Rights Commitments

Governments have until now taken a narrow perspective of their obligations introduced in the Covenant

(ICESCR) to use "maximum available resources" (MAR) to fulfill economic, social and cultural rights responsibilities. This has meant an exclusive focus on budget expenditures (and in the case of countries of the Global South, international assistance) at the expense of other key determinants of resources for realizing human rights—such as monetary policy, financial sector policy, taxation and deficit financing (Balakrishnan et al.). A more expansive consideration of what it means to use maximum available resources to realize human rights, including women's rights, would focus on these other determinants of resource availability to concretize substantive equality through benefits and protections in the economic and social realms.

Scholars of human rights underscore that economic, social, and cultural rights have yet to be translated in a meaningful way into national laws. Robert Robertson notes that their recognition has been impeded for a number of reasons: debt and recession, which have eroded public support for spending and developmental aid; the globalization of the world economy and the influence of international financial institutions which have weakened the national policy levers needed to implement economic, social, and cultural rights; and resistance to attempts to establish these rights domestically through arguments of judicial impracticality and financial limitations. At the heart of the problem of implementation is the question of resources.

In terms of gender, a related impediment has been the lack of gender mainstreaming in government budgets in Canada (Brodie and Bakker). A report by the Auditor General of Canada notes that despite the federal government commitment to assessing the impact of policies and programs on women and men (gender-based analysis, [GBA]) since

1995, there is no government-wide policy requiring this of departments and agencies. Some federal departments are making efforts to improve their GBA practices; however, few of those that are performing GBA can provide evidence that demonstrates these analyses are used in designing public policy. Central agencies such as the Department of Finance have

argued deal only with aggregate economic variables such as fiscal surpluses and fiscal deficit targets and the level of public debt. These are distinguished from structural policies that can impact specific sectors and segments of the population. Examples of structural policy include tax, tariff policy, managing federal borrowing, transfers to the

policies often dictate cuts to social spending and a lowering of taxes to remain internationally competitive for investment (UNRISD).

The development of a framework based on international women's rights law to assess the Canadian government's employment of resources towards the realization of economic and social rights through the federal

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appointed GBA Champions, yet could not demonstrate that their analysts had reviewed and challenged gender impacts of spending initiatives or policy proposals submitted by departments for approval (Report of the Auditor General).

Relatedly, the Report of the Parliamentary Standing Committee on the Status of Women recognizes that to attain more gender-sensitive budgeting it will be necessary to scrutinize the limits of economic policy that remains within the confines of prevailing economic and budgetary consensus. For instance, economic growth does require measures such as employment creation; when viewed from a gender equality perspective, the notion of "full" employment needs to take into account the unpaid work in which most women are engaged in the household and voluntary sectors (Bakker "Unpaid Work").

Yet it is clear that Finance Canada's thinking about macroeconomic policies does not understand GBA to be applicable as suggested by the 2009 testimony to the Standing Committee on the Status of Women by the GBA champion at Finance. Macroeconomic policies it was

provinces, and effective regulation for the financial sector (*Towards Gender Responsive Budgeting* Ch. 5, note 158). Thus, an alternative approach to that of the Department of Finance, suggested here, argues that considering social policies as an afterthought to macroeconomic policies is not supportive of policy coherence between human rights commitments and public budgets (Bakker "Show Us"; Elson and Cagatay).

Feminist economists and activists have long documented how broader macroeconomic strategies and discourses about the role of government, in particular public investment, shape the direction of economic growth, the nature and level of job creation, poverty reduction efforts, and time spent in social reproduction activities, that is, the ways in which society produces, consumes and reproduces its life and lifestyles including through the labour of the care economy. In addition, they point out that so-called "sound" economic policies that emphasize low inflation and mobility of capital often undermine commitments to human rights and gender equality as these "sound"

budget is particularly timely given the continuing economic crisis of the last few years. Women's rights and indeed human rights have been largely absent from the processes and policies in many countries through which the crisis has been addressed. Yet recent research has revealed the disproportionate impact of the bank bailouts on the poor and women in particular (Delacourt; Stratton). Governments used public funds to bail out the financial sector, which initially created a much-needed stimulus to economies ravaged by multiple crises (financial, food, environmental, etc.). However, by 2010, pressure from falling taxation revenues due to economic slowdown were met by austerity policies aimed at drastically cutting social transfers and social services. Women are triply vulnerable to such a policy response as they are over-represented among public sector front-line workers, depend more on public transfers and services (for instance, one quarter of Aboriginal women's income came from government transfers [Statistics Canada, *Women in Canada* "First Nations, Métis and Inuit Women"]) and, must fill the gap through their

unpaid labour for reduced public support for social reproduction (Heintz).

Gender Equality, Human Rights, Recent Budgets

Macroeconomic policy, the realization of human rights and the goals of gender equality are interrelated. As Radhika Balakrishnan, James Heintz, and Diane Elson point out:

The human rights framework has at its core the principles of non-discrimination and equality. According to the nondiscrimination principle, the realization of rights should not differ across individuals based on gender, race, ethnicity, nationality, or other social grouping—in other words, there is a strong emphasis on horizontal equality in the human rights framework. People should also have equal opportunity to claim their rights—i.e., that human rights principles should apply to all persons equally. Note that this does not necessarily imply a perfectly equal distribution of income and wealth. The distribution of resources in society consistent with a human rights approach would be one that guarantees that individuals have an equal enjoyment of the realization of their basic rights without discrimination outcomes. (11)

Such a human rights approach can help to guide macroeconomic policy choices that will support gender equality by providing alternatives to monetized measures such as GDP growth and low inflation. The “value-added” of feminist thinking has been to identify issues that are overlooked by most macroeconomic approaches but which nevertheless have a fundamental impact on the

well being and long-run health of the economy. For instance, feminist economics notes that within mainstream macroeconomic thinking, a key factor of production—labour—is assumed to be a non-produced good or produced without cost. Feminist macro models foreground the conditions that underpin the production of labour as a gendered process with women at the forefront of providing reproductive (caring) labour that is largely unpaid and not recognized as real economic activity through national income accounts. Feminist scholars argue that the way in which this labour is distributed and how it is provided in any society is part of the macro economy with a direct effect on the labour supply and overall economic productivity (Seguino).

A nascent international literature links the formulation of economic policy to the realization of human rights, and does so in a precise way through the methodology of audits (Center for Women’s Global Leadership, et al.). Unlike a study of policy impacts that attempts to establish a causal link between economic policies and results (e.g., enjoyment of rights), an audit examines how policy has been conducted—“whether it has consisted of action ‘reasonably calculated to realize the enjoyment of a particular right’” (Balakrishnan and Elson 9).

For example, such audits apply legal criteria to evaluate policies. Thus a key budget-focused obligation of governments under United Nations international human rights treaties is to make full use of the country’s maximum available resources to realize human rights obligations of respect, protection and fulfillment (ICESR). Each of these obligations has two dimensions: *conduct* and *result*. The obligation of conduct means the government is obliged to behave in a way that reasonably can

be expected to realize the enjoyment of the particular right. The obligation of result means the government is obliged to achieve outcomes that enhance the enjoyment of specific rights. For example, does public expenditure on health represent “action reasonably calculated to realize” the right to health in a way compliant with obligations of non-discrimination and equality? Findings of unequal health expenditure across different social groups might suggest a case of failure to meet obligation of conduct if we find the group with the lowest share of expenditure has the lowest health status (Balakrishnan and Elson 9).

From this human rights perspective, economic policy should be guided by the principle of progressive realization and non-retrogression. Progressive realization recognizes that whilst governments have finite resources they are obligated through international human rights commitments to take specific steps to ensure that individuals’ economic and social rights improve over time. Non-retrogression means that once a particular level of rights has been realized it should be maintained. In addition, the right to non-discrimination and equality intersects with all human rights and, along with progressive realization and non-retrogression, needs to be part of the design, implementation and outcomes of macroeconomic and financial policy decisions.

This design should incorporate distributive impact analysis in terms of the effects of public spending, tax policy and monetary policy on different groups of women and men. Gender responsive budgeting—now undertaken in dozens of countries across the globe by both governments and women’s groups—offers such an analysis of the effects of budget policy (see www.unwomen.org for regional examples of gender responsive budgeting). Kathleen

Lahey, Brenda Spotton Visano, and Armine Yalnazian have all provided us with examples of such an analysis in the Canadian context. For instance, Lahey found that with respect to the 2012 Federal Budget, tax cuts were gender regressive. The least regressive—personal income tax cuts—meant that 60 percent would go to men, 40 percent to women. In-

ing and the dominant governing philosophy of neoliberalism—the latter consciously seeks to undermine the idea of social collectivities and instead promotes an individualized market—based logic of self-help. This represents a collision of a social ontology anchored in group claims with an individualistic ontology that assumes people can stand outside of

place to ensure the accountability of public budgets to human rights commitments. We need to establish tracking and monitoring systems that link the ability to realize rights such as those specified in CEDAW to spending and taxation policies. In her Spring 2009 report, the Auditor General of Canada recommended that Gender Based Analysis (GBA)

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frastructure spending, which focused almost exclusively on construction projects, Lahey notes have mainly benefitted men given personnel and ownership in this sector (69 percent to 95 percent is her estimate of benefits to men versus women). Incorporating a diversity of women's voices to a greater degree in economic decision-making will shift the scope and effects of macroeconomic policy and target resources available for the progressive realization of rights in general. A complementary human rights evaluation through audits involves a consideration of whether measures taken by States contribute to or undermine the right to equality thereby providing an important tool with which to assess policy in relation to the right to gender equality.

Conclusion: Why the Disconnect?

There are a number of explanations for the current disconnect between commitments to women's human rights and political action through budgets.

1. There are fundamental differences between human rights think-

their gendered social relations and indeed, the other fault lines that signify forms of domination. This tension has also been accompanied by a shift in the politics and discourse of claims-making, away from redistribution toward recognition (Fraser "From Redistribution").

2. A related shift has occurred in who counts as a subject of social justice and whose needs and interests deserve consideration. The degendering of social policy and the erasure of the goal of gender equity has characterized the Canadian policy process since the mid-1990s. Janine Brodie has referred to this erasure as a process of the "3Ds": delegitimization of women's groups as relevant voices in the policy process (especially once women's groups such as the National Action Committee on the Status of Women began to critique free trade and broader macroeconomic policy frameworks); dismantling of much of the gender-based policy-capacity with the federal government and many of the provinces; and, the disappearance of women from social policy debates with children becoming the new objects of focus (Brodie).

3. There are no mechanisms in

be systematically carried out in all federal departments as part of their policy process. This call came on the heels of the Parliamentary Standing Committee of the Status of Women's recommendations for Canada to develop gender-responsive budgeting as part of its policy planning.

4. A final reason for the disconnect comes from the skepticism of the women's movement and the left about the language and politics of rights—specifically, that a human rights strategy necessarily individualizes and depoliticizes social struggles and cannot challenge systemic inequalities. Alternatively, Nancy Fraser argues that rights must be viewed dialectically: they are both a language of mobilization and an institutional device for translating social movement power into structural change. From this perspective, the content and meaning of rights becomes a stake of struggle rather than given or fixed ("Social Rights"). By linking rights to resources, a case can be documented for substantive discrimination in the application of the ICESCR obligation that commits signatories to ensuring an adequate standard of living through the use of

“maximum available resources.” Such a focus relies less on the legal architecture of the human rights state than on governments and central banks as the key sites for directing financial resources toward the realization of human rights.

Today, there are two qualifiers to this support for “a politics of rights interpretation” (Fraser “From Recognition”). First, human rights activism needs to problematize the national as the sole locus of democratic engagement and struggle around resources and grapple with questions of public power and accountability for realizing economic and social rights at the broader global level.

As Inge Kaul has pointed out in her work on global public goods, many issues today cannot be simply relegated to the national but require international cooperation and resourcing. Nevertheless, as many international human rights agreements illustrate, we still rely on national states to give substance to women’s human rights through social policies, public sector employment and taxation systems that favor social investment for a collective future. Thus, a focus on governments and budgets makes virtue of what Dominique Clement identifies as a weakness in the human rights legacy in Canada—its exclusion of social rights, which have always been a critical component of the feminist agenda in giving tangible reality to the right to equality.

A brief version of the ideas expressed in this article initially appeared in July 2011 for the Federation for the Humanities and Social Sciences Equity Matters Blog (see Bakker, “Connecting the Canadian Women’s Human Rights Legacy to Budgets”).

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Endnotes

¹The Index benchmarks national gender gaps on economic, political, education and health criteria, and provides country rankings that allow for effective comparisons across regions and income groups. It was first introduced in 2006 (see World Economic Forum).

²All statistics from *Women in Canada: A Gender-based Statistical Report*, 7th Edition, Ottawa: Statistics Canada.

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