

**Local Government
and Human Rights:
Doing Good Service**



International Council on Human Rights Policy

The International Council on Human Rights Policy was established in Geneva in 1998 to conduct applied research into current human rights issues. Its research is designed to be of practical relevance to policy-makers in international and regional organisations, in governments and inter-governmental agencies, and in voluntary organisations of all kinds. The Council is independent, international in its membership, and participatory in its approach. It is registered as a non-profit foundation under Swiss law.



Cover illustration

© The Trustees of the British Museum. Hanging canopy (tengai). From Japan. Probably Kamakura period, 14th century AD.

Local Government and Human Rights: Doing Good Service

The International Council thanks the Swiss Agency for Development and Cooperation (SDC); the Ministry for Foreign Affairs, Finland; the United Kingdom Department for International Development (DFID); and the Swiss Federal Department of Foreign Affairs (DFAE), for their financial support to this project. In addition, the Council thanks the United Nations Development Programme (UNDP) for its financial support to translate this report into Russian.

Local Government and Human Rights: Doing Good Service

© 2005 International Council on Human Rights Policy

48, chemin du Grand-Montfleury, P. O. Box 147, 1290 Versoix, Switzerland.

Local Government and Human Rights: Doing Good Service, 2005.
International Council on Human Rights Policy. Versoix, Switzerland.

All rights reserved.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording and/or otherwise without the prior permission of the publisher.

The designation of geographical entities in this report, and the presentation of the material, do not imply the expression of any opinion by the International Council on Human Rights Policy concerning the legal status of any country, territory, or area, or of its authorities, or the delimitation of its frontiers or boundaries.

The International Council on Human Rights Policy is a non-profit foundation registered in Switzerland.

ISBN 2-940259-62-3

Cover illustration: © The Trustees of The British Museum. Hanging canopy (tengai). From Japan. Probably Kamakura period, 14th century AD.

Design and layout by Fairouz El Tom, Research & Publications Officer at the International Council on Human Rights Policy.

Printed by ATAR Roto Press SA, Vernier, Switzerland.

This report is available from:
International Council on Human Rights Policy
48, chemin du Grand-Montfleury
P. O. Box 147, 1290 Versoix
Geneva, Switzerland
Phone: (+41 (0) 22) 775 3300
Fax: (+41 (0) 22) 775 3303
ichrp@ichrp.org
www.ichrp.org

CONTENTS

Acknowledgements	1
INTRODUCTION	5
Why use the human rights framework	5
A note on methodology	6
Structure of the report	7
I. WHY HUMAN RIGHTS?	11
Why examine local governance from a human rights perspective?	11
The human rights framework	12
Rights and duties	13
II. HUMAN RIGHTS AND OTHER APPROACHES	15
The debates around decentralisation	15
Conflicting or complementary frameworks?	15
Good governance	15
Sustainable human development	16
Gender analysis	17
The capabilities approach	17
Poverty reduction	17
Shared concepts and human rights	17
More about the human rights framework	19
Participation	19
Non-discrimination	19
Accountability	20
Measuring implementation	22
Using a human rights lens	22
Agency not welfare	23
Obligation not discretion	23
Consistent and inclusive decisions	24
Sustainability not opportunism	25
III. PLANNING, IMPLEMENTATION AND EVALUATION	27
The cycle of local government activities	27
Planning	28
Implementing	30
Monitoring	31
Evaluating	31
IV. LEGAL OBLIGATIONS ON ECONOMIC AND SOCIAL RIGHTS	33
Specific economic and social rights	33
Education	33
Health	34
Housing	34
Water	35
Applying human rights to local government activities	36
V. THE REINVENTION OF LOCAL GOVERNMENT	41
The variety of decentralised structures	41
The legal and constitutional framework	44
Human and financial resources	45

Capacities	47
Participatory governance structures	50
Citizen relations	50
The impact on local services	53
Education	53
Health	54
Water and sanitation	55
Housing	56
Assessing local services on the basis of human rights	57
Human rights standards	57
Availability	57
Accessibility	57
Acceptability	57
Adaptability	57
Human rights principles	57
Participation	57
Non-discrimination	60
Examples of reserved seats	62
Accountability	63
Electoral accountability	64
Information and transparency	65
Legal accountability	66
VII. OTHER ACTORS	71
The role of central government	71
Legal responsibilities of central government	72
Practical responsibilities of central government	73
International co-operation	74
Civil Society	76
Human rights NGOs	77
National human rights institutions	78
Local government networks	78
VIII. ASSESSING THE IMPACT OF HUMAN RIGHTS ON DECENTRALISATION PROCESSES	81
Achievements in education, health, housing and water supply	81
Issues outside the realm of human rights	85
IX. CONCLUSIONS	87
<i>RECOMMENDATIONS</i>	88
For local government officials	88
Making good use of human rights	88
For central government officials	89
Information and reporting	89
Judicial remedy	89
For human rights ngos and civil society	90
For national human rights institutions	90
For international donors	90
References	91
Suggested web sites	97
Appendix I	99
Endnotes	101

ACKNOWLEDGEMENTS

This report was prepared by Nancy Thède, who served as lead researcher for this project. An anthropologist by training, Dr Thède is Professor of International Development in the Department of Political Science at the *Université du Québec à Montréal*. Previously, she was Co-ordinator of the Democratic Development Programme at Rights & Democracy.

Dr Thède was assisted by the following researchers:

Bolivia

Manuel de la Fuente is Professor of Economics at the University Mayor de San Simón of Cochabamba. Graciela Vásquez Zambrana, a lawyer, was previously in charge of special programmes at the office of the *Defensor del Pueblo*.

India

Harihar Bhattacharyya is Professor of Political Science at the University of Burdwan in West Bengal.

Philippines

Soliman Santos is a human rights lawyer, peace advocate and legal scholar.

Senegal

Cheikh Guèye is Field Officer at *Enda Tiers Monde* in Dakar. Assane Mbaye teaches human rights law in the Faculty of Law and Political Science at the *Université Cheikh Anta Diop*, and at the National School of Administration, in Dakar.

Tanzania

Rwekaza Mukandala is Professor of Political Science and Public Administration at the University of Dar es Salaam. Chris Maina Peter is Professor of Law at the University of Dar es Salaam and Head of the Department of International Law.

Ukraine

Mridula Ghosh is Board Chair of the East European Development Institute (EEDI), Kyiv, and editor-in-chief of the East European Monitor.

Their papers are available on our web site at www.ichrp.org

A preliminary draft paper was submitted by:

Pakistan

Abid Qaiyum Sulehri is Assistant Executive Director of the Sustainable Development Policy Institute (SDPI). Nadeem Fazil Ayaz, a lawyer, is Manager of Programmes at Action Aid in Pakistan.

The research team worked under the supervision of an Advisory Group composed of:

Catherine Dom	Development practitioner, has worked as Adviser for central and local government on development planning and governance issues; member of Mokoro Ltd and Co-director of DT Consulting sprl.
Peter Kagwanja	Head of the International Crisis Group for Southern Africa; formerly a Research Associate with the Kenya Human Rights Commission, during which time he worked on issues of local governance and constitutional reform in Kenya.
Walter Kälin	Professor of Constitutional and International Public Law at the University of Bern, Switzerland; member of the United Nations Human Rights Committee; Representative of the UN Secretary-General on the human rights of internally displaced persons; member of the International Council.
Rashid Seedat	Director of the Corporate Planning Unit for the City of Johannesburg, South Africa.
Patrick Van Weerelt	Human Rights Advisor for the Bureau for Development Policy in UNDP's Democratic Governance Group, New York.
David Velasquez	Independent consultant; previously Director of the Youth, Sports and Childhood Division at the Municipality of Asunción, Paraguay.

In addition, the following individuals participated in a review meeting that took place on June 27 and 28, 2004 at the offices of the International Council. Laure-Anne Courdesse is Human Rights Officer at the Office of the UN High Commissioner for Human Rights, based in Sarajevo, Bosnia and Herzegovina. Marcia V. J. Kran is Democratic Governance Practice Manager at the United Nations Development Programme's Bratislava-based Regional Centre for Europe and the Commonwealth of Independent States. Paul Lundberg is a specialist in democratic local governance with experience in strengthening the planning and management capabilities of newly emerging local governance institutions in various countries. David Ondracka manages projects on political corruption, public administration reform and business ethics at the Czech chapter of Transparency International. The Council would like to thank all the above individuals for their contributions to the report.

In addition, the Council would like to thank the following individuals for their helpful comments: David Amwayi, Muhammad Asghar, A.N. Eluwa, André Frankovits, Stefanie Grant, Rosette Librea, Paul Lundberg, Sheila Muwanga, Theonas Nyamhanga, Celestine Nyamu-Musembi, Mahi Pal, Joanna Regulska, Marta Santos Pais, Corinne Elizabeth Skarstedt, G. C. Sosmeña jr, GEO Resource Centre NGO Team, and the Department of the Interior and Local Government, Republic of the Philippines.

Workshops to discuss the draft report were held between December 2004 and April 2005. These took place in Bern, Switzerland with staff of the Swiss Development Cooperation (SDC); Damascus, Syria under the auspices of UNDP/HURIST, with UNDP staff from the Middle East and North Africa region; Porto Alegre, Brazil with civil society groups attending the World Social Forum; Copenhagen, Denmark, hosted by the Danish Institute for Human Rights. There were also workshops held with staff at the Canadian International Development Agency (CIDA) in Ottawa, Canada as well as staff from Rights & Democracy, Montreal, Canada.

The project was co-ordinated by Monette Zard, Research Director at the International Council. Monette Zard and Robert Archer, Executive Director of the International Council, provided some additional writing and edited the report. Fairouz El Tom, Research and Publications Officer, sub-edited and produced the report. Shivani Verma, intern with the International Council, contributed legal research.

INTRODUCTION

In 2002 the International Council published a short report, *Local Rule: Decentralisation and Human Rights*, which mapped some of the potential human rights implications of decentralisation reforms. The links that emerged were complex and multifaceted. On one hand, reforms can enhance political participation, increase local autonomy, empower disadvantaged groups and lead to more accountable government. By bringing delivery of services closer to those who use them, decentralisation can lead to more effective and efficient government and thereby protect social and economic rights. On the other, it can entrench the powers of local elites; weaken national institutions; exacerbate social division and provoke violence; deepen inequality; and cause regression of social and economic rights because of corruption, shortfalls in resources or discrimination and loss of economies of scale.

The report found that decentralisation does not ensure that services will be improved or rights better protected; indeed, the outcome can be something of a lottery. Development and human rights advocates are therefore challenged. How can they harness the potential of local governments to improve their delivery of key services and thereby protect and promote human rights?

Of course, political factors are an important influence on decentralisation processes. Are political authorities committed to serving local people? The design of decentralisation programmes matters too – in particular, how local government's roles and responsibilities are defined in relation to central government. Many other factors affect outcomes.

This report explores some of these factors and discusses how local governments can improve the services they deliver. It argues that national and local governments have legal obligations to promote and protect human rights. It also argues that local governments can find it in their interest to use the human rights framework because, used thoughtfully, it can help them to become more effective and more legitimate.

WHY USE THE HUMAN RIGHTS FRAMEWORK

Local government officials, and others, use many methods to assess local government performance. Many of these good practices are well-recognised elements of good governance and other development approaches. Direct elections increase public participation and popular accountability. Central government reporting requirements strengthen regulatory accountability. Local officials and politicians also make public commitments to improve certain services or to better serve certain constituencies.

Since few local governments refer directly to human rights when they design their policies and human rights shares many values with governance and development, it will be asked: what advantage will local governments gain from using a human rights framework? This question is at the centre of the report: it accepts the value of other approaches but suggests that using a human rights framework offers additional strengths. Because human rights standards have the force and precision of law, the framework offers distinctively precise legal and political instruments for measuring performance and achieving change. It will help local governments to identify and address exclusion and inequity more effectively. It can strengthen accountability in various ways. It can sharpen aspects of planning and evaluation. In all these areas, it can improve performance in distinctive ways.

A NOTE ON METHODOLOGY

Research on this project began in November 2003. The Council commissioned studies in seven countries – Bolivia, India, Pakistan, the Philippines, Senegal, Tanzania and Ukraine. Although the process and chronology of decentralisation were different in each country, in every case decentralisation devolved power below state or province level and included elements of political, administrative and fiscal decentralisation. Up to three local government areas were sampled in each country, including rural, urban and peri-urban districts.

Researchers investigated whether certain services had improved or regressed following decentralisation and then explored a range of factors that could account for these results. In doing so, they consulted key constituencies – including local officials, local civil society organisations, members of the community, national officials and other relevant parties. As they proceeded, the researchers sought to assess where adoption of a human rights framework would help local governments to deliver essential services more efficiently and equitably. They therefore examined both local governments and the services they deliver, as well as the quality of local *governance*, because both influence the delivery of services and protection of social and economic rights.

Throughout the project, particular attention was paid to groups who are at risk of social exclusion, including very poor people, women and indigenous communities. They and other marginalised groups have acute needs and their interests are least likely to be adequately addressed. In this respect, the quality of the services that local governments provide such groups 'tests' the degree to which local governments in practice respect human rights principles.

It should be noted that in most cases the Council selected for research local governments that were perceived to have been more successful in delivering services to local communities following devolution. The reasoning was simple: it is all too easy to identify failures and reasons for them. The ingredients of successful local government are harder to detect and are less understood.

To take account of the fact that most local officials have not adopted an explicit human rights framework, research teams combined development and human rights specialists, to enable dialogue and learning to occur as the research progressed. All the researchers were also brought together at the beginning of the study, to agree how the role of human rights in local government would be analysed and to develop a common research framework.

After completion of the country studies, a review meeting brought the researchers together again, this time with a group of external reviewers, including local government representatives. They assessed the research and drew out key issues, conclusions and recommendations. This meeting made important contributions to the final report.

By looking pragmatically at the experience of local governments and drawing out how they can use human rights methods and techniques, the project aims to show that human rights techniques offer local government officials useful tools for measuring the quality of public services and their own achievements. Too often, human rights methods are perceived to be complex and abstract, or solely critical. In fact, though it is true that human rights advocates act as watchdogs against abuse, many human rights techniques can be applied in positive ways by officials to improve their relationship with the public and help them to perform their duties to a high standard.

We also hope the project may serve a broader purpose. In recent years, many development organisations, governments and United Nations (UN) agencies have started to integrate human rights into their policies and programmes. This has not generally been straightforward. Public officials, politicians and development specialists often say that human rights principles do not help them take difficult decisions or make their decision-making better or quicker. In this broader context, the project may help to suggest how the human rights framework can be made more accessible, more ordinary and more useful to people from different backgrounds and disciplines.

STRUCTURE OF THE REPORT

Chapter I looks briefly at some of the central elements of the human rights framework and discusses why human rights are important and useful for local governance.

Chapter II explores the various frameworks that are on offer for local governments to use, including 'good governance', 'basic human needs', 'sustainable human development', and 'gender equity'. It compares the key characteristics of these approaches to the human rights framework, identifies areas of complementarity, and discusses how a human rights perspective might add value.

Chapter III explores how the human rights framework can be applied to the different phases of local government planning, implementation and evaluation.

Chapter IV examines the responsibilities of local government in relation to some of the principal social and economic rights, including education, health, water and housing.

Chapter V introduces the findings of the research and surveys the varied contexts in which different local governments operate.

Chapter VI discusses how the local governments that were studied measured up when assessed against the human rights framework.

Chapter VII explores the role of other important actors.

Chapter VIII assesses the overall human rights impact of decentralisation and lays out some of the challenges ahead.

The final chapter draws conclusions and makes some recommendations.

PART ONE

**THE HUMAN RIGHTS FRAMEWORK
AND OTHER APPROACHES**

I. WHY HUMAN RIGHTS?

WHY EXAMINE LOCAL GOVERNANCE FROM A HUMAN RIGHTS PERSPECTIVE?

Decentralisation – the transfer of powers and responsibilities by the central state to intermediate and local levels of government – is taking place in some 80 per cent of all developing and transition countries. In most of these cases, local government has assumed responsibility for numerous services related to health, education, housing, water supply, policing, taxation and other matters. Elections at local government level have been introduced almost everywhere. Its relevance to political empowerment, citizen involvement and delivery of public services has meant that local government has become a major arena of policy formation.

Human rights have also become a central element of international policy. They assert that every person has certain economic, social and political entitlements, by virtue of his or her humanity. Human rights instruments set out safeguards, based on fundamental ethical principles that guarantee these entitlements. International human rights laws are approved and ratified by governments. Though they focus first on the responsibilities of states, they are relevant to all levels of government and to other institutions to which the state devolves authority.

In this sense, human rights and local governance are both essentially concerned with the provision of certain entitlements, including participation in local political processes and access to essential services. Local government is increasingly responsible for the design and delivery of such services, and for citizens is increasingly their most obvious point of contact with government.

This is the first reason why human rights activists should take an interest in local government – and why those working in local government should become interested in human rights. A second reason has to do with the evolution of human rights work. For many years, civil and political rights dominated the human rights agenda. These remain vital issues, of course, but recently more attention has been given to economic, social and cultural (ESC) rights.¹ These rights are particularly relevant to local government responsibilities. In effect, substantive realisation of many economic and social rights is determined at the level of local government.

Its approach to power is a third reason why the human rights framework is relevant to local government. Human rights recognises the possibility that power can be abused by those in authority. It therefore applies safeguards to guarantee human dignity, constrain abuses of power and prevent competition for power degenerating into violent conflict. These safeguards are relevant to the exercise of power at local as well as national level.

Finally, in many countries, decentralisation has followed the introduction of democratisation reforms, in which human rights activists have often played a key role. The same activists have often become prominent in central and local governments. The story of local governance is thus intimately linked with that of human rights.

THE HUMAN RIGHTS FRAMEWORK

Since 1945, when the United Nations was formed, states have constructed a legal code that recognises and articulates a set of fundamental human rights and freedoms. The various UN standards reflect values and principles that states agree are shared across all societies.²

Existing human rights instruments include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Civil and political rights include the rights to life, liberty and security of the person; right to fair trial; freedom from slavery, torture and arbitrary arrest; freedom of thought, conscience, religion, opinion and expression; and rights to assembly and association, and to participation in public affairs.

Economic, social and cultural rights include the right to work and to be justly rewarded for it; the right to rest and leisure; the right to an adequate standard of living, including food and housing; rights to health, education and to social security; and the right to participate in the cultural life of a community. These rights are widely accepted. The International Covenant on Economic, Social and Cultural Rights has 149 ratifications³ and the rights it contains have been affirmed at numerous conferences involving the vast majority of the world's governments.

It is sometimes argued that economic, social and cultural rights cannot be enforced in the same way as political and civil rights; that ESC rights are aspirational because in many societies it would be prohibitively expensive to implement them; that wide disparities in living standards between countries mean that these rights cannot be guaranteed; and that courts cannot (or should not) adjudicate such rights because this would lead to judicial interference in government budget decisions.

None of these arguments can be given more than a certain weight. For one thing, similar objections can be raised in relation to civil and political rights. It is expensive, for example, to sustain an efficient justice and penal system and an effective police force. In addition, the rights to education, health care, an adequate standard of living and other economic, social and cultural rights are protected in international law on the basis that a state will implement them progressively, over time, recognising that a state cannot do more than available resources permit.

Increasingly, the mainstream view is that human rights do not need to be ranked or set in opposition. Indeed, the interaction of all rights may be crucial to the achievement of any. Rights to free speech, to education, or to decent work are worthy of achievement in themselves; but each may also have an instrumental role to play in reinforcing other rights. Respect for one category of rights may be essential to achieving another. This is what is meant by the principle of interdependence. The guarantee to security of the person, for example, stands at the heart of political and civil rights; but it means very little if an individual is starving.

The Council's research suggests that interdependence is not just a valuable ethical principle. The case studies continually demonstrated that the link between exercise of political and civil rights – notably the right to information, to political participation and association – underpinned the continued delivery of high quality services by local government. If health services were not provided to certain sections of the community, for instance, it was likely that political obstacles were the cause. Similarly, the status of marginalised groups and women tended to determine how local governments addressed their needs.

RIGHTS AND DUTIES

If a human rights framework is applied to service delivery, those who use or benefit from services become holders of rights – entitled to make claims on their government.

At the same time, the framework asserts that, if claims are to have meaning, a person or an institution must have a duty to respond to or respect them. Ascribing a right, therefore, implies identifying a person or authority responsible for delivering or protecting that right (a duty bearer).

States' duties are usually set out at three levels:

- **To respect:** States should not directly or indirectly deprive individuals of their rights, or establish an institutional system that gives incentives to others to deprive them of their rights.
- **To protect:** States should enforce respect for rights; they should prevent those who would deprive another of rights from doing so – including lower levels of government, international institutions, private corporations, community elders or family members.
- **To fulfil:** States should create conditions in which rights can be realised. This implies taking legislative, budgetary, judicial and other action that is required and investing resources appropriately. The obligation to fulfil is sometimes sub-divided into a duty to “facilitate”, which requires states to enable people to meet their own needs, and a duty to “provide” which requires states to provide services when otherwise these could not be

realised. Many of the largest social investments (for instance, education, health, social insurance, security, environmental protection) fall into this category.

The obligation of states to respect, protect and fulfil economic and social rights can be tested in different ways. One that is increasingly used assesses performance against four “essential features” or standards. These ask whether services or rights are (a) available, (b) accessible, (c) acceptable, and (d) adapted to context.⁴ These four standards will be discussed later.

It should be stressed that the duties of office holders are not boundless. As noted above, international law sets clear limits on obligation in relation to ESC rights. It is understood that states need to take account of available resources and that rights cannot be achieved at once but will be implemented progressively. This language recognises that poor states – and by extension less-endowed local governments – are not immediately able to guarantee the levels of education and health care that more developed ones can. However, this does not provide states (or local governments) with excuses to perform poorly. They are expected to use the maximum of available resources to promote and protect rights.

In the next chapter, we discuss the human rights framework in more detail and assess how it complements and differs from “good governance” and other policy approaches that local governments apply.

II. HUMAN RIGHTS AND OTHER APPROACHES

THE DEBATES AROUND DECENTRALISATION

Two major schools dominate analyses of decentralisation: public administration studies, and approaches based on sociology and political science. Public administration literature⁵ tends to affirm that decentralisation will enhance the efficiency of public services, political participation and transparency, while reducing corruption and mobilising new financial and human resources by bringing “voter-consumers” closer to government.⁶ The managerial thrust of this school is strong. It is often implied that, if reforms are technically on target, the rest will follow automatically.

Advocates of the second school tend to focus on the potential pitfalls of decentralisation. They warn that decentralisation is a brainchild of neo-liberalism or the International Monetary Fund (IMF) and the World Bank, and claim that it is designed to unburden national government of costly social responsibilities, fragment social and political resistance, or return power to oppressive local elites.

Both these positions are overly simple. As research is now showing, decentralisation can produce positive, negative or mixed results. Outcomes depend on a complex combination of factors, including political will, history, economic resourcing and endowment, levels of inequity and poverty, the constraints imposed by donors and central governments, and so forth. Decentralisation needs to be understood as a complex process, subject to numerous local and external influences. In addition, because most reforms have occurred recently, it is too early to make a final assessment of their impact.

To complicate matters further, donors, national governments, political parties, civil society organisations and other observers encourage local governments to apply a bewildering variety of sometimes inconsistent methods to organise and implement their work. Some of the most influential ones are listed below.

CONFLICTING OR COMPLEMENTARY FRAMEWORKS?

Good governance

Good governance is the preferred framework of most international donors who support democratisation and political reform. Defined as “the exercise of political, economic and administrative authority to manage a nation’s affairs”,⁷ it originally aimed to introduce judicial and other institutional reforms that, by increasing transparency and legal guarantees for private property, would counter corruption and enhance investment.

Over time, thinking has evolved towards greater inclusion of concerns such as public participation and human rights, suggesting that “good governance generally implies that those institutions and actors that regulate the behaviour of public bodies stimulate citizens’ participation in government...”. A recent document identified seven main features of the approach: democratic accountability; public sector transparency; public participation at all levels of government; clear separation between administration and politics; legal protection of citizens’ rights; a professional civil service; and financial accountability.⁸ The UNDP has gone further, framing good governance “as values, policies and institutions that are governed by human rights principles, i.e., equality and non-discrimination, participation and inclusiveness, accountability and the rule of law”.⁹

Though few local governments use human rights as their operational framework, authors who have discussed the relationship between good governance and human rights¹⁰ generally conclude that good governance can enhance human rights by strengthening the state’s capacity to ensure realisation of economic and social rights, but that “successful good governance programmes can co-exist with a recipient government that regularly violates human rights”.¹¹ Observers have also noted that, when good governance adherents are tempted to apply human rights selectively, “the risk increases that good governance will work against the realisation of human rights”.¹²

Sustainable human development

This model merges the ‘basic human needs’ approach of the early 1970s with the Brundtland Report’s call in 1987 for environmentally sustainable development.¹³ The ‘basic needs’ approach sought to eliminate poverty by multiplying local development initiatives. Sustainability approaches promote forms of development that will not undermine the earth’s ability to regenerate itself. Through Agenda 21 (1992) and the Kyoto process (1997), many governments and associations of municipal authorities have adopted a ‘sustainable human development’ approach and prioritise:

- poverty reduction,
- capacity building,
- economic and social service initiatives at local level,
- basic needs, and
- solutions that protect the interests of future generations.

The UNDP links the three approaches: “[S]ustainable human development aims to eliminate poverty, promote human dignity and rights, and provide equitable opportunities for all through good governance, thereby promoting the realisation of all human rights – economic, social, cultural, civil and political.”¹⁴

Gender analysis

Gender analysis “looks at how power relations within the household interrelate with those at the international, state, market and community level”.¹⁵ In doing so, it focuses (like human rights) on non-discrimination, using the international Convention on the Elimination of Discrimination against Women (CEDAW) as a basis for advocacy and programming. The three main programming areas of the United Nations Fund for Women (Unifem), for example, are economic and social rights, governance, and human rights (in particular, the elimination of discrimination and violence against women).

The capabilities approach

Nobel laureate Amartya Sen has proposed a focus on capabilities; that is, the concrete ability of persons to gain access to the benefits of development (to live a long and healthy life, to participate in political life, to engage in economic activities etc.). This idea enjoys strong support amongst development practitioners and has been influential in shaping the notion of human development and the Human Development Index (HDI). As we shall see, this emphasis is also consistent with many aspects of the human rights framework.¹⁶ Sen maintains that the two concepts are congruent, but that neither can be subsumed by the other: “There are many human rights which can be seen as rights to particular capabilities. However, human rights to important process freedoms cannot be adequately analysed within the capability framework.”¹⁷

Poverty reduction

National Poverty Reduction Strategies and the Millennium Development Goals (MDGs) have become the main instruments through which international and national organisations currently focus development programmes. The MDGs, adopted by the United Nations General Assembly in 2000, set seven goals to be achieved by the year 2015. (An eighth goal discusses international co-operation in support of their achievement.) The MDGs are consistent with several economic and social rights (education and literacy, gender equality, adequate standard of living) but are not set out in human rights terms.

SHARED CONCEPTS AND HUMAN RIGHTS

Each of these approaches to local governance and development share some key concepts and features with each other and with the human rights framework. The table below identifies some of the areas of difference and overlap. However, such a table certainly involves subjective judgments. We recognise that our assessment is open to question and include it to generate a constructive debate. (Explicit recognition of a principle is indicated by the ✓; implicit recognition by the *).

PRINCIPLES/ FEATURES	APPROACHES				
	Good governance	Sustainable development	Gender analysis	Capabilities	Human rights
Participation	✓	✓	✓	✓	✓
Non-discrimination	*		✓	*	✓
Accountability	✓		*		✓
Rule of law	✓	*	*		✓
Transparency/right to information	✓				*✓
Prioritises poverty reduction	✓	✓	*	✓	*
Empowerment	*		✓	✓	✓
Availability		*		*	✓
Accessibility		*		✓	✓
Acceptability			✓		✓
Adaptability			✓		✓
Legally binding framework					✓
Effective remedy					✓
Entitlement					✓
Indivisibility					✓
Recognises future generation claims		✓	*		*
Capacity building		✓	✓	✓	
Institutional efficiency	✓				
Basic needs & services		✓	*	*	✓

Considering the various approaches, three observations can be made. First, the human rights framework scores well. It accommodates most of the central principles of other approaches. Second, human rights highlight several values that other frameworks do not – including obligation, remedy, entitlement, and indivisibility. These suggest where the framework distinctively adds value.

It should also be noted, thirdly, that where different frameworks share concepts, they do not always refer to exactly the same things. For example, 'participation', 'transparency' and 'accountability' have somewhat different meanings for advocates of good governance and advocates of human rights.

MORE ABOUT THE HUMAN RIGHTS FRAMEWORK

Running democratic local governments successfully is a complicated process, and a recent one in many countries. Officials can clearly draw usefully on different approaches. This report does not claim a human rights framework is the only good one or that its methods are best in every circumstance. Combined with other approaches, however, we argue that it can improve performance, because it draws attention to issues and groups of people to which other approaches give less or insufficient attention. Where, more precisely, is a human rights framework likely to be most useful to local government?

This section examines three core values of human rights – participation, non-discrimination (inclusion) and accountability before looking at ways of measuring success in implementing social and economic rights.¹⁸

Participation

The notion of participation is grounded in international human rights law. The ICCPR notes that everyone has the *right to take part* in the political decisions that affect their lives. With respect to economic and social rights, participation should be comprehensive and both *free* and *meaningful*. People are entitled to participate in developing strategies and implementing them, and also to monitor how governments and other relevant actors perform their responsibilities.¹⁹ In addition, the right to participate is subject to legal enforcement. This is a strong understanding of participation, more far-reaching than much good governance practice which does not necessarily presume that citizens or beneficiaries of development programmes should be entitled to engage critically with decisions that affect them. In a human rights framework, participation is a broader requirement that emphasises both the substance and process of decision-making.

Non-discrimination

The principle of non-discrimination stands at the heart of human rights. To understand its use, it needs to be set in context. The fundamental principle is that all human beings have dignity and rights by virtue of being human. It follows that rich people have rights as well as poor ones, members of majorities as well as members of minorities. The claim of rights to universality cannot be sustained unless this is recognised; and the political credibility of the framework, as an approach to human justice, relies on it too. If the framework is

to be persuasive, morally and politically, *everyone* should understand that they draw benefit from it.

In practice, however, the test of equity and fairness is whether a system protects and empowers those who are weak and disadvantaged, and whether authorities protect the rights of people who are excluded, unpopular and politically invisible. This is why human rights advocates have always given particular attention to those who are at risk, from prisoners to children and the very poor, and why the core principle of equitable treatment for all (without regard for differences of religion, gender, ethnicity, age, caste, class, language etc..) is usually invoked to protect such individuals.

Non-discrimination is also at the heart of human rights practice because it is considered by human rights law to be an immediate obligation of states and is non-derogable: states cannot defer or suspend for any reason their obligation to prevent discrimination.

Accountability

Good governance theory attaches great importance to accountability; it is usually linked with two other principles of good governance, the rule of law and transparency. Historically, for example, accountability was principally associated with financial accountability in the management of public and aid funds. Over time, it came to be accepted that the rule of law was required to provide a predictable and transparent legal framework, which is essential for investment and the security of private property. In recent years, transparency – achieved by providing public information about financial transactions – has come to be considered as a key weapon against corruption.

International human rights law does not refer directly to accountability; it is nevertheless a fundamental feature of the framework. This needs some explanation.

As we have noted, the human rights framework is constructed around ideas of entitlement (rights) and obligations. The entitlement to claim a right presumes that some person or authority has a duty to deliver or restore that right. In most cases, the responsibility to protect, fulfil or promote rights lies with states, who are the signatories of human rights instruments. Human rights obligations apply to local governments because they are a constituent element of government or because national government has devolved powers to them. In both cases, the primary responsibility for protecting and promoting rights lies with the national government, which has the double responsibility to monitor local government performance to ensure that rights are respected, and enable local governments to perform their duties by providing them with adequate powers and resources.

The framework's active understanding of entitlement and obligation takes human rights part of the way towards a model of political accountability. Its recognition that, where rights have been violated or are not fulfilled, claimants should be able to seek legal recourse (restitution of their rights or compensation) provides a further vital element. For officials this means that (where court systems are effective) national and local governments can be taken to court and sanctioned if, as a result of their action or inaction, rights are violated or unmet.

In addition, the framework builds in accountability through a cluster of what are sometimes called "process rights". The most important of these political and civil rights are perhaps the rights to free expression, to be informed, to participate in political life, and to associate freely with others. (One might add the right to education to this list, because it is much more difficult to make good use of the others without it.) These are called process rights because, although they are valuable in themselves, their exercise also creates the conditions in which other rights can be met – including most of the economic and social rights on which this report focuses. Examples from the research are given later on in the report but, to illustrate, a farmer cannot expect to protect her land if she has no access to information about land law or land reform programmes. In a similar way, employees are unlikely to secure safe working conditions if they cannot obtain information about health and safety laws or are prevented from meeting to discuss or negotiate improvements. Local governments are unlikely to be highly efficient or responsive to their constituencies if they never hold elections or elections are corrupt.

Combining these rights, actively exercised, with the principle of legal recourse *and* the core notions of entitlement and obligation, provides the human rights framework with a strong and dynamic vision of accountability. The framework is applicable to political decision-making as well as financial matters, and gives attention to the *quality* of decision-making processes as well as their outcomes.

It should also be stressed that, in defining an official's responsibility to protect and promote rights, the framework sets boundaries on that responsibility. Having been drafted and approved by governments, human rights laws are realistic. They state, usually with some precision, what officials are not responsible for as well as what they have a duty to do. They set limits to the claims that citizens can make, and require claims to be justified. They recognise constraints on the ability of government to fulfil and implement rights, just as they require government to demonstrate that it has made real and appropriate efforts to honour its commitments. From this perspective, if the rights framework requires officials to act responsibly to promote and fulfil human rights, it also protects them against unspecific and unjustified claims or criticisms.

MEASURING IMPLEMENTATION

As noted above, the United Nations Committee on Economic, Social and Cultural Rights has developed tools for measuring whether economic and social rights (in relation to health, education, housing, food or water) are being achieved, and whether the process for achieving them is likely to give long-lasting results. They are based on the following four tests or standards, each of which is relevant for the services that local governments usually deliver:

Availability

A service should be available in sufficient quantity to meet the needs of the entire population concerned.

Accessibility

Services should be distributed and located so that all members of the population concerned can use them without discrimination. This implies both physical and economic access, and access to relevant information. Access must be sustainable and affordable, commensurate with income levels. (Some rights, such as primary education, must be provided free of charge.) The state has a duty to provide services to people who, for reasons beyond their control, cannot access them on their own.

Acceptability

Services must be provided in a form and manner that respects the cultural values, norms and practices of all those who use them. They must be relevant, culturally appropriate and of good quality.

Adaptability

A service's form and content should be adapted to the needs of communities or individuals in different social and cultural settings, and to changing local, national and international contexts and standards.

USING A HUMAN RIGHTS LENS

As suggested, whether used independently or in combination with other approaches, a human rights framework can strengthen policy-formation and assessment in four ways:

- it empowers the citizen/voter who stands at the core of the framework;
- it affirms that states are legally *obliged* to meet their human rights commitments;
- it requires consistency and non-discrimination (universal entitlement); and
- it recognises that rights are linked – that process rights play a role in achieving economic and social rights, and that the achievement of one right is tied to the achievement of others.

Below, we look at each of these in a little more detail.

Agency not welfare

Service-delivery does not adequately describe the responsibility of local governments. Effective and accountable local government implies the involvement of citizens in decisions that concern them. The human rights framework recognises this. In a General Comment on the right to water, for example, the UN Committee that monitors social, economic and cultural rights says that, “[t]he right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water, must be an integral part of any policy, programme or strategy concerning water”.²⁰ The CESCR General Comment on the right to health similarly notes that effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies, is critical to promoting health. “Effective provision of health services can only be assured if people’s participation is secured by States.”²¹ The emphasis would be similar with respect to other economic and social rights.

When it is meaningful, participation empowers people. Active involvement in formulating decisions and implementing them allows people to take decisions and accept decisions taken in their name by those who represent them.

Having entitlement to speak – to voice opinions, express dissent, argue for priorities – is a crucial element of rights for the same reason.

Both assume the possibility and importance of co-operation. In practice, strategies to achieve rights cannot be implemented successfully without co-operation between government, civil society and other actors.

Rights-holders are thus active participants in the realisation of their rights. The needs-based approach is weaker in this respect. It puts government at the centre of delivery and casts citizens as beneficiaries, even passive recipients, of goods and services that government provides. On this model, elected local authorities are expected to exercise the powers devolved to them in the interest of the common good. But is it legitimate to define the common good without citizens’ involvement? The needs approach does not give enough attention to political process. An approach that puts citizens near the centre of decision-making is more likely to deliver a good service and be perceived as legitimate.

Obligation not discretion

The human rights framework affirms that government (including local government) has a duty to deliver certain services, including primary education and health, public housing, potable water and so on. These services are not discretionary.

The obligation on government is quite detailed. States are required to meet minimum standards and follow certain processes. While it is accepted that many rights cannot be achieved instantly, governments are not permitted to allow standards of provision to fall.

The core content of various rights has also been described by the CESCR. It includes the responsibility to provide at least a minimum essential service, to ensure non-discrimination and equitable distribution, and to adopt a national strategy and plan for achievement of the right. States which ratify the Covenant also undertake to use 'the maximum of available resources' to attain economic, social and cultural rights.²² Retrogression is prohibited and governments are not permitted to repeal laws that protect a right or adopt laws or policies that are incompatible with its protection.

States are also required to provide judicial remedy for rights considered justiciable within the national legal system.²³ Legal remedies should underpin administrative and other forms of recourse, to ensure their effectiveness.

The CESCR considers that the following provisions of the International Covenant on Economic, Social and Cultural Rights are capable of immediate application by courts and other bodies: gender equality in the enjoyment of economic, social and cultural rights (art. 3); equal remuneration for equal work (art. 7(a)(i)); the right to freely form trade unions and to strike (art. 8); measures to protect children and young persons from economic and social exploitation without discrimination (art. 10(3)); compulsory universal primary education (art. 13(2)(a)), the liberty of parents to choose schools for their children (art. 13(3)), and the autonomy of educational institutions (art. 13(4)); and the right to scientific and creative freedom (art. 15(3)).²⁴

When central governments devolve responsibilities to lower tiers of government, their duty to protect rights remains. They are required to ensure that local governments comply with the international obligations to which they have agreed. This is clearly established in a recent General Comment on water.²⁵

This means that local governments that have been delegated the responsibility to provide services related to economic and social rights can in turn hold national governments to account. If they have signed and ratified international human rights treaties, for example, governments are obliged to ensure that, when they devolve services, their quality does not decline.

Consistent and inclusive decisions

The human rights framework affirms that *all* people have dignity and certain entitlements. As a result, it focuses particularly on those who cannot secure their entitlements, or whose rights are violated. In most cases this means people who are poor and otherwise excluded.

Specific tools are available to identify those who are excluded, to assess whether steps have been taken to prevent violations, and to compensate those whose rights have been violated. Process rights, including the rights to expression, information and participation, are among the most important of these tools.

The very strong prohibition of discrimination is a strong counterforce to pressure-group models, or political traditions that bias decision-making in favour of those who are traditionally or economically powerful. They affirm the right of all people to education, health, water and housing, and deny privileged claim to such services by particular individuals or groups.

Human rights methods can be effective in this area. A budget analysis of social spending can reveal discrimination that public authorities would otherwise fail to notice.²⁶ Encouraging local authorities to collect statistics about vulnerable groups or disclose more detailed information about provision of services can make officials more accountable and draw attention to forms of discrimination and inequity that were not visible. The same methods can assist officials to resist pressure from interest groups that seek to bend public policy in their favour. The skills that human rights organisations have acquired in monitoring government performance and collecting disaggregated information about vulnerable groups, are particularly useful here.

Sustainability not opportunism

Steady political and economic investment over many years is necessary to improve access to many economic and social rights. High standards in education, health, environmental protection and other core social policies cannot be achieved within a single electoral term; hence the principle of progressive realisation. Since local governments, like national ones, are under constant pressure to produce immediate results, the human rights framework offers a corrective to short-termism. Political calculation will always tempt officials to channel resources towards projects and areas that will generate electoral support, rather than to ones that benefit few or poorly organised voters. Incoming administrations are similarly tempted to replace the programmes of outgoing governments, even where it is vital to maintain continued investment.

The human rights framework can help officials to resist these temptations, since it requires them to continue to invest a maximum of available resources towards realising rights, and prohibits retrogression. Moreover “progressive realisation” does not imply delay or deferment: action needs to be immediate even if fulfilment cannot be achieved at once.²⁷ Immediate obligations include the following:

- to ensure that no explicit or implicit discrimination occurs in the existing level of realisation of rights;
- to adopt legislative measures to protect rights;

- to provide judicial remedy through recognition of rights in the domestic legal order; and
- to adopt a plan of action and strategy for the realisation of each right.

Regarding the development of national plans and strategies, General Comments on the right to adequate food (Number 12), to health (Number 14) and to water (Number 15) set out the requirements for such plans. They must be based on the good governance principles of accountability, transparency and independence of the judiciary, and must be developed, implemented and monitored using a broad and representative process of participation and consultation.

The human rights framework thus requires local governments to plan how they will achieve economic and social rights and indicates what such plans should include. It also suggests how performance should be monitored and assessed. In this sense, it provides a roadmap that, used thoughtfully, can help local governments to provide health, education, water, housing and other services equitably and effectively. It also offers a management tool which goes well beyond a narrow focus on individual projects or programmes and can be used strategically for both long and short-term planning and evaluation.

In the next chapter, we look in a little more detail at how human rights can be relevant to planning, implementation and assessment.

III. PLANNING, IMPLEMENTATION AND EVALUATION

THE CYCLE OF LOCAL GOVERNMENT ACTIVITIES

Local governance under decentralisation is a complex and demanding exercise. According to the City Government of Johannesburg, three factors generally determine the activity cycle of a local government:

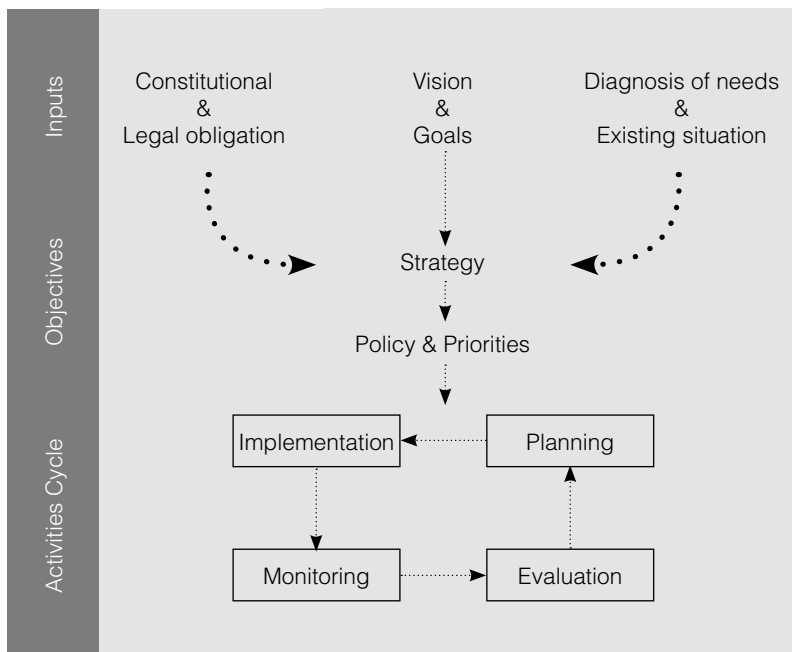
- its duties and mandate, as set out in the Constitution or relevant legislation;
- the municipality's *vision* of its role and future direction; and
- its diagnosis, both of the general situation and major challenges that need to be addressed.

These factors guide the development of a *strategy* to address the problems identified, which should be organised in terms of *priorities*. Having agreed a strategy and set priorities, officials are then in a position to plan programmes and activities. As these are implemented, they should be monitored and, on completion, the whole cycle should be evaluated.²⁸

The work of local governments can be divided into the following phases:

- **planning** – allocating resources to priorities, establishing criteria, devising projects and timelines;
- **implementation** – doing the work, applying resources to complete projects within specific timelines;
- **monitoring** – assessing progress and identifying problems;
- **evaluation** – determining to what extent the activities addressed the priorities, and whether changes are required.

As the responsibilities of local governments enlarge (and the sheer scale of cities and city government activities continue to rise), managing these processes becomes increasingly demanding. Some authorities have developed management tools to help them, and in some cases go well beyond the letter of their responsibilities. Others are stretched to achieve the most minimum standards. But, as Johannesburg City warns, “basic service provision alone will not address growing poverty and inequality in cities”.²⁹ How can local administrations assure themselves and citizens that they address the *real* problems of their communities, and do so responsibly and professionally? Although this report cannot answer such a broad question, this chapter does suggest how human rights methods and principles can enrich local government procedures for planning, implementing, monitoring and evaluation. It also notes where local authorities should be taking human rights into account at different points in the activity cycle.



Planning

First, local governments should be aware of what the Constitution or national laws say about human rights. What rights have been enshrined in domestic law, and are thus legally applicable in local government policies? What human rights aspirations are expressed in the Constitution and other basic documents that should inform the vision and policy objectives of local authorities?

What are local authorities' options when national laws and national constitutions do not mention certain rights? Many local authorities will argue that they should confine their remit within national law. This is only a reasonable position, however, when national laws are framed responsibly in relation to international standards. In cases where national law glaringly omits, or indeed denies, certain rights, local authorities can adopt, at their own initiative, local or provincial legislation that reflects international standards. In the United States (US), for example, the City of San Francisco has enacted local legislation to implement CEDAW, which has not been ratified by the United States.³⁰ With respect to the environment, the mayors of more than 130 US cities, including New York and Los Angeles agreed in 2005 to reduce their carbon emissions in line with the Kyoto Protocol, which the Federal Government has refused to support. Similarly, a group of between 9 and 16 US states are also expected to adopt policies that will freeze and then reduce state-level carbon dioxide emissions.³¹

Secondly, local authorities should review their mandate and powers, including powers devolved to them by central government, and identify where their responsibilities can be framed in terms of human rights. This has value on two main grounds. It may enable them, first, to establish clearly where they have *legal* duties; and, second, it will help them to enumerate (and circumscribe) those duties in precise terms.

When local governments set out their vision and goals, these should reflect the legal commitments to human rights that have been identified earlier. In addition, local governments may want to ask whether they wish to include commitments to human rights in core public documents that set out their vision and objectives – even where they are not under any statutory obligation. Again, there may be two advantages in doing so: politically, first of all, human rights have public approval in many societies; secondly, using human rights as a reference point may enable local governments to set themselves more objectives and specific tests of performance.

When making a diagnosis of the general situation, and the needs of constituents, the human rights framework can again add precision. In particular, it will cause officials to ask which groups in society are at risk of discrimination and exclusion, as well as which services they have a clear duty to deliver. It will also assist them to identify the extent (and limits) of their responsibilities to provide those services and address the needs of all groups identified. In addition, the framework will assist local governments (and other actors) to attribute responsibilities to specific officials, and define lines of accountability. In doing so, this will also help local authorities to clarify their reporting and information responsibilities more clearly.

A diagnosis that draws on human rights principles and methods will more easily set priorities, and be able to distinguish statutory obligations (priorities by definition) from non-statutory ones (priorities by choice). This in turn may help local authorities to allocate expenditure in a transparent and accountable manner.

When programmes and activities are drawn up, the whole planning process as well as the programme itself, can be reviewed against human rights objectives. Some local governments will undertake such reviews because they have a commitment to human rights objectives. But all should consider doing so, because it will help them to identify and avoid risks.

If planners ask themselves whether the annual plan meets human rights requirements with respect to participation, discrimination and accountability, the human rights framework will help them to foresee whether some of their activities are likely to be challenged in the future for causing discrimination or corruption, ignoring the interests of certain groups, or failing governance standards (with regard to transparency, communication, participation etc.). If they ask whether the same programmes take account of different economic and

social rights, it will help them to determine whether the services they provide will be adequate in range and quality; or whether certain essential services are not being made available or receive insufficient funding. The four 'tests' (availability, accessibility, acceptability and adaptability) will also throw light on strengths and weaknesses of the programme, and help to identify political and economic risks. Applying the kind of 'grid' set out on page 36 will also provide useful information and insights.

Reviewing the plan using a human rights framework will also help local officials to identify any statutory obligations, or reporting obligations – to central government, or Parliaments for example – that may have been missed.

Implementing

This planning work will be extremely relevant when programmes are implemented, because they will provide staff with tools to assess the degree to which programmes are meeting objectives and standards, in relation to the content of programmes (water provided, lessons given) but also process (quality of public consultation, levels of public participation, etc.). If programmes clearly identify the importance of non-discrimination, officials are more likely to watch out for its occurrence, and their managers are more likely to notice if they do not. If programmes clearly state that girls and boys are both entitled to education, teachers and officials are more likely to notice the presence or absence of girls, and take steps to encourage (and where necessary require) parity of opportunity. If plans emphasise the importance of actively consulting and involving the public in programmes, officials are more likely to attach importance to consultative processes and listen, more carefully and with more discrimination, to a wider range of opinions.

This, in turn, will require and encourage local authorities to train their staff and ensure they have good information about the authorities' objectives and values. The human rights framework can be useful at several levels in this respect. It will, first of all, help local authorities to be explicit about their human rights commitments. Secondly, it will help them to be explicit and clear about their obligations, both statutory ones but also human rights obligations. Thirdly, the frameworks' emphasis on communication, transparency and participation will encourage managers and senior officials to involve their own staff more – to inform them, train them, and encourage their ownership and participation in local government programmes. Fourthly, it will encourage local government staff to promote more transparent communication with the public, and value their participation in, and ownership of, local authority programmes. Finally, it will assist managers and staff to understand the importance of accountability and take responsibility for programmes that they administer.

Beyond training of their own staff, local authorities also need to give attention to their external relationships and communications. The human rights

framework will encourage officials to ask a range of relevant questions. Is the public adequately aware of the local authority's human rights commitments and obligations? Is the local authority providing information about the range of services it provides, and the standards of service it expects to meet? Can members of the public find out who is responsible for a particular service, and are they able to lodge complaints?

Monitoring

Developing an effective complaints' mechanism is likely to be a vital component of effective monitoring. Here too, human rights questions are relevant. Is an authority's complaints' mechanism able to receive, judge and resolve complaints in a fast, affordable and effective way? Is it accessible – not least to groups that are distant from large cities, poor, suffer discrimination or tend to be excluded?

Human rights methods also focus on the very important role of information. Do the authority's procedures ensure that senior officials find out when their services are defective or discriminatory? Do they encourage action to improve them? Are statistics collected and do these enable officials to determine whether discrimination is being addressed, or performance improving? Is relevant information reported to central government and to other monitoring institutions? Is relevant information released to the public? Applying a human rights framework will encourage local officials to give attention to the collection and dissemination of information, to monitor their own work and report adequately to monitoring authorities, and to search for weaknesses and discrimination in the services they deliver.

In particular, it will cause officials to ask whether groups are excluded from protection or from services, and to give such groups specific attention.

It should also encourage officials (and other actors) to analyse budgets and expenditure in relation to human rights obligations and objectives.

Evaluating

Evaluation of the activity cycle will take into account information and analysis that emerged in each of the three earlier phases. Officials will draw on the human rights objectives and the priorities identified in the planning phase to set standards by which to assess progress. They will rely on information gathered from monitoring the programmes to reach judgements about the content and quality of service delivery, the degree to which staff capacity is increasing, and the quality of relations with the public. They will also take account of central government audits, and public response to the authority's programmes and performance.

More specifically, the human rights framework can help authorities evaluate the degree to which officials and programmes empowered and successfully addressed the needs of vulnerable and excluded groups, and reduced or eliminated discrimination that had been identified.

Human rights methods can be helpful too, though less distinctively, when local authorities assess whether programmes were implemented efficiently; money was well spent; public expectations were met; staff skills improved; and what should be changed and retained when planning the next cycle.

For local officials, at first sight the human rights framework appears distant from their concerns. In fact, it is not. The framework offers tools for planning and monitoring. It highlights processes that help governments and officials to be accountable and legitimate. It is also realistic. Having been negotiated and approved by governments, human rights standards recognise that resources are not infinite and that officials must make difficult choices between competing priorities. The notion of progressive realisation acknowledges the reality that not all rights can be achieved simultaneously.

At the same time, human rights principles and methods establish agreed and achievable ethical and legal parameters, within which decisions should be made. By applying them thoughtfully, local government officials and community organisations can make themselves more accountable and can achieve more equitable outcomes. Officials can deliver services properly and fairly to all citizens, while citizens can see that this is so.

IV. LEGAL OBLIGATIONS ON ECONOMIC AND SOCIAL RIGHTS

If they apply human rights to the delivery of local services, local governments will begin to work in a different way. The human rights framework expects officials to use quantitative tools to evaluate their services, but also to ask who benefits from them (and who does not). It expects officials to give attention to decision-making processes and ask who participates in decisions (and who does not). Choosing to build a school, health dispensary or road becomes more than a matter of economic or administrative efficiency: officials start to take account of public expectations and objectives, public accountability, and equity.

Crucially, the framework focuses attention on the legal and moral obligations of government. As noted previously, most countries have ratified the major international human rights instruments. These require governments (and institutions to which they delegate authority) to respect, protect and fulfil human rights. In this chapter, we summarise the responsibilities of national and local officials with respect to specific economic and social rights. We look particularly at education, health, housing, and water and sanitation.

SPECIFIC ECONOMIC AND SOCIAL RIGHTS

Education³²

International human rights law requires states to ensure that all children within their jurisdiction attend primary school. Primary schools should be free; any charge levied must be voluntary. Governments should also take steps to make free secondary education available to all.

In reality, many countries require pupils to pay indirectly for primary education. Parents pay for use of educational facilities and materials, extra-curricular activities, or contribute to teachers' salaries or school maintenance; such charges often affect girls more than boys.³³

The content of education programmes is also important. States are required to promote the full development of the person and respect for human rights. They are expected to monitor the education system's performance in these respects.

Discrimination in access to education is strictly prohibited, without exception: neither shortage of resources nor the principle of progressive realisation are relevant. "[S]harp disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant."³⁴ This is particularly relevant to local government officials when central government devolves responsibility for education.

Health³⁵

Under international human rights law, every person is entitled to the highest available standard of health care. The entitlement applies to both physical and mental health. Like education, health is closely linked with other human rights. Officials are required to ensure that health care is accessible and provided quickly and in an appropriate form to everyone under their jurisdiction. In addition, their responsibilities in relation to health include the provision of safe drinking water and adequate sanitation, and access to an adequate supply of safe food and housing. Safe working conditions and the quality of the environment are also aspects of the right to health; and officials are required as well to provide education in health matters, including information on sexual and reproductive health.³⁶

Discrimination in relation to health is also prohibited. With respect to ensuring gender equality in this area, states are required to take measures to counteract harmful traditional practices and norms. Indigenous peoples are also given specific consideration – health services for them “should be culturally appropriate, taking into account traditional preventive care, healing practices and medicines”.³⁷

Government has a duty to *promote* health. As noted, health education should be provided and health services should be culturally appropriate. In addition, states are required to adopt administrative, budgetary, legislative, judicial and other measures to promote the right; they are encouraged to draw up a national health plan.

The UN Committee on Economic, Social and Cultural Rights has asked national *Ombudsman* offices and human rights institutions to address the question of health, including the issue of remedies. It has also called on international financial institutions (such as the World Bank and the International Monetary Fund) to “pay greater attention to the protection of the right to health in their lending policies, credit agreements and structural adjustment programmes”.³⁸

Housing³⁹

The right to housing is derived from article 11 (1) of the International Covenant on Economic, Social and Cultural Rights which recognises the right of everyone to an adequate standard of living, including adequate food, clothing and housing. The right is about more than a roof over one’s head. It has been described by the UN Committee on Economic, Social and Cultural Rights as the “right to live somewhere in security, peace and dignity”.⁴⁰ It implies adequate privacy, space, security, lighting and ventilation, as well as access to basic services and infrastructure, including safe drinking water and energy for heating and cooking. Location is also relevant: people should be able to reach their places of work. Housing must be affordable in relation to local income levels.

States have a specific responsibility to meet the needs of disadvantaged groups or those that suffer discrimination.⁴¹ They are required to put in place and enforce a legal framework that provides security of tenure and punishes forced evictions, whether carried out by official bodies, individuals or private companies.

Poverty or lack of resources does not excuse violation of housing rights. The CESCR has asked international agencies to “avoid involvement in projects which ... involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation”.⁴²

Women often face specific discrimination. Even in countries which grant legal equality to both sexes, women are often economically disadvantaged and suffer discrimination. National and local governments should give particular attention to this matter, because the right of women to own land, property and housing often determines their quality of life and the prospects of their children.⁴³

Water⁴⁴

The International Covenant on Economic, Social and Cultural Rights does not refer explicitly to the right to water, which is derived from several rights that are named: the rights to an adequate standard of living, to adequate housing, to health and to life. The UN Committee on Economic, Social and Cultural Rights has particularly emphasised the importance of this right for certain groups of people, including women, children, communities in deprived rural and urban areas, indigenous peoples, nomadic and traveller communities, refugees, asylum-seekers, internally displaced persons and returnees, prisoners and detainees, and other groups who have physical difficulty in obtaining water.

The state should avoid engaging in any activity that limits enjoyment of the right to water. It should avoid, for example, “unlawfully diminishing or polluting water”.⁴⁵ And it should act to prevent third parties from doing so. Where water services are operated or controlled by local governments or private companies, governments are required to establish a system of regulation that should include independent monitoring and enforcement mechanisms, to ensure that everyone in their jurisdiction receives an adequate supply of water, at affordable cost, without discrimination. They are required to take positive steps to ensure that disadvantaged groups are supplied and to establish educational programmes regarding water hygiene and conservation.

The most recent CESCR General Comment on the right to water (2002) explicitly mentions the role of local authorities. It notes that, where water provision has been delegated to regional or local authorities, the state still remains responsible for complying with Covenant obligations and should therefore ensure that local authorities have sufficient resources to maintain and extend the supply and quality of water services. It must also ensure that local authorities do not discriminate.

APPLYING HUMAN RIGHTS TO LOCAL GOVERNMENT ACTIVITIES

The grid below illustrates how local governments might apply human rights in their policies. It reflects the *obligations* that local governments have in relation to human rights; and suggests how local governments can use human rights as a *tool* to help them plan, implement and evaluate their programmes.

APPLYING HUMAN RIGHTS: THE EXAMPLE OF EDUCATION

Standards	Content	Principles
Availability	Does compulsory, free primary schooling exist in sufficient quantity throughout the territory?	<ul style="list-style-type: none"> Do venues for free and meaningful participation of parents, teachers and pupils exist in all schools? Is schooling non-discriminatory, i.e.: Is it provided on an equal basis to all, including girls, ethnic and religious minorities, the disabled and others? Do school and municipal authorities provide timely and accurate accounts of their responsibilities? Do they respect, protect and fulfil the right to education?
Accessibility	Are schools physically and financially accessible to the entire school-age population throughout the territory?	<ul style="list-style-type: none"> Are pupils/teachers/parents able to participate without financial or physical barriers? Are any specific groups systematically discriminated against in their access to schooling? Are mechanisms to ensure accountability accessible to all persons throughout the territory?
Acceptability	Are the content and pedagogy of education geared to the capacity and cultural diversity of pupils and their communities?	<ul style="list-style-type: none"> Do the process and content of participation take into account the cultural diversity of the population? Are all cultural groups and minorities equally served, without discrimination? Do accountability mechanisms allow for cultural diversity?
Adaptability	Do the structures, content and processes of education evolve according to changing internal and external needs and demands?	<ul style="list-style-type: none"> Do the nature and form of participation evolve with these changes? Is there a view to counter new forms of discrimination? Do the efforts to respect, protect and fulfil take into account the changing context?

This brief overview suggests that, where local authorities adopt the human rights framework, they will take into account many factors that go beyond a strict understanding of municipal service delivery. Doing this could improve the quality and reach of many services they provide. At the same time, it is evident that very few local governments have integrated human rights in their programmes. What can we learn from their current performance? Have reforms associated with decentralisation improved the quality of services provided – and if so, why? Even if local governments do not apply human rights explicitly, to what extent is their practice consistent with human rights methods and principles? In the second part of this report, we turn to these questions.

PART 2

**LEARNING FROM EXPERIENCE:
LESSONS FROM THE CASE STUDIES**

V. THE REINVENTION OF LOCAL GOVERNMENT

The past decade has seen decentralisation reforms profoundly transform local government institutions in many countries. Local governments have taken over key areas of activity that are of vital importance to daily life. Financial resources have also increased, but not always at the same rate as responsibilities. It has also been a period of innovation. Participatory budgeting has become particularly well known, but local governments in many countries have learned to involve citizens in decisions. Participatory planning, local service councils, and other consultative processes are increasingly common.

Here, we look at the variety of contexts in which local governments operate before moving in the next chapter to assess the degree to which local government reforms are consistent with human rights principles and methods.

THE VARIETY OF DECENTRALISED STRUCTURES

Every local government has particular arrangements for taking decisions, raising and spending income, reporting to higher and lower authorities, managing its affairs and delivering services for which it is responsible. Some arrangements work better than others in providing citizens with services they need and want. Some of the key factors determining performance are listed below:

- The legal framework
- Resourcing and revenues
- The electoral system and the quality of electoral politics
- Checks and balances, and separation of powers
- The strength and quality of local participatory mechanisms
- Commitment to human rights in society (at national and local level) and to economic and social rights in particular
- The quality of political and organisational leadership
- Commitment to decentralisation (is it driven externally?)

Not all these factors are in the control of local government. Some are driven by national government (tax levels, transfer allocations, education policies), others by external actors (foreign investors, international donors), others still by actors who operate locally but are independent (politicians, religious and business leaders, social movements, civil society organisations).

The table below summarises how some of these elements feature in the countries researched for this study. We then discuss how different factors influence the performance of local governments and where possible, identify arrangements that appear to work best.

COMPONENTS	COUNTRIES		
	Bolivia	Philippines	India (West Bengal)
Legal framework	Laws of: Popular Participation (1994); Decentralisation (1995); Municipalities (1999); National Dialogue (2001)	Constitution 1987; Local Government Code (1991)	Constitution (73 & 74 Amm. 1993); West Bengal Municipal Act (1994)
Responsibilities	Primary health & education; infrastructure; local hospitals; local development; culture; sports; gender	Health; education; housing; social welfare; environment; agriculture; public works; tourism; investment; telecommunications	Public health; slum improvement; water; sanitation; others
Revenues	Formula: 20% of national budget; local taxes; international co-operation	Formula: 40% of central gov't revenues; local taxes; direct loans	Programme-based from central & state gov't; local fees
Local electoral system	Political parties; independent citizen coalitions; reserved seats	Political parties only	Political parties only; reserved seats
Separation of powers	Yes, but lack of judicial independence	Yes, but not below municipal level	Info not available
Participation mechanisms	OTBs; school & health committees; monitoring committees	Local development councils; citizen councils; local health & school boards	Ward & village assemblies
Human rights framework	Constitutional protection for health & education; rights of indigenous peoples; women's rights	Constitutional protection for health & education; rights of indigenous peoples; women's rights	Constitution provides non-justiciable economic & social rights (work, education)
Political will	Institutionalised; broad local discretion	Local & discretionary	Institutionalised
Motives for decentralisation	Mixed (regional elites /donors)	Internal democracy movement	Internal (state gov't)

COUNTRIES

Senegal	Tanzania	Pakistan	Ukraine
Laws of: Collectivities; Territorial administration; Transfer of Responsibilities (all 1996)	Constitution (1984 Amm.); 8 laws	National Local Government Ordinance (2001)	Constitution (1996); several specific laws (1997-2001)
Health; housing; education; planning; natural resource management; youth; sports; culture; others	Health; education; water; others	Health; education; water; sanitation; agriculture; soil conservation; others	Health; education; development; environment; land use/ planning; sports; water; housing; sewage; culture; transport
Varying level of core funding; local taxes; int'l co-operation	Programme-based; local taxes	Formula: 40% of provincial revenues; local taxes	National transfers to set minimum; local taxes; int'l co-operation
Political parties only	Political parties only; reserved seats	Political parties banned; direct elections at lowest of 3 tiers; reserved seats	Political parties & independent citizen candidates
Info not available	Info not available	Info not available	Yes but lack of judicial independence; overlapping functions of local executive heads & councils
Elected health committees; others at local council discretion	Health & school committees	Citizen community boards; village & neighbourhood-	Territorial Communities; local referenda by public initiative
Constitution recognises economic & social rights; int'l human rights law takes precedence	Economic & social rights not included in constitutional Bill of Rights	Not party to ICESCR. Economic & social rights included in non-binding 'Principles & Policy' chapter of the Constitution	Constitutional protection for economic & social rights of 'compactly residing' ethnic & religious minorities
Local & discretionary	Discretionary	Discretionary	Institutionalised but broad local discretion
Donor pressure	Donor pressure	Donor pressure; central gov't legitimacy	Mixed (regional elites /donors)

Even a cursory review of the table reveals the extent of difference and the unique way in which arrangements are combined in each country. Bolivia and the Philippines appear to have decentralised to the greatest extent. India (West Bengal) figures strongly on some levels but not others. The other four countries show rather spotty patterns. Only Bolivia and the Philippines have well-defined fiscal transfers. The variety of participatory mechanisms is particularly well-developed in Bolivia. West Bengal demonstrates the presence of political will most clearly; but the trade-off seems to be that local government powers are severely constrained.

The legal and constitutional framework

Legal status affects both the sustainability and effectiveness of local governments. Their authority may be protected constitutionally (as in the Philippines, Ukraine and India), mandated by a specific law on local government (as in Bolivia and Pakistan), or be the product of an ad hoc decision by government. Constitutional protection provides the greatest guarantee of stability, since it is the most legitimate form of recognition and the one most difficult to alter. A specific law on local government is the next best solution because amendment requires at least a parliamentary vote. Creation by administrative measure is the least stable arrangement, since an incoming government can easily modify it.

The legal framework also defines the extent and nature of the powers that local governments are authorised to exercise. The degree to which they have autonomy in exercising those powers is crucial. If they require authorisation at every step from central government, then decision-making is likely to be cumbersome and possibly conflictual. At the same time, proper regulation of local government, as well as adequate financial support, are vital elements of sound decentralisation.

It is important to define the mandates of central, intermediate and local government clearly. Confusion and inefficiency are almost inevitable when powers are ill-defined. This is a common problem in many decentralisation arrangements and can seriously hinder effective governance.⁴⁶

Finally, the legal framework should set out clear requirements for accountability and subsidiarity in relation to central government. In terms of accountability – whatever the extent of devolution to local authorities – central government needs to set and monitor national standards. This is clearly an obligation of states under international human rights law. To meet their treaty obligations, states need to show that local governments respect human rights and must enforce compliance where necessary.

Human and financial resources

How local governments are financed determines their performance, and many are severely hampered by a lack of human and financial resources. In principle, national governments should ensure that local governments have what they need to fulfil their responsibilities; for example, there should be no 'unfunded mandates'. This is particularly important in the case of local governments in poor regions, or in regions where wealth is very unevenly distributed.

The issue of human resources is both thorny and highly political. Proponents of decentralisation (including many donors) often argue that service personnel, in health and education for example, should also be devolved. National public sector employees and their unions often oppose such proposals because it would result in job insecurity and disparate regional standards. Where they succeed in their opposition, the resultant difficulties of co-ordination mean some loss of efficiency. On the other hand, where responsibility for public service personnel has been transferred, local governments often have great difficulty in paying their salaries.

In many of the countries where significant decentralisation has occurred, governments have failed to allocate sufficient financial resources to maintain services and cover the new infrastructure and personnel costs that local governments have to carry. In all the cases studied, a high proportion of local authority budgets (often up to 80%) are spent on recurrent costs – leaving very little available for capital or development investment.

In some cases, such as Senegal (where communes are officially financially autonomous) local governments are now authorised to solicit international funds for service delivery projects from 'decentralised co-operation' programmes, or even to borrow from private financial institutions (this is the case in the Philippines). Although this opens new perspectives for well-managed and solvent local governments, it also opens the door to mismanagement and greater disparity amongst municipalities.

Examples of revenue-sharing

Philippines

The Philippines is widely considered to have a generous revenue-sharing arrangement with local government. The *Internal Revenue Allotment* (IRA) allocates a share of national tax revenue to local governments – currently 40% of the total. The calculation is based on the amount collected in the third fiscal year before the current one. The allocation is distributed according to a formula: provinces 23%, cities 23%, municipalities 34% and *barangays* 20%. The share of each province, city and municipality is determined by population (50%), land area (25%), and “Equal Sharing” (25%). Every *barangay* with a population of at least 100 people is guaranteed a minimum “equal share” of PhP80,000 (about USD1455 in July 2004) per annum, chargeable against the *barangay* IRA of 20%. The balance is allocated among *barangays* on the basis of population (60%) and “Equal Sharing” (40%). Local governments can also raise local taxes and receive a share of the revenue from national wealth located within their limits (e.g.: mining, fishery and forestry charges). The law allows them to float bonds and borrow from private banks.

Bolivia

Bolivia's arrangement is less complex and less flexible. Local governments receive 20% of the total national tax collected, based on the number of inhabitants. Local governments can also raise their own taxes (on vehicles and real estate) and can apply for funding from national development funds and international co-operation organisations. Funds from the Heavily Indebted Poor Countries Initiative (HIPC II) are allocated to social services in areas with the most acute poverty.

India (West Bengal)

Some 50% of the state budget is spent through local governments (panchayats), but solely on programmes designed and designated by the state government. Funds are earmarked for village development and rural employment activities. Central government funding (often up to 40% of local budgets) functions in the same manner. Local governments have authority to select the beneficiaries of their programmes and can raise local taxes, duties, tolls and fees.

Tanzania

Local councils have discretionary powers, as well as power to levy taxes. The central government provides them with allocations for each national priority area (education, health, etc.), covering up to 80% of their budgets. These transfers are not formula-based and tend to be irregular.

Ukraine

The Budget Code (2001) allocates expenditure from the national budget directly to local governments to undertake their designated responsibilities. Minimum levels of transfer are determined on a per capita basis, taking into account the socio-economic, ecological and natural resources of each locality, in order to guarantee the basic needs of the population.

Senegal

The central government's *Fonds de dotation de la décentralisation* compensates local governments for the responsibilities that central government has transferred to them. It also finances (8% of the total) deconcentrated central services operating within their territory. In 2004 the fund was enlarged, from about USD9m. (less than 10% of real local government expenditure) to USD39m. This is a single one-off increase, however, and the level of future funding remains uncertain. Local governments can raise their own taxes (business, real estate, head tax, etc.) but revenue from these sources is generally low (about 10% of local budgets) and collection capacity is often poor. Aside from these revenues, local governments can enter into funding arrangements directly with international institutions.

Pakistan

The Provincial Finance Commissions transfer approximately 40% of total provincial revenues to local governments, calculated principally on the basis of population. However, salaries are paid from the provincial level, and as a result only non-salary components of the allocation are actually transferred to local governments. This is in general under 20% of the total amount due. Local governments receive no funding directly from central government.

These examples suggest that funding arrangements for local governments are far from homogeneous and in most cases are inadequate. The most equitable arrangements include provisions that enable the diversity of local government needs to be taken into account. The least satisfactory provide inadequate funding and depend on discretionary transfers from central government. The case of West Bengal appears to be an exception to this rule: though transfers are discretionary, in practice they cover most local government expenditure.

Capacities

Devolution of responsibilities to the local level implies new forms of local governance. Even where democratic and participatory processes are well established, provisions need to be made to ensure that elected representatives, local officials and citizens know how to exercise their new mandates and responsibilities. Where democratic participation did not previously exist, it is even more necessary to give attention to this educational dimension of reform. Donors have become aware of this problem and created special programmes for training locally elected representatives.

Participatory Local Governance Mechanisms

Bolivia

The Law of Popular Participation (LPP), passed in 1994, creates several local participatory governance mechanisms, including:

Organizaciones territoriales de base (OTBs) (grassroots territorial organisations): Community organisations (unions, peasant and indigenous organisations, neighbourhood councils) in each municipality decide on a structure. They can propose and monitor municipal works and services and recommend replacement of local health and education authorities. Members must help build service facilities.

Comités de vigilancia (CVs): CVs or monitoring committees are elected by OTBs to monitor local authority activity and expenditure. They run participatory development planning processes and work with local officials to prepare a social analysis of the community, on which planning is based. Central government requires CVs approval to release funds to local councils.

Juntas escolares (JEs) (school committees): Parents and OTB representatives meet regularly with the school head and teachers' representatives to monitor expenditure, education reforms and the performance of teacher and school authorities. JEs have been well supported and have reduced corporal punishment and discrimination in schools but they have been less effective in developing teaching projects.

DILOS (health committees): DILOS are composed of the Mayor, a representative of the regional health department, and a member of the Comité de vigilancia. Their two major responsibilities are to monitor and audit use of public funds by the local health authorities, and to set up local "negotiation rounds" for representatives of the OTBs and different organisations working in health, to develop an annual operational plan for the sector. Bolivia has an impressive tradition of organising such committees. However, they do not always function as intended, because of the influence of political alliances.

India (West Bengal)

Gram Samsad is a twice-yearly mandatory assembly of all voters of a constituency. It initiates village-level plans, prioritises projects and beneficiaries for different programmes, and audits the activity and expenditure of the local council (Gram Panchayat).

Ward committees, formed at the sub-panchayat level, are the major venue for local participation and link the neighbourhood with the municipality

Senegal

In some localities, local assemblies of citizens have been convened at the initiative of the local Mayor and council, but they are not statutory.

Local Health Committees were established by law in 1992. Elected by the population, their composition is expected to reflect the mix of local associations (of youth, women, etc.). Their formal role is to mobilise local resources to pay for health services and carry out educational activities regarding hygiene and reproductive health; in practice, they tend to concentrate on raising money.⁴⁷ Their transparency is widely questioned.

School committees exist in some localities but are not required by law.

Philippines

Under the Local Government Code (1991), NGOs and peoples' organisations are granted specific seats in local development councils, local health and school boards etc. Civil society organisations can also promote local accountability using "recall" and "peoples' initiative" provisions. Unfortunately, these mechanisms have rarely been used, because national parliamentarians blocked implementing legislation⁴⁸ while local development councils are often so large that they are dysfunctional.

Tanzania

Decentralisation has triggered participatory local planning: communities at hamlet or neighbourhood level identify their development priorities and submit them to the village council. The village council consolidates and forwards them to the ward development council, which refines and submits them to the ward council as the ward development plan. Participation varies greatly from one locality to another. Ward executive officers are appointed by the district administration. Village councils have an elected Chairperson.

Health and Education Boards have been set up at ward/village level and in each school, as required under the terms of the HIPC programme. They are principally responsible for co-ordinating and monitoring Council activities. They are composed of local citizens/users, representatives of the administration and personnel from the service itself.

Pakistan

Citizen Community Boards (CCBs) are designed to enhance community involvement in development activities. Many CCBs have been registered in Sindh and Punjab provinces. They can receive project funding from local governments, but not more than 80% of the total project cost. This has proved an inhibiting factor, especially in rural areas where people cannot raise the balance locally.⁴⁹ An extensive household survey noted that the existence of CCBs was not initially well known at local level.⁵⁰

Village and neighbourhood councils are provided for in the decentralisation ordinance to stimulate local participation.

Participatory governance structures

Decentralisation processes have created many new mechanisms and venues for public involvement in local politics – citizen councils in the Philippines, community boards in Pakistan, monitoring committees in Bolivia, ward committees in West Bengal and many more. The resulting mix of representative and participatory structures makes local government more dynamic and puts ownership in the hands of ordinary people, but does not always produce the most efficient outcomes. This is to be expected if government is considered as a multi-stakeholder, rather than administrative activity.⁵¹ Simple efficiency is only one objective of decentralisation: the added legitimacy that results from participation and public accountability is at least as important.

Citizen relations

It is not easy to obtain consent from a new set of actors, many of whom have little experience of local government decision-making. Nonetheless, these new forms of participation often work well. Participation does not inevitably inhibit the performance of local governments: in general those that have genuinely sought citizen participation (like Naga City in the Philippines) have achieved impressive results.

The Naga City governance approach

Naga City (population 160,000) is a medium-sized Philippine city in the midst of a rather poor agricultural district some 400 km south of Manila. 25-40 % of the city's population are poor; Naga City has few financial resources. However, its government put those available to good use. As the City web site states: "Naga's governance model is founded on 3 elements: a progressive development perspective with 'growth with equity' as a core philosophy; partnerships that enable the city to tap community resources for priority undertakings; and people participation which ensures long-term sustainability by generating broad-based stakeholdership and community ownership of local initiatives."⁵²

The approach has resulted in city social programmes that work in partnership with the urban poor to find sustainable and equitable solutions to their problems. The local government works actively with civil society organisations, encouraging participation and dialogue in its ongoing quest for better ways of doing things. It has integrated innovations from around the world in its local programmes (for example, Montessori-inspired pre-school programmes in all neighbourhoods, even the poorest, and e-government access through its web site). It has increased participation and transparency to such an extent that, despite rising costs, the City is able to do more with less. Several of its policies and programmes have won international awards.

Questions about managing dissent and conflict inevitably arise. For example, to what extent are local governments entitled, on human rights grounds, to oppose local cultural norms and attitudes? This presents real problems for many local governments. Part of the answer lies in encouraging participation and consultation. Use of human rights criteria – which emphasise consistency and non-discrimination as well as participation and inclusion – can also assist decision-making in this difficult area.⁵³

This brief survey has revealed the variety of contexts in which local governments operate and the range of their experiences. Given this variety, how can we assess the extent to which good local government practice is consistent with human rights methods and principles? This is the subject of the next chapter.

VI. HOW DO LOCAL GOVERNMENTS MEASURE UP?

Although decentralisation has taken many forms and produced different effects in different countries, our case studies suggest that many experiences have been innovative and positive. Though poverty does not appear to have fallen, in the cases that we studied local officials and citizens generally appear to consider the overall impact of reform to have been positive. In some instances as well, people value their new-found empowerment as much as greater wealth.

THE IMPACT ON LOCAL SERVICES

Education

In almost all cases where responsibility for primary education has been devolved, overall investment in education (including private investment), as well as enrolment in schools (including enrolment of girls) have increased.

In the *Philippines* (where political commitment has been exceptionally high in some municipalities) urban and rural local governments have improved access to education and also its quality. In one locality, a programme designed by the local government human rights representative increased enrolment, and rates of vocational training and employment, for youths from economically disadvantaged families. In Naga City, the local administration has a distinctive approach to management of education and has achieved remarkable results. Its early childhood education programme has been introduced throughout the city and is accessible to children from all economic backgrounds. The cognitive competence, social skills and self-esteem of children from low-income families have all risen sharply in consequence. The programme is funded by the local government, but also by parents, *barangay* councils and local non-governmental organisations (NGOs). Local NGO advocacy led the city to pass an ordinance declaring all pre-schools to be inclusive, and sanctioning schools that reject children with disabilities. In 2002 the city ran a broad consultation to improve the quality of the school system. It led to a series of 'soft' changes designed to adapt school materials to the local reality and in less than a year local scores on national exams jumped by 16 per cent.

Tanzania has increased the number of primary school classrooms by up to 10 per cent since 1999 and primary school enrolment by up to 50 per cent for both boys and girls. However, the preceding period was marked by severe under-investment in health and education, due principally to the effects of the Structural Adjustment Programme imposed by international donors. Schools became overcrowded, possessed few teaching materials, and lacked both a water supply and latrines in their run-down buildings. Even small increases in investment created a real sense of improvement.

In *Bolivia* 95 per cent of boys and girls were enrolled in primary school by 2002 and the proportion finishing school had slightly increased. Many new classrooms have been constructed, often with the active involvement of parents, and the number of teachers has risen significantly, even in rural areas. Numerous initiatives (many led by NGOs and other private institutions) are adapting education to local conditions and needs, sometimes with the participation of local governments. Though rates of illiteracy have fallen, they remain high for women, especially in rural areas. International co-operation provides nearly 70% of the investment in education.

The president of a local school committee in Bolivia identified a problem of potentially wide relevance. As infrastructure budgets are devolved to individual municipalities, each municipality receives only a small sum. Recurrent expenditure (particularly on salaries) consumes most of it, leaving very little for long-term investment. As a result, municipalities do not have resources to innovate or invest, nor are groups of municipalities in a position to pool their funds. This may become a major obstacle to the infrastructural development of primary services in many countries.

In *Ukraine*, decentralisation has yet to produce visibly positive results. In the period immediately prior to decentralisation and post-independence, access to primary education decreased drastically through a fall in numbers of schools and the number of pupils registered. The quality of education has also declined.⁵⁴ The situation may improve due to the 2001 Budget Code, which renders the budget allocation process for education transparent and objective, thus making it possible for each local government to obtain its rightful share of monies for primary education.

Health

Health services present a more complex picture. Here too, urban and rural coverage has increased, and more people are being served by health centres closer to their homes. This trend is particularly evident in rural areas where services were previously inaccessible. Village health posts or visits by mobile primary health units have increased. Some new services (mainly in urban areas) are owned privately. Some societies have introduced health insurance programmes. Nevertheless, health coverage in most countries (measured by the number of doctors per capita, or the distance of health facilities from the home) remains below the World Health Organisation norms.

In *Bolivia*, health services and infrastructure have improved, particularly in peri-urban and accessible rural areas. In less accessible rural areas, however, progress has been slow. The division of tasks between municipal and Ministry of Health authorities is not well demarcated (or not well understood) and conflicts for control of personnel and equipment have frequently occurred. Health personnel are also notoriously unwilling to work in rural areas. Nor, except in

some NGO-run programmes, have efforts been made to make health services culturally acceptable. Some NGO programmes have proved unsustainable. In many cases, public information (for example about the universal mother and child insurance) is not available, and local health committees (DILOS) do not function well, partly because many local council and monitoring committee members are unfamiliar with the technical aspects of health delivery, and it has been difficult to establish a collaborative relationship with health sector personnel. Discrimination by health personnel against indigenous peasants, and particularly women, remains a problem.

In *Senegal*, the number and quality of local health posts has increased, but low central government funding has widened disparities between communities that enjoy a strong local revenue base and those that do not. Here too, local communities tend not to be involved in health sector activities and elites run many health committees.

In *Tanzania*, communities appear to have renewed their faith and trust in public health services, after they collapsed under the impact of Structural Adjustment Programmes between 1985 and 1995. Child immunisation has soared, and in some areas now approaches 100 per cent. All villages have access to medical outreach services; numerous health centres have been refurbished; and essential drugs are regularly available in dispensaries. User fees have been introduced except for children and expectant mothers, and more health facilities are privately-run (often by churches or NGOs). A health insurance plan is available, but many households find it difficult to pay the annual fee of TSh5,000 (about USD5). Health sector reforms, like those in education, are largely funded by international programmes such as HIPC.⁵⁵

Ukraine is the sole case in our survey that belies these positive results in health care, but this is not necessarily due to decentralisation itself. One major problem is that of corruption: a recent study⁵⁶ on the issue puts public health care and education facilities at the top of the list for corruption experienced by users;⁵⁷ but private facilities are also rated as being riddled with corruption. In addition, the proportion of budget expenditure on health is very low, compared to European Union standards. Decades of authoritarian rule have contributed to creating a situation where people seem reluctant to undertake autonomous community-based initiatives.⁵⁸ In the absence, moreover, of structures permitting active citizen participation in local government, innovations in health and education delivery depend solely on the political will and commitment of the elected local government.

Water and sanitation

Many local governments have made provision of clean water a priority. They have attached less importance to sanitation where, as a result, improvement has been slower.

In *West Bengal*, following decentralisation of the institution that supplied drinking water, services to disadvantaged groups have improved. Coverage is still not universal (although in some places it is almost so) but disadvantaged neighbourhoods are given priority when funds are allocated.

In *Pakistan*, decentralisation is recent and implementation is slow. Local inhabitants seem to be unaware that they have entitlements and afraid to claim them from local authorities. Sanitation services have increased, but access in disadvantaged areas (rural zones and poor parts of cities and towns) remains low. Some are concerned that local councils are investing in sanitation because quick results can be achieved, but neglecting health and education, which require more substantial investment.⁵⁹

Housing

In almost all cases where municipal authorities have been given responsibility and resources, more houses have been provided. Dignity is clearly enhanced as a result of land and property titling.

In *West Bengal*, agrarian reform has been a key factor in the success of decentralisation. It led many poor peasants to join co-operatives and legally register their property. Housing projects are funded by the central and state governments and are reserved for people living below the poverty line. A quota system protects the interests of the disabled, scheduled castes and scheduled tribes. Allocation is made by ward committees (constituency-based citizens' committees that include potential beneficiaries). Each beneficiary receives 20,000 rupees (USD100) as a grant, 20,000 rupees as an interest-free loan to be repaid over 5 years, and must provide 5,000 rupees (about USD25) herself. Bad housing and homelessness are far from solved, however. In very poor areas, some 90% of people face housing problems.

In the *Philippines*, Naga City again provides an inspiring example. Urban poor organisations had been campaigning for policies to address urban poverty for several years when the local government established the *Kaantabay sa Kausawagan* (Partners in Development) initiative in 1989. It aims to empower urban poor communities by responding to their two main concerns: insecurity of tenure and weak infrastructure. The programme secures land tenure by negotiating with landowners and empowers the poor by converting them into homeowners. It also upgrades urban areas by providing basic infrastructure. In 1998, a city ordinance institutionalised the programme and since then the urban poor sector has been allocated 10% of the annual local government budget. By the end of 2001, the programme had reached 27 poor neighbourhoods and had secured or was securing land titles for almost all urban poor families. Moreover, the programme had stimulated the local economy, broadened the tax base, and improved the urban environment. Intangible benefits were equally important – dignity and empowerment of urban poor families, a sense of community, and enhanced civic pride.

ASSESSING LOCAL SERVICES ON THE BASIS OF HUMAN RIGHTS

What emerges from these general observations when they are analysed in terms of the human rights standards and principles outlined above?

Human rights standards

Availability

In nearly all the municipalities that were surveyed, services increased following devolution. This was most evident for primary schools, health clinics, clean water, and low-income housing schemes, but other services improved as well.

Accessibility

Our research showed that access also improved and that territorial distribution improved across the board. With respect to financial accessibility, the story was more complicated. Not all services are provided free of charge but, where they are not, access for poor people is occasionally facilitated (by providing affordable health insurance, for example). Other research clearly shows that in some areas, notably in primary education, removal of fees has led to quite dramatic improvements in participation (enrolment).

Acceptability

The record here is patchier. While some improvements occurred, in other areas new problems arose, often linked to discrimination. Some local governments have adapted primary teaching programmes to the needs of minorities. Bolivia provides bilingual teaching (Quechua-Spanish) and Naga City (Philippines) offers special education programmes for poor and intellectually challenged children.

Adaptability

Few local governments appear to have adapted their programmes to changes in their policy environment or community. This area requires further attention.

Human rights principles

Participation

Decentralisation has been promoted partly because it is believed that bringing government closer to the people, enhances participation and therefore

accountability. That this relationship is not automatic is brought out by a human rights perspective which requires that participation be effective and meaningful.

The importance of consulting those who are affected by development programmes has been widely recognised by donors, many of whom consider a participatory approach to be an essential element of good practice. The World Bank has made participation/consultation of civil society a core element of its Poverty Reduction Strategy Papers (PRSP) process, for example.

Donors take this view because they assume that public consultation and participation increase the legitimacy of decisions, create ownership, and thereby increase accountability. In practice, however, the discourse on participation and consultation is used to cover a wide range of processes – from contribution of unpaid labour, to soliciting of opinions, and involvement in decision-making. As a result, it has become quite a diffuse concept that can be used to cover a multitude of useful and not so useful approaches.

Historical attitudes to institutions and structures also influence whether participation is meaningful. In Tanzania, for example, the abolition of the village collectivisation structures of *Ujamaa* upset many people, because the lowest level, the local 10-house cell, was popular. Many Tanzanians felt the system that replaced it fell into the hands of local elites.

Processes involving public participation or consultation can be manipulated, or reflect obedience to charismatic or traditional leaders. Some NGOs claim a role as “development brokers”⁶⁰ and their voice is sometimes (mis)taken by funders as representative of the local population. Outside authorities – national government officials or donors – are often accused of using consultative exercises to validate their proposals or decisions, rather than offering real opportunities for discussion of alternatives. As one commentator put it, those involved often feel that they have “been participated”.⁶¹

Where the fabric of community organisation is dense and communities have confidence, however, participation is often active and inclusive. In some instances, decentralisation has stimulated the entry into local politics and governance of new energies, organisations and ideas, and has helped transform the quality of local governance.

On their own initiative or in compliance with national legislation, local governments have invented an impressive series of participatory structures and mandates. Participation has grown exponentially in some countries after budgetary and programming decisions have been put into the hands of local people. In Johannesburg, the city government puts 5 per cent of its total budget in the hands of wards, where citizens decide how to use it. Many municipalities have adopted participatory budgets and development plans, after the experience of the municipality of Porto Alegre, Brazil.

These experiences highlight the difference between participation *with* power and participation *without* it. When citizens can really influence the priorities and decisions of local government, and budget allocation, their participation becomes *effective* and *meaningful*. A human rights framework encourages local governments to develop rules and practices that support rather than constrain the public's ability to participate in local political and development decisions, as well as monitor local government efforts to implement them.

Participation in decentralised local governance

In Bolivia, the Law of Popular Participation created municipalities that include both rural and urban zones. (Previously, rural areas did not have local governments.) As a result, formerly excluded rural people (predominantly indigenous) gained access to the political arena. Participation goes beyond local elections. Every municipal government must prepare a five-year participatory development plan and annual operational plans. The law recognises existing peasant unions as the basic unit of participation. OTBs meet to discuss and select their development priorities, and these are presented to the municipality, incorporated in the plan, and then approved by the community. Specific mechanisms for participation and representation of the community also exist at sectoral level: parents' committees for schools and DILOS for the health sector.

In Senegal too, each municipality must prepare a local development plan, but the degree of participation depends on the initiative of the local elected council. In some cases it merely undertakes a consultation of the population in order to determine local needs and priorities. In others, it implements a participatory diagnosis, and on that basis identifies priorities. In areas where civil society is particularly dynamic, some local councils have gone beyond the letter of these requirements and have instituted participatory local planning and budgeting.

In West Bengal, India, local government does not have sole authority to undertake development activities. However, each of the three tiers of its local government structure has a regular popular assembly where decisions as to the allocation of funds for development activities are discussed and beneficiaries designated.

In the Philippines, the 1991 Local Government Code provides for the election of local governments, and also calls for the creation of local development councils on which civil society organisations are represented. Implementing legislation has not been forthcoming because of political disagreement at national level. This means that at present these local councils function only in localities where local government officials want them to exist.

The research for this project shows that participation has increased following decentralisation and that new groups of citizens are involved – including women, ethnic minorities, and the poor. In addition, many citizens and local communities feel empowered even if they receive few direct benefits. Empowerment is itself a public good that people desire and prize.

But what of the quality of that participation? If it is generally free, is it meaningful? The extent to which the excluded bring their own interests and perspectives to these new political fora is often minimal. In many cases, local elites – political parties, peasant union and business leaders, high castes – continue to set priorities. Where participation has developed both quantitatively and qualitatively, it is confined to specific localities and appears to be due to the experience and creativity of local civil society organisations and the willingness of local officials to experiment and share power.

If we examine participation in more detail, the picture is therefore more complex. Opportunities to participate have multiplied; and access to them has increased. But not all sectors of the population are equally able to participate effectively in the new mechanisms. With respect to acceptability and adaptability, moreover, much could be improved. Progress across all fronts occurs only in societies that have attempted to adapt the mechanisms of participation to local traditions and organisational experience (as in Bolivia, where peasant organisations have a role in decentralised governance).

Non-discrimination

It is not possible to determine in general terms whether discrimination takes place, or who suffers from it, because it always occurs in a specific social, political and cultural context. Discrimination also changes form in response to legal and other efforts to suppress it.⁶² In practice, therefore, local authorities need to monitor for discrimination continually. Here, the human rights framework can be helpful because it focuses attention on certain questions.

- Which groups in the society are particularly exposed to discrimination? (The list of those who potentially face discrimination is very wide, and might include minorities, migrants, women, non-citizens, religious faiths, ex-prisoners, the illiterate, homosexuals etc..)
- What forms does discrimination take?
- What laws exist to protect the rights of those who are subject to discrimination?
- Do they successfully address the forms of discrimination identified?
- What mechanisms exist to enforce those laws (through courts, but also national human rights institutions and other bodies)?
- Are relevant authorities (local government officials, police, judicial officers, political and religious leaders) in fact acting to prevent the discrimination identified and applying the mechanisms for enforcement that are available?
- Are those who suffer discrimination in a position to act in defence of their rights? Is the local government acting positively to assist them to do so?

- If overall the delivery of basic services is improving, is the gap in access between the most vulnerable and the most favoured (or the average) decreasing?

Particularly relevant for local government officials is the principle that their responsibility to act to stop discrimination is not conditional on resources: the test is rather *how any amount of money, no matter how small, is used*. Local budgets should reflect the importance of discrimination too. It may not be enough to ensure that different groups of the population have equal access to funds and benefits: in cases of entrenched discrimination, local governments may need to make a clear effort to close the gap between the majority (or privileged groups) and groups who have suffered discrimination. For the same reason, neutral law may not produce equitable outcomes, and affirmative action may be required to create real equity of opportunity.⁶³

In practice, decentralisation has had mixed effects on discrimination. In certain cases, intolerant ethnic or religious groups take control of local government institutions following reform, and local minorities face worse discrimination as a result. This problem is most likely to arise in societies that are not politically or socially homogeneous; where central government is itself discriminatory; or where its authority (including its capacity to monitor and regulate local governments) is weak.

The best examples of decentralisation, however, have had a positive impact. Discriminatory practices have declined most obviously when local (and national) governments have developed programmes and mechanisms that protect and empower groups subject to discrimination. Women, indigenous peoples, the poor and the young have all benefited from such policies. Improvement of infrastructure has also brought striking benefits to disadvantaged groups in some societies, particularly in rural areas.

Some local governments have attempted to improve the representation of marginalised groups by reserving seats for them in elections. (India, Pakistan, Bolivia, and Tanzania, for example.) Others have created monitoring committees composed of community representatives (Bolivia). Institutionalised mechanisms of inclusion make visible the injustice of discriminatory practices and publicly legitimise opposition to them. In general, wherever official institutions clearly demonstrate that they will not tolerate discrimination, it has a powerful effect.

Regarding direct representation, young men have often benefited from reform in part because they have 'new skills' that older men do not. They are often more literate and educated. They may have travelled to find work, speak more languages (including languages used by government) and be more familiar with official institutions and regulations. They are thus more equipped to work within the different institutional environments that meet in the context of decentralised government. By contrast, younger women more rarely have opportunities to acquire these skills and as a result do not enjoy the same opportunities.

Examples of reserved seats

In West Bengal, as in other Indian states that have decentralised, a certain number of seats on elected local bodies are reserved for three categories of traditionally disadvantaged persons: women, scheduled castes and scheduled tribes. One-third of seats are reserved for women. For scheduled castes and tribes, the number is proportionate to the composition of local society. In West Bengal this provision has worked well: members of these groups have become active representatives and their representatives are generally respected and accepted by the rest of the population. This said, it should be understood that in West Bengal the political and institutional environment is supportive. State and local governments have implemented numerous policies that promote the interests of the poor, notably land reform and agricultural co-operatives. The communities concerned have organised themselves, and share a culture of political activism and participation. These measures underpin the presence of disadvantaged groups in government.

The same cannot be said everywhere. Flagrant counter-examples can be cited in India. Where state governments have not taken steps to recognise and protect the claims of disadvantaged communities, elected women and representatives of scheduled tribes and castes have often been systematically intimidated. In some localities, elite castes have committed very serious abuses to maintain their control. There have been cases of women councillors being raped or publicly stripped naked, and representatives of scheduled tribes and castes beaten or assassinated.⁶⁴

Evidence can also be found in other countries for saying that reserving seats is ineffective in the absence of a supportive environment. In Pakistan, seats are reserved for women and religious minorities, but a strong culture of subordination has meant that elected women have rarely developed a voice of their own. Although since 2000 they no longer vote separately, the country's small religious minorities continue to be marginalised and to suffer certain forms of discrimination.

Local council seats are also reserved for women in Tanzania and Bolivia. In Tanzania, women representatives are appointed to reserved seats by the political parties, in proportion to the size of the party's parliamentary presence. In consequence, women tend to speak for their parties. In Bolivia (particularly in rural communities where male dominance remains strong), women are often pressured to withdraw once elected, ceding their seats to a male member of their family.

The record of local government on non-discrimination is therefore patchy. Efforts have been made to target excluded groups, particularly rural communities that previously received few basic services. More services are available to poor people, rural communities, women and ethnic minorities. Their involvement in decision-making has also improved, especially when targeted strategies

(such as reserved seats) have been introduced. However, much remains to be accomplished. Little has been done to ensure effective access to services, which are rarely adapted to traditional practices or available in local languages. While services, access and participation may have improved, excluded people are not always able to take advantage of new opportunities, and services and channels of participation for the disadvantaged have not usually been designed with them in mind. New systems fall short in terms of acceptability and adaptability.

RESERVED SEATS IN LOCAL GOVERNMENT

Country	Reservation System	Results
West Bengal, India	Women: one-third of seats (ridings) at all levels. Other: Scheduled Castes & Tribes - number proportional to population.	Enhanced representation of excluded sectors. Overall political context supportive of the measure. In other Indian states, results can be disastrous.
Bolivia	Women: Political party lists must contain at least 30% women candidates. Civic movements presenting a list of candidates must have at least 50% women.	A greater number of women candidates have been elected. In rural areas, however, pressure is often exerted on women elected to resign in favour of a male replacement.
Pakistan	Women: One-third of seats reserved. Other: 5% for minorities; 5 % for peasants and/or workers. Elimination of separate electorates for non-Muslims in 2000.	Women representatives tend to follow lead of male colleagues. Non-Muslims cannot be elected council Chair.
Tanzania	Women: One-quarter of seats reserved. Appointment is by political parties in proportion to the number of seats won by each party.	Women representatives show allegiance to their party, rather than to their constituency or to women collectively.

Accountability

Accountability is a core principle of democratic governance and different types of accountability exist within the local governance context. The research shows that many kinds of initiatives and mechanisms can be found but most have been poorly adapted to local conditions. Little effort has been made to help local people understand and use them, and local elites are frequently reluctant to introduce effective accountability procedures.

Elections are one of the prime foundations for accountability in democratic systems. *Hierarchical supervision* refers to the responsibility of higher levels of government to monitor municipal government action. *Internal performance standards* in the local civil service are also a means of ensuring accountability. *Formal horizontal supervision* is being explored in some of the more recent decentralisation schemes. The approach consists of creating oversight bodies composed of citizen representatives or of citizen organisations that have a formal legal mandate to monitor the activity of specific local government bodies. Civil society has also developed forms of *informal horizontal or downward accountability* which in some countries have been active for hundreds of years. They are often much stronger at the national level than locally, however, and their role with respect to local government has only begun to develop recently. Local associations and non-governmental organisations can, and do, make an important contribution towards promoting accountability through their role as watchdogs, through the local media, and through the provision of expertise to local government.

Electoral accountability

For promoters of local government reform, accountability is a major justification for decentralisation. Important efforts have been made to render local government accountable for its actions to its citizens. One mechanism, introduced in almost all countries where decentralisation has occurred, is the provision for free and fair election of local government officials. Its human rights basis is located in article 25 of the ICCPR. Elections are nevertheless a blunt instrument of accountability, given their relative infrequency and the broad range of issues contested. An issue must be overwhelmingly important to influence – on its own – the outcome of an election. Nevertheless, if citizens want their government to change, elections can be decisive.

Electoral competition has had both salutary and negative effects. On the one hand, it encourages local governments to work for visible results – in service provision as well as in other areas – in order to secure re-election. On the other, it can encourage newly-elected administrations to dismantle the programmes of their predecessors, sometimes with disastrous effects on service provision. This problem occurred in Bolivia, the Philippines and Senegal among the countries we studied. It is instructive to note that it did not occur in West Bengal, presumably because programmes there are not designed and funded at local level, but by the state government. Local politicians cannot therefore manipulate social programmes in their own political interests, and as a result these are both more institutionalised and more stable over time. In other countries, local governments are often coalitions of parties of mixed political backgrounds. In such cases, opposition may be weak, or compromised, and electoral calculations can more easily dominate differences of policy.

Information and transparency

Transparency underpins accountability and, more specifically, policies to contain corruption. Local government reforms can decentralise corruption by creating new opportunities for it.⁶⁵ In some rural settings, for example, villagers consider that local councillors are entitled to the privilege of 'paying themselves' by diverting to their own pocket some of the money allocated for local development. Where civil society is relatively weak and less aware of its rights, local government is under no pressure to ensure transparency.

On the other hand, some local governments have been energetic as well as inventive in providing timely and reliable public information. For example, the Naga City *Citizens' Charter* (Philippines) establishes procedures and performance standards for 120 city services. The city's web site includes information on the annual budget and procurement costs, and local officials take a proactive approach to communication, using billboards, local radio, even consultations to disseminate information. In South Africa, central government has passed transparency legislation that obliges local governments to make official documents publicly available.

Courts have also occasionally ventured into this area. In *L.K. Koolwal v State of Rajasthan*, citizens of Jaipur sought to compel municipal authorities to provide adequate sanitation, claiming that the current situation was hazardous to Jaipur residents. The Rajasthan Court decided that the municipality had a statutory duty to remove dirt and filth from the city within a period of six months and a committee was formed to monitor implementation of the decision. In reaching its judgement, the Court referred to article 19 (1)(a) of the Constitution, which guarantees freedom of speech, and extended it to include the "right to know". In this case, the Court extended the right to entitle the petitioner to full information about the municipality's sanitation programme.

In many cases, however, even when information is provided, citizens do not have the capacity to interpret complex plans or financial statements. In others, municipal authorities will allege that (sometimes costly) bureaucratic procedures are necessary for acquiring information, effectively blocking access, even when legislation states that information is to be made available.

A key element in both transparency and accountability is the existence of a variety of independent perspectives on the issues or checks and balances, to be available. They may not be sufficient, but they are necessary.

Given the numerous problems associated with transparency, *complaints mechanisms* are vital. They should be independent in order to ensure impartiality. Some large cities have established *Ombudsman* offices. Smaller municipalities often have a complaints book or box.

Promoting transparency: strategies and obstacles

An effective political opposition can play an important role in ensuring transparency. Often however, local governments are broad coalitions of parties and political opposition is weak or ineffective.

An active and independent local media will help information to flow. Local media often depend in practice on information supplied by local officials. Few are financially independent and many survive on funding or advertising revenue from local authorities. Self-censure is therefore pervasive.

Monitoring and advocacy by civil society organisations can be vital. Civil society organisations, however, are often weak at local level; where this is not the case (especially where opposition political parties are underdeveloped) they are often treated by local authorities as if they were the political opposition.

Freedom of information legislation can improve transparency. Even when it is law, however, authorities will often conceal information, set up bureaucratic obstacles, or provide it only after a long delay. Officials may count on the fact that few people will persist as they fear the costs (social and political as well as financial) will be prohibitive.

Many local authorities now provide information on *municipal web sites*. These can be difficult to access due to low levels of internet connectivity; they may not be user-friendly or supply all the information needed.

Public hearings can increase transparency. But their timing often prevents those most directly concerned from attending. Some societies hold referenda, but not always on the most sensitive or important issues.

External audits by central government are a potentially vital safeguard, however, local governments refuse to submit to them on the grounds that national government has a political bias.

Local authorities themselves need access to information. Information about their own activity helps them to plan and evaluate their work competently. They also need information about the activities and policies of central government, especially those that have an immediate impact in their region. Finally, they need to know what other organisations are doing. The activities of private companies and international donors may have an impact on local citizens. Many organisations, including development agencies, are unwilling to be fully transparent about their activity. Not all problems of transparency are thus due to national or local government.

Legal accountability

Little evidence emerged in our case studies that local governments are enforcing legal accountability. Rule of law is a critical component of the human

rights framework but some systems make no provision for separation of powers at local level. Local executives (especially Mayors) are often all-powerful, and legislative institutions (local council) and judicial mechanisms (local courts, *Ombudsman* offices) tend to be weak or non-existent. Controls on the actions of the local executive are therefore weak in most cases. Legal accountability is primarily achieved through courts and relies on independence of the judiciary. Municipal courts, dispute settlement mechanisms, law enforcement agencies, and national institutions such as Audit Commissions, *Ombudsman* offices and Human Rights Commissions all play a role. The mandate of these bodies should include oversight of local government (but often does not).

Accountability requires that clear and binding standards are set and communicated to all. The human rights framework requires that redress or remedy be provided to individuals if their rights are violated or the law is infringed (following fraud, theft, corruption, etc..).

The status of international human rights law within the national system is often a contentious issue. While most states have ratified the major international human rights treaties, thereby agreeing to implement them within their territory, a large number of national Constitutions and Supreme Court decisions explicitly consider certain rights non-justiciable. In most cases, these are economic, social and cultural rights. This is true, for example, in both Senegal and in Tanzania.

Some semi-legal accountability mechanisms have also been developed to enhance access for specific groups of people, especially women and children (for example the Barangay Human Rights Action Centers' work in the Philippines, or the municipal legal services in Bolivia). These services are usually national, and are not created or managed by local government. It remains to be seen to what extent local mechanisms for accountability will adapt over time to evolving conditions and demands.

Other ways to ensure accountability have been explored. The *Bolivian Comités de Vigilancia* are perhaps the most systematic example of horizontal accountability. Composed of representatives of community organisations, they can block financial transfers to local governments if they consider these have not acted accountably or transparently, or have failed to respect the priorities of local development plans. Local councils can revoke a Mayor for similar reasons.

The Bolivian Constitution enshrines a series of rights including the right to health, to education and to work. It affirms that education is the "highest function of the state" and that primary education will be universal, free and compulsory, and explicitly establishes the multi-ethnic and pluri-cultural nature of the country. The Human Rights *Ombudsman* has frequently acted to protect the Constitutional right to health.

Examples of court cases concerning economic and social rights

Judicial decisions on economic and social rights are relatively rare, but an increasing number have been handed down in recent years, as citizens and civil society organisations become aware of the channels available to them. Whilst implementation of court decisions continues to be a challenge in many cases, the following examples give a sense of the range of legal remedies that can be obtained.

In the *Philippines*, as in many other countries, the principle of justiciability for economic and social rights remains uncertain.⁶⁶ But there have been a number of noteworthy Supreme Court decisions in recent years. *Laguna Lake Development Authority vs. Court of Appeals*⁶⁷ involved the disposal by the Caloocan City government of the 350 tons of garbage it collects daily and the residents of Barangay Camarin, Tala Estate, Caloocan City, where the garbage was dumped; they were concerned about the pollution that this caused to their environment. In deciding in favour of the residents, the Supreme Court said, "It is to be borne in mind that the Philippines is a party to the Universal Declaration of Human Rights and the Alma Ata Conference Declaration of 1978 which recognize health as a fundamental human right".⁶⁸ Another noteworthy case, dealing with the right to education is *Louie Soriano vs. Araceli R. Pineda*.⁶⁹ The Court of Appeals, invoking the 1987 Constitution and the Universal Declaration of Human Rights, ordered Pineda, Head Teacher of the Juan C. Angara Memorial High School, Dinalungan, Aurora, to allow Soriano to enrol and study after he was meted out a disciplinary action without due process.⁷⁰

In *South Africa*, recent court cases have explicitly addressed local government responsibilities for economic and social rights. The South African Constitution establishes that all citizens have the right to adequate food, water and social security. It also requires national courts to consider international law in interpreting the Bill of Rights. In 2000, in a case brought by Grootboom et al. against the municipality of Cape Town on the right to housing, the Constitutional Court ruled that: "...A right of access to adequate housing also suggests that it is not only the state who is responsible for the provision of houses, but that other agents within our society, including individuals themselves, must be enabled by legislative and other measures to provide housing. The state must create the conditions for access to adequate housing for people at all economic levels of our society."⁷¹

ESC rights in India have been defined through judicial interpretation of the right to life guaranteed under article 21 of the Indian Constitution, rather than through any direct Constitutional guarantees. *Olga Tellis v. Bombay Municipal Corporation (BMC)*,⁷² which concerned the eviction of pavement dwellers by the municipality, is a case in point. The judgement in this case expanded the right to life to encompass the right to livelihood. The Supreme Court held that "an equally important facet of the right to life is the right to livelihood because, no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation".

Although the Court eventually found that the BMC eviction was valid (under article 14 and 19 of the Constitution) it also required that alternative accommodation be arranged for the pavement dwellers prior to eviction. In a sense, therefore, the Supreme Court upheld the right of the pavement dwellers to shelter.

In *Municipal Council Ratlam v. Vardhichand and ors*⁷³, a municipality had failed to construct drains claiming insufficient resources to do so; filth and dirt had accumulated, and people could not remain in the locality due to the noxious nuisance. The case went all the way to the Supreme Court which held, among other things, that the “right to life” was at issue since environmental pollution affects the individual’s right to breathe fresh air and sanitary conditions are essential for the proper enjoyment of this right. It ordered the Municipality to take immediate action within its statutory powers to construct a sufficient number of public latrines, provide water supply and scavenging services, to construct drains and cesspools, and provide basic amenities to the public.⁷⁴

In the final analysis, when the four human rights standards are used to assess accountability, the results are unimpressive. In terms of availability, not many mechanisms have been introduced, and not all decentralisation processes provide for them. It seems that decentralisation enthusiasts have assumed that accountability and transparency will follow automatically when government is moved closer to the people. In some cases, decentralisation has increased local corruption.

Access is problematic too, largely because local citizens and civil society are often unable to make good use of the information and accountability mechanisms that are available. Efforts to make these mechanisms acceptable are almost non-existent. Procedures rarely take account of language or literacy. The same can be said of adaptability.

Few local governments consider accountability in relation to international human rights norms; and accountability is even more rarely enforced. This is a missed opportunity.

Although some constitutions explicitly exclude economic and social rights from the realm of justiciability, failure to enforce these rights is usually due to simple lack of awareness amongst political and judicial officials, and other local actors. Few local government officials are aware of the legal responsibilities incumbent on central government to ensure that economic and social rights are respected, protected and fulfilled. Few local citizens are aware of the legal options that are available to them. As a consequence, few cases have been brought against local or national government in support of claims based on economic and social rights.

VII. OTHER ACTORS

The quality of decentralised service delivery does not depend solely on local government officials and citizens. Many other institutions and actors play a role and have legal responsibilities. These actors are the subject of this chapter.

THE ROLE OF CENTRAL GOVERNMENT

Central government, in particular, has a crucial role. It has a clear legal obligation to ensure that within its territory international human rights commitments are respected, protected and fulfilled. In cases where it has devolved responsibilities to local governments (or private agencies), it is required under its commitments to put procedures and controls in place that will ensure that its human rights obligations are met.

Central government can therefore have a positive influence on local government performance, when it marks out the functions of central and local government clearly, monitors local government performance properly, and provides local governments with resources that allow them to carry out their responsibilities and address underlying inequities and differences in capacity and wealth. Equally, central government can undermine performance. Tanzania illustrated this problem in 2003, when the Government abolished all local taxes. The measure made the Minister of Finance popular but slashed local government income. Some were unable to pay salaries.

The importance of financing and financial transfers can scarcely be exaggerated. In *Local Rule: Decentralisation and Human Rights*, the International Council found, unsurprisingly, that levels of central government funding directly influenced the capacity of local authorities to successfully fulfil duties that central government devolved to them; and that in many cases central government did not make adequate or appropriate funding arrangements. For central governments, it is obviously politically and financially tempting to reduce the range of their direct responsibilities (by devolving certain functions) and in the process reduce their costs (in ways that may be difficult to detect). But this is a Faustian bargain: services to people on the ground may be damaged deeply and, even if funding is eventually restored, it may take many years for institutions to recover.

Central government officials, parliamentarians and human rights organisations should therefore pay particular attention to this question when decentralisation occurs. The volume of central government transfers, but also fiscal mechanisms for generating local revenue, need to be evaluated carefully. This is an area where budget analysis can be particularly relevant and useful.

It is not enough, however, to assess the global allocation of resources that central government sets aside for local governments, or for devolved health, education, housing, policing and other local services. Whereas some local governments can generate significant local tax income and can rely on a vigorous local economy and a large local pool of entrepreneurs and professionals, other regions are impoverished and have unskilled populations. An undifferentiated transfer system will cause regional differences in income to widen and will leave some regions permanently underdeveloped and impoverished. Just as local governments have an interest and a duty to develop the local economy and become as financially self-sufficient as possible, central governments need to take specific steps to ensure that additional resources are made available to regions that are impoverished or under-endowed.⁷⁵

Legal responsibilities of central government

When it ratifies the International Covenant on Economic, Social and Cultural Rights, a government accepts the obligation to respect, protect and fulfil those human rights.⁷⁶ Although it is true that many rights may not be realised immediately, it is obliged to take steps towards their realisation, for example, through legislative measures, the provision of judicial remedies where appropriate,⁷⁷ establishing a national plan of action and monitoring procedures etc..

The government may delegate implementation to lower tiers of government (regional governments, municipalities etc.) or private actors (companies, NGOs or others). In all cases, nevertheless, the government remains responsible for implementing and enforcing its human rights obligations. This has many implications for national officials. For example, in order to know whether rights are being respected, they need to collect information, audit performance, and set standards for local governments and local government officials.

They also need to put in place an infrastructure that is adequate and equitable, and ensure that trained and competent staff are in place to run local affairs. In order to fulfil the right to health, for example, governments need to ensure that doctors and other medical personnel are trained in enough numbers to run hospitals, clinics and other health-related facilities, and that the latter are equitably distributed throughout the country.

States also have an obligation to make economic, social and cultural rights enforceable nationally. This includes recognising ESC rights within the domestic legal system and ensuring that appropriate means of redress, or remedies, are made available to individuals whose rights have been violated. National officials are expected to take account of the requirements of the ICESCR when they take decisions. Courts are also expected to do so.⁷⁸ By extension, the same is true of local authorities.

Governments also have certain non-derogable obligations, which are not subject to progressive realisation but must be applied immediately and in full. The prohibition on discrimination is non-derogable, for example. Governments must act to prevent discrimination at once, without regard for availability of resources or other factors. Governments also have a duty to ensure a basic level of subsistence so that people can live in dignity. A state in which individuals or groups lack essential food, primary health care, basic shelter and housing, or primary education is likely to be in violation of its obligations under the Covenant.⁷⁹

A third immediate obligation on states is to refrain from taking steps that worsen access to economic and social rights (the principle of non-retrogression). Legislative or policy decisions that cause living conditions to decline would violate the state's obligations under human rights law. This principle should influence the design of decentralisation processes, the delegation of powers to local government, and the ways in which national government monitors and sets standards for local government performance.

Practical responsibilities of central government

In addition to the legal responsibilities outlined above, experience shows that central governments face a number of practical challenges during and following decentralisation. How they manage them can significantly affect local government performance.

Firstly, governments commonly face a number of issues associated with relocating staff from central ministries to local governments. Localisation can cause officials to feel they have lost status, which can have immediate or long-term effects on morale. In this context, the provision of salaries is important. After relocation, salaries may fall, in appearance or in reality, and in some instances local budgets do not provide for the salaries of relocated staff. Problems of this kind can have different effects: morale may decline, the service may collapse (for example because officials resign), or local officials may develop innovative ways to raise income (including new forms of corruption). Governments can take action of various sorts to maintain the status and morale of officials and ensure that they are adequately paid for delivering the services for which they are responsible. Practical forms of support designed to create a stronger ethos and pride in local government can be especially vital during the initial periods of transition after relocation.

Monitoring is highly relevant as well. Gathering information on human rights outcomes is only one dimension of central government monitoring. Auditing, reporting and the collection of statistical information need to occur in a range of areas. Central government needs to provide training opportunities to local officials where necessary. It should not devolve services or functions – police training or exam standards might be examples – that are better managed at central level.⁸⁰

INTERNATIONAL CO-OPERATION

Recognising that poorer states cannot fulfil economic, social and cultural rights by their own efforts alone, the international human rights framework promotes international co-operation. The International Covenant on Economic, Social and Cultural Rights and relevant General Comments assert that richer states should assist poorer ones to achieve human rights standards.⁸¹

States also have a duty to avoid doing harm abroad, for example by acting in ways that undermine the ability of other states to protect and promote economic and social rights in their countries. Macro-economic reform programmes have often been accused of making groups of people poorer or more insecure.⁸² Programmes to privatise services have been criticised on similar grounds. While the human rights framework is neutral in principle towards privatisation, it requires states to deliver basic services (such as water) to all those who need them, without discrimination. This means that essential services should be accessible, affordable and meet certain standards.

The General Agreement on Trade and Services (GATS)

The GATS was agreed in 1994 as part of the creation of the World Trade Organization (WTO). It is an international treaty that requires government and government agents to submit the delivery of services to international competitive processes. The Treaty covers an expanding list of services and applies to any government service (excluding justice, the police, the military and taxation) that is not provided on an entirely not-for-profit basis. Where some parts of a service are delivered by private organisations (as is often the case in health services or transport), the entire service is subject to GATS rules.

Some 160 services are currently covered.⁸³ It has been pointed out that: “When countries agree to add service sectors to the agreement, a wide range of restrictions which local authorities might have imposed on service companies are vulnerable to challenge by another country under the WTO disputes procedure.” This is because exclusions must be listed at the time governments first register a service under GATS. Once registered, a local authority cannot place any new restriction without opening itself to challenge before the WTO dispute settlement panel.

Given that local governments are increasingly responsible for service delivery, some analysts and local government associations have argued that the GATS will inevitably lead to the privatisation and marketisation of local government services, eroding “the democratic freedom of local governments to create policies that best suit their communities at any given time”,⁸⁴ and possibly preventing local governments from adopting rights-based methods.

In response, many municipalities have declared “GATS-free Zones” to protect their freedom of manoeuvre. Most of the municipalities involved are in developed countries, however, and it is not yet clear what impact GATS will have on them.⁸⁵

Multilateral, bilateral and private donors have been actively involved in decentralisation programmes. Indeed, many governments decentralised because it was a condition of donor support.⁸⁶ Sometimes donors have been the main driver of reform and not only provided the bulk of funding for decentralisation but defined its shape and direction. Where this is so, familiar difficulties of aid dependency, weak ownership and problems of legitimacy are likely to arise.

This is not always the case.⁸⁷ Donors can certainly play a positive role. HIPC⁸⁸ funds assisted Tanzania after the government eliminated local taxes, because they permitted local governments to invest in infrastructure. But donor funding does not last forever and, on its own, does not provide a sound foundation for sustainable reforms.

These few comments suggest that donors should carefully monitor the effects of their policies, devolve responsibility for implementation to the greatest extent possible, and plan with sustainability in mind.⁸⁹ Making use of the human rights framework can help them to do this.⁹⁰

In fact, donor governments have a formal responsibility, under their international human rights obligations, to realise economic, social and cultural rights in poorer countries *and* to respect, protect and fulfil those human rights themselves. They have committed to provide aid to the maximum of their available resources, and to do no harm. Using the standards and principles set out in Chapter II can help them do this.⁹¹

Few bilateral and multilateral agencies have developed a human rights approach to development assistance, but the few that do exist are inspiring and the idea is gaining ground. Many municipalities have committed themselves to human rights⁹² and a few have developed rights-based programmes for specific sectors of the population, usually on children's rights and gender approaches. The city of Asunción, Paraguay, for example, has an explicit human rights approach in gender and childhood policies. Some municipalities in the Philippines have declared themselves to be UNICEF-inspired "Child Friendly Cities".

The Child Friendly Cities Initiative

Some 548 cities worldwide are now part of the Child Friendly Cities Initiative (CFCI) launched in 1996 following UN Habitat II. The Conference declared that the well-being of children is the ultimate indicator of a healthy habitat, a democratic society and of good governance. A Child Friendly City is a city, or any local system of governance, committed to fulfilling children's rights. It is a city where the voices, needs, priorities and rights of children are an integral part of public policies, programmes and decisions. See: www.childfriendlycities.org

CIVIL SOCIETY

Innovative models of local government create mechanisms for including local citizens and their organisations in consultative and decision-making processes. In many instances, citizens and their organisations have quickly seized new opportunities for political involvement. But participation cannot be conjured out of thin air: a background of local organisation is a necessary condition of success.

Where societies have developed a strong pro-democracy movement, or a dense and active civil society (including popular and community-based organisations), the potential for effective participation is obviously greater. In Bolivia, for example, highland mineworkers were famously well-organised, and when mines closed in the 1980s and 1990s, many moved to lowland regions in search of work, taking with them their strong sense of organisation, participation and social justice. These skills have strongly influenced participation in local government. In a similar way, Bolivian peasant unions have become a central pillar of local government and the principal channel for participation in rural municipalities, through the *Organizaciones territoriales de base*.

Pakistan provides a counter-example. Decentralisation created citizen community boards but these have been slow to take root. In many places they have not even been established, mainly because citizens have little experience of initiating social participation, expressing their views, or engaging authorities in discussion of policy.⁹³ (Some NGOs, with support from international donors, are promoting the creation of community citizen boards, and it is possible that once they are established more widely, citizens will become more aware of their existence and role).⁹⁴

Organisations may also be unwilling to engage. Especially in countries that are emerging from authoritarian rule, they may find it difficult to switch from opposing to co-operating in official processes. This needs to be recognised, as does the legitimate choice that organisations and individuals may make to become involved (or not) in local government.

One of the key requirements for ensuring accountability of local authorities is the capacity of local civil society to monitor government activities and provide independent information and assessment of local government performance. Outside large urban municipalities, however, civil society is often weak and has little experience of monitoring or co-operating with local government. Partnerships and mentoring with other, more experienced, organisations can help to develop these skills.

From a human rights perspective, local and international NGOs have run many fruitful projects, often in collaboration with local governments. Small-scale and tailored to the specific characteristics of the community, they can be both

popular and innovative. NGOs have developed local education projects and health insurance schemes for disabled children, rural women and indigenous communities. In some cases, these programmes have been integrated into local government programmes, and expanded. In other cases, however, after NGOs have withdrawn their support, projects have withered. NGOs have a responsibility to examine whether projects will be sustainable. In the absence of a long-term strategy, private initiatives of this kind can undermine rather than promote economic and social rights.

HUMAN RIGHTS NGOS

Human rights NGOs have given relatively little attention to decentralisation and have strong reasons to engage more in this area.⁹⁵ Decentralisation presents several challenges for them. It causes them to focus on issues to which they have paid little attention (service delivery, economic and social rights, local democracy), and relate to levels of government with which they have rarely interacted (local politicians, local government officials). Yet the incentives are significant. Local government is increasingly influential, especially in its impact on economic and social rights. For the vast majority of people, how local governments perform will increasingly determine their quality of life and whether their rights to education, health, housing, water and sanitation, even livelihood, political participation and information are achieved.

Many opportunities for human rights NGOs can therefore be identified. First of all, they can monitor local government performance. Experience of monitoring government has given human rights NGOs many relevant skills. They include legal advocacy, public advocacy, and expertise in accurately gathering and reporting information. Secondly, there will be significant opportunities for training, wherever local government officials are persuaded that human rights methods can help them or where they are required to apply human rights principles by national government. In many localities, thirdly, it will be important to collect statistics and figures to measure performance. Fourth, human rights NGOs will bring skills to the work of assisting groups of people who are not reached effectively by local services or who suffer discrimination. Fifth, they can develop their expertise in the application of economic and social rights, an area where much practical testing and new thinking are still required. Sixth, the technical knowledge of human rights law which human rights NGOs possess will be a valuable resource, both to other civil society organisations and local officials. Finally, NGOs with a national presence can strengthen accountability and the flow of information between central and local government, by undertaking national advocacy and reporting on local government issues. Where a national government does not set adequate standards for local government, or does not monitor their performance properly, NGOs can advocate for improved regulation. There are many spaces for action, and human rights NGOs can make important contributions of different kinds.

NATIONAL HUMAN RIGHTS INSTITUTIONS

Many countries (including most of those in this study) have created national human rights institutions (a National Human Rights Commission, a human rights *Ombudsman* office, a *Defensor del Pueblo* office etc.). Some have established regional or provincial human rights institutions as well. Such institutions can play an effective role in protecting human rights, and are in a position to monitor the performance and accountability of local governments, and the quality of services they deliver. Often, however, the mandate of such institutions does not include economic, social and cultural rights.⁹⁶

It is imperative that the mandate of NHRIs include economic and social rights *and* that it extend to cover local government. Some NHRIs creatively expand their mandate – this has been the case with the *Defensor del Pueblo* in Bolivia, but to guard against the eventuality that a future *Defensor* change this policy, it is important that the mandate itself be explicit on this point.

LOCAL GOVERNMENT NETWORKS

Local government associations and networks at national, regional and international levels offer another mechanism that local governments can use to share information about their experiences and learn about new approaches. On their own or in collaboration with donors, they organise training sessions and tools for local government programming, evaluation, networking, advocacy and other activities. To date, aside from specialised networks like *Human Rights Cities*,⁹⁷ these associations have not paid particular attention to human rights in local governance.

They should begin to do so because local government networks are perhaps the key entry point for helping local governments throughout the world understand and address the scope of their human rights obligations. Local government networks and associations provide a vital point of communication. They can bridge the distance between local government and larger international processes. This is important in relation to human rights, which are increasingly mainstreamed at UN level, and influence the legal environment in which national government operates. Local government associations and networks can help to articulate the scope of human rights obligations of their members and can help build the capacity and relevance of local governments in relation to human rights.

PART 3

DRAWING CONCLUSIONS

VIII. ASSESSING THE IMPACT OF HUMAN RIGHTS ON DECENTRALISATION PROCESSES

Many of the links between local government and human rights remain to be explored. Local governments will be major actors in the future, both in development and human rights. Emerging mega-cities in countries of the South are expected to become powerful economic and political centres in coming decades. It will undoubtedly fall to local governments to find solutions to many of the social, economic and political challenges associated with globalisation. They may play a key role in developing new forms of governance and extending access to human rights, including economic and social rights. The challenges are enormous; the opportunities also.

Local governments can meet the expectations of their citizens. But they are only likely to do so if they make a concerted attempt to identify those expectations and respond to them. Decentralisation reforms, or larger local government budgets, will not by themselves guarantee good results.

Despite this, the overall impact of local government reform on economic and social rights can cautiously be described as positive. Visible improvement has taken place in some areas; quantitative indicators on availability of services and, to a lesser extent, access to them are important here. On more qualitative and context-specific issues, such as acceptability (legitimacy) and adaptability, judgement must be more provisional. In these areas, real progress has been rare.

ACHIEVEMENTS IN EDUCATION, HEALTH, HOUSING AND WATER SUPPLY

The case studies we have examined show that decentralisation can have a positive impact on local services and consequently on the realisation of economic and social rights. At the same time, it must be borne in mind that these cases are amongst the best – and even here, results are not consistently positive. Where power is abused by a local elite or where local government is severely under-financed, the effect on human rights protection can be highly damaging, and recourse to human rights principles to achieve reform is likely to be less effective. We have seen that even in relatively 'successful' municipalities, such as in Bolivia and Senegal, major disparities emerge between communities that have a broad tax base and communities that do not. Decentralisation is only a process. Real progress will not occur in the absence of adequate resources, national as well as local commitment to fair government, and adoption of a more explicit strategy for achieving rights.

What are the positive impacts of decentralisation? Across the board, we have found that, by raising the resources available to local governments, it has increased social service infrastructure at local level. There are now more primary

schools, health posts, clean water systems and public housing schemes, and they are distributed more widely throughout the territory, not only in urban centres. Quantitative human rights standards – availability and accessibility – are better fulfilled than previously.

The human rights framework does underline the importance of quantifying, and in particular, the necessity of benchmarking and monitoring in order to guide policy towards more satisfactory results.⁹⁸ Although quantifiable measures may not be the only key to assessing the impact of decentralisation, it is important to make use of them where appropriate. To assess their performance objectively, local governments need to collect information – reports, disaggregated statistics and other data – and analyse the information they gather over periods of time.

When we apply the four human rights standards, and their three accompanying principles to the different decentralisation processes we have studied, we see that “qualitatively”⁹⁹ decentralisation has produced less convincing results. The tests of acceptability and adaptability are only partially fulfilled at best.

Local governments also had a poor record on non-discrimination; in general, they have not responded well to the needs of very disadvantaged groups. Two problems emerge here. First, though services to disadvantaged groups improved in both rural and urban areas, services in rural areas improved much less. Second, specific groups – indigenous people among the rural poor; women, especially young women, in indigenous communities – are particularly disadvantaged. Though this problem is well understood, local governments have rarely addressed it well and, when they have, exceptional political will and vision seem to be responsible (Naga City in the Philippines, for example).

Weaknesses in enforcement and accountability mechanisms suggest that problems lie ahead. This is reflected in wide differences in results between quantitative and qualitative indicators. It is vital to make qualitative progress in achieving rights if quantitative advances are to be sustained. There are already signs that quantitative indicators are starting to regress because of structural and resource constraints.

It may be presumed that, in time, qualitative improvement will follow quantitative improvement. Unfortunately, this is not likely to happen automatically. It will only occur if local governments organise their programmes with this end in mind. To do so, they will need support from central government and international agencies. Ultimately, a shift needs to be made, whereby local government becomes genuine local governance. Eventually, fuller and meaningful participation by citizens is necessary to achieve rights-based local service delivery.

It may be that the quantitative improvements generated during the early stages of decentralisation eventually reach their limits, and stagnate or enter a phase of decline. The fact that most local governments have very small budgets for infrastructure development indicates this risk. In the short-term, for example,

access to education can be improved without great technical difficulty or a large increase in expenditure. In the longer-term, however, more co-ordinated and complex mechanisms for funding and managing education will be required to raise standards, requiring higher levels of technical and administrative support. At present, most local governments are not in a position to plan ahead, or invest, as they will need to do.

Evidence is emerging as well that, despite its success in enhancing local coverage of health, education and other services, decentralised local governance has not had an impact on poverty reduction.¹⁰⁰ An assessment of decentralisation that is based solely or principally on its quantitative impact, however, misses the issue of empowerment. In many cases, though poverty has not decreased, people believe they are better off when they gain access to services and to new channels of participation. This is one of the most positive impacts of decentralisation. Particularly where previously marginalised people have participated more fully, decentralisation has helped local politics to develop and created a new understanding of public service and public good.

Just as the impact of reform on the delivery of local services has varied, so too has the impact on protection of economic and social rights. Specifically, education appears to have improved much more, and more widely, than health.

Substantive differences between health and education

The impact of decentralisation seems to have been more positive on education than on health. Why? It would appear to be due to the way in which these sectors have been historically organised, and above all to the degree of meaningful participation.

Education is an intrinsically empowering right and is perceived to be so by people in most countries. It strongly influences the ability of individuals and groups to claim other rights. Poor communities are particularly conscious of, and enthusiastic about, the opportunities that education offers for securing a better future. In most countries too, participatory mechanisms work well in the education sector: parents participate in school committees and strongly believe that their involvement helps their children, improves school management and raises the quality of teaching.

In the health sector, by contrast, very poor people often have little access to, and less faith in, the public health system. This is true in both Bolivia and Pakistan, for example. Women are also less likely to use the public health system than men. The system is largely organised around curative strategies and hospitals consume a large part of local health budgets. Traditional medicine is poorly integrated into the public health system, and rural areas have poor access to health services (though they are undoubtedly better than before), in part because health personnel do not want to live in these areas. Medical personnel often have condescending and discriminatory attitudes towards the poor and the illiterate. Participatory venues in the health sector are less dynamic and more prone to conflict than in the education sector.

The difference, succinctly put, seems to be that power in the education sector is more diffuse. Almost every family in a community has at least one child in school, and parents feel they have the information and knowledge necessary to make informed decisions and to demand accountability from school authorities. In the health sector, however, the structure is hierarchical and doctors are often members of an economic and social elite. Moreover, the technical complexity of health care is poorly understood by community representatives and the families of those who are sick. The community ultimately feels less ownership.

In sum, decentralisation has produced mixed results. It has enabled good governments to do better and bad governments to do worse. In the worst cases, it has increased the power of corrupt, unaccountable local elites. In the best, it has given numerous people access to influence and to resources and opportunities that they did not enjoy before. It has empowered citizens and local governments to improve their communities as places to live and places to participate.

Use of the human rights framework will not resolve all the problems that local governments face. This is clear. As “a basis for intelligent dialogue”,¹⁰¹ however, it can be useful in numerous ways. The framework provides an internationally agreed, legally binding, baseline for performance in a range of areas, and can be used to test and assess the quality of governance. It can identify problems, including deficiencies that would otherwise be concealed, and provide guidance about how to deal with them. It can be used during the planning, implementation and evaluation of programmes.

For local governments that are performing poorly, human rights criteria can clearly identify where they are going wrong and what problems their policies are creating or aggravating. The framework can also help to put things right. Civil society organisations, national government institutions, and international donors, can apply human rights tests to identify where, and sometimes how, poorly performing local governments can improve.

For local governments that are ‘successful’, integrating human rights into their planning, activities and evaluation can help to improve their performance, and help make them consistently better over time. To the extent that local governments already have an adequate resource base, trained and competent staff, a legal regime in place, good reporting and accountability mechanisms, and responsible political leadership, they are likely to be able to make better and more creative use of the human rights framework.

Human rights can be used as the principal framework. But it can also be combined with and can improve other approaches, because it asks questions that reveal information about policies, groups of people, and trends that would otherwise remain invisible. Running democratic local governments successfully is a complicated process – and a recent one in many countries – and officials can draw usefully on many different frameworks.

ISSUES OUTSIDE THE REALM OF HUMAN RIGHTS

Local government reform has enormous potential and generates high expectations, much scepticism and new problems. Not all of these have to do with human rights, or can be resolved by applying a human rights framework. These factors nonetheless have a direct impact on the realisation of human rights and include:

Political will: The commitment on the part of a local administration to invest its energies and creativity into obtaining the best results for its citizens may be inspired in some cases by commitment to human rights but may equally be due to other values and goals – which may be ethical, political or even personal. The human rights framework cannot create commitment to fairness and fair government where it does not exist.

Political skill: The ability of local leaders to obtain effective results, and identify and exploit windows of opportunity is crucial to the effectiveness of local government but is not a direct product of a human rights framework. Politicians can make good use of human rights methods and principles to build legitimacy, but the rights framework cannot instil political skills.

Local government resources: That financial resources are required to protect human rights is evident. But the volume of resources that local administrations can mobilise will depend on the vitality of the local economy and society, and central government funding. Whilst human rights can help officials and activists to lobby for proper allocation of adequate resources, it does not generate them in the first place.

The structure of local government: The human rights framework does reflect to a limited extent on local government's structures (concerning equity and non-discrimination, for example). But it does not prescribe how local governments should be territorially organised or the type of electoral system. These are key elements in determining the quality of local governance and its results.

Poverty and productivity: Human rights principles affirm the dignity of all people, and in this sense are resolutely against poverty. They require governments to give priority to those who are poor and to groups of people who are excluded. However, as noted, the framework does not create resources or generate particular levels of income for local governments or citizens.

Civic pride: Successful local governments are often found where citizens show high commitment to, and pride in, their community and its services. Such commitment is often linked to the political will and skill of local political leaders and officials; but it also has roots in a deeper culture of popular involvement. That civic culture may or may not have an explicit commitment to human rights.

The character of civil society: Local civil society can be more or less democratic or sensitive to human rights. NGOs and community-based organisations may work together well or disputatiously. NGOs may speak accurately, or not, for the communities they work in. The human rights framework can influence but cannot determine the character of local civil society.

The international context: A human rights approach has things to say about unequal international relations but it does not control the policies of international financial institutions; nor can it reverse inequitable international trade and financial relations.

Limits to what can be done at the local level: Finally, it is important to recognise that, if human rights cannot solve all problems, neither can local government. Overall responsibility for basic services usually involves two or more levels of government. Local authorities typically have responsibility for delivery of basic services, but upper levels of government often retain control of health and education personnel. Adequate service delivery requires that all levels of government correctly fulfil their roles in order for it to work.

IX. CONCLUSIONS

Local governments deliver vital services and play an increasingly important role in realising economic and social rights. Many local governments are already grappling with how to achieve good governance and sustainable development. In the future they will also have to take account of their obligations to realise human rights. If they, as well as central governments and other actors take these seriously, they will benefit more from the new opportunities that decentralisation has created, and avoid some of the pitfalls and risks they currently face.

As this report has demonstrated, human rights are pragmatic standards, negotiated by governments, that are relevant to many basic services for which local governments have responsibility, including health, primary education, clean water and housing. Focused on outcomes, but also on process, human rights offer a methodology that can assist local governments to plan, implement and evaluate their programmes more effectively and equitably. In the short and medium-term, they can also address some of the accountability and transparency deficits which even successful local governments experience.

The human rights framework also offers useful qualitative and quantitative tests. We have highlighted two qualitative ones (acceptability and adaptability to local context) and two quantitative ones (availability and accessibility). In applying these standards, our research revealed significant progress is occurring in the quantity of services offered but that qualitatively, services have not advanced as they need to do. If progress is to be sustained, both need to progress together. There are already signs that quantitative indicators are starting to regress because of structural and resource constraints.

Ultimately, if local governments integrate human rights more systematically into their activities, their programmes are likely to be more legitimate, more effective and more sustainable over time. This is a challenge that local governments cannot face alone. Many actors, including national authorities, international institutions, and associations of local governments, should work together in a concerted way to ensure that local governments make appropriate and effective use of human rights to improve the services they provide.

RECOMMENDATIONS

FOR LOCAL GOVERNMENT OFFICIALS

Making good use of human rights

Very few local governments – and none of those surveyed for this study – have adopted policies that explicitly draw on human rights. Some local governments have joined the *Cities for Human Rights* movement and are working towards the development of a Charter of Human Rights in the City.¹⁰² Others are developing local Charters.¹⁰³ Despite these explicit commitments, none at present use international human rights to inform their planning and programming.

More local governments draw *implicitly* on human rights principles. They are guided by commitments to equity and social justice, and on these grounds prioritise disadvantaged sectors. They attach importance to participation and transparency, and actively promote local democracy or take steps to eliminate corruption. In most instances, a more informed application of human rights principles and standards would improve performance further and help to *institutionalise* core elements of rights-based local governance, including accountability, non-discrimination and participation. In the long-term, more systematic use of human rights criteria by local governments will improve their policies and strengthen their legitimacy.

Individual local governments and local government networks should consider how they can integrate human rights into their planning, implementation and evaluation activities, in more systematic and explicit ways.

- It may prove useful to prepare a human rights manual for local government. This would assist local politicians and officials as well as citizens to identify how the human rights framework can be applied to local government performance, governance and service delivery. The development of a human rights check-list, like that outlined on page 18, may be helpful.
- After consultation with their local constituents, individual local governments may wish to draft a local human rights charter. Such documents set out specific human rights responsibilities that fall upon the municipality. By stating their responsibilities and making clear the link between human rights and services (water, housing, health, education), local authorities and citizens will become more aware and better equipped to monitor performance.
- Other approaches to local governance – including the good governance model or the sustainable human development model – share many concepts and values with human rights. They should not necessarily be seen as alternatives; often they are complementary and compatible. Local governments, civil society organisations, international donors, central governments, political parties and other actors should seek to apply each

where it is most useful. A sustained effort should nevertheless be made to integrate human rights principles and methods with existing approaches because they will strengthen local government policies in distinctive ways.

FOR CENTRAL GOVERNMENT OFFICIALS

It is the responsibility of central government to create an enabling environment in which local governments understand and implement their human rights obligations, are able to maintain standards over time, and are adequately resourced to do so.

- National legislation should delineate clearly the responsibilities and powers of central and local government authorities in relation to one another.
- Central governments should establish mechanisms to oversee the services they have devolved to local governments and ensure that local governments respect human rights.
- Central governments should ensure that local governments have adequate resources, and know and understand their human rights responsibilities.

Information and reporting

Data and information collection are critical. It requires action from *both* local and central government.

- In the absence of reliable and suitably disaggregated data, local and central government officials cannot assess and monitor performance. Central and local government officials should gather such information, and give attention to internal auditing and reporting procedures, the collection of relevant statistics and public access to information. Central government has a duty to ensure that such procedures and information are in place in order to monitor its adherence to human rights commitments.

Judicial remedy

Both local and central government should ensure that people are able to complain and to seek and obtain redress where appropriate. Different types of accountability exist within the local government context. However, legal enforceability is a key feature of the human rights framework.

- Central governments are obligated, when they ratify international human rights treaties, to ensure that judicial mechanisms are in place to assist and compensate those whose rights are violated. Although courts are unlikely to be the venue of choice for most people, (who will generally look to other, more accessible types of administrative remedy), they should be available as the backbone of any system with adequate accountability built in.

FOR HUMAN RIGHTS NGOS AND CIVIL SOCIETY

Human rights defenders, NGOs and other local civil society organisations play an important role by monitoring and engaging with local authorities.

- In general, human rights actors should give more attention to local government, which has a growing influence on economic and social rights. They may do so through research, monitoring and advocacy programmes on local government issues. They may work to build the capacity of civil society to apply human rights methods and tools at local government level. They may also work directly with local government to strengthen its human rights expertise and awareness.
- When they establish their programme priorities, donors should consider how to strengthen civil society capacity to monitor and engage with local government.

FOR NATIONAL HUMAN RIGHTS INSTITUTIONS

National and sub-national human rights commissions and *Ombudsman* offices should also be more alert to the important role played by local government. The mandate of such institutions does not always extend to local government; in many cases, it does not include economic and social rights either.

- NHRIs should take steps to ensure that their mandates include oversight of local government and monitoring of economic and social rights. Governments and parliamentary institutions that have oversight responsibility should encourage and assist NHRIs to do this.

FOR INTERNATIONAL DONORS

International financial institutions, multilateral agencies and bilateral donors have strongly supported decentralisation. This study shows that most local authorities have weak accountability, do not take adequate measures to prevent discrimination, and rarely diversify their programmes to accommodate local needs and expectations.

- International agencies should integrate international human rights standards in local government programmes they support, and should focus attention on improving accountability, responding to local needs, and raising the quality of economic and social services.
- Effectiveness is only one dimension however. No government (indeed no donor programme) can sustain its effectiveness if it does not give attention to the question of legitimacy. Donors should continue to give attention to issues of democratic participation, transparency, inclusion and other processes that determine the legitimacy of government.

REFERENCES

- Ashley, M. (July 2002). "Reading the Riot Act. Local Government Takes on GATS", *European Information Service*, Issue 231.
- Atkinson, D. (2002). *Local Government, Local Governance and Sustainable Development. Getting the Parameters Right*. Cape Town: HRSC Publishers.
- Baker, J. and H. Wallevik. (2002). *The Local Government Reform Process in Tanzania: Towards a greater interdependency between local government and civil society at the local level?* Kristiansand, Norway: Agder Research.
- Bierschenk, T., J-P. Chauveau and J-P. Olivier de Sardan. (2000). *Courtiers en développement. Les villages africains en quête de projets*. Paris: Karthala.
- Blair, H. (2001). "Institutional Pluralism in Public Administration and Politics: Applications in Bolivia and Beyond", *Public Administration and Development*, 21, 119-129.
- Boex, J. (2003). "The incidence of local government allocations in Tanzania", *Public Administration and Development*, 23, 381-391.
- Borger, J. (25 August 2005). "US states by-pass Bush to tackle greenhouse gas emissions", *The Guardian*.
- Burki, S., G. Perry and W. Dillinger. (1999). *Beyond the Center: Decentralizing the State*. Washington: The World Bank.
- CHR (Commission on Human Rights)/UNDP. (2003). *CHR Reengineering Project: Rights-Based Approach (RBA). Design Report*.
- CIDA (Canadian International Development Agency). (2001). *CIDA'S Action Plan on Child Protection: Promoting the rights of children who need special protection measures*. Retrieved on 19 February 2004, from www.acdi-cida.gc.ca/childprotection
- CIET/National Reconstruction Bureau (Pakistan). (2002). *Social Audit of Governance and Delivery of Public Services. Baseline Survey 2002. National Report*. Islamabad.
- Cities for Human Rights. (1998). "Barcelona Agreement".
- City of Johannesburg. (2005). "Human Development Strategy: Joburg's commitment to the poor.
- Crook, R. (2003). "Decentralisation and Poverty Reduction in Africa: The Politics of Local-Central Relations", *Public Administration and Development*, 23, 77-88.

- Crook, R., and A. Sverrisson. (2001). *Decentralisation and Poverty-Alleviation in Developing Countries: A Comparative Analysis or, is West Bengal Unique?* Brighton, United Kingdom: IDS.
- DAC (Development Assistance Committee) Governance Network. (2003). *Synthesis Study on Supporting Decentralisation and Local Governance – Lessons Learned, Good Practices and Emerging Issues*. DCD/DAC/EV(2003)3.
- DFID (Department for International Development). (2000). *Realising Human Rights for Poor People*. Retrieved on 21 September 2005, from www.dfid.gov.uk/pubs/files/tsphuman.pdf
- Eaton, K. (May 2003). "Restoration or Transformation? *Trapos* vs. NGOs in the Democratization of the Philippines", *The Journal of Asian Studies*, 62, 2, 469-496.
- Faguet, J-P. (2004). "Does decentralization increase government responsiveness to local needs? Evidence from Bolivia", *Journal of Public Economics*, 88, 867-893.
- Grindle, M.S. (2000). *Audacious Reforms. Institutional Invention and Democracy in Latin America*. Baltimore: Johns Hopkins.
- Hiskey, J., and M. Seligson. (2003). "Pitfalls of Power to the People: Decentralization, Local Government Performance, and System Support in Bolivia", *Studies in Comparative International Development*, 37, 4 (winter), 64-88.
- Hutchcroft, Paul D. (January 2001). "Centralization and Decentralization in Administration and Politics: Assessing Territorial Dimensions of Authority and Power", *Governance*, 14, 1, 23-53.
- IAGU (Institut Africain de Gestion Urbaine). (2000). *Etude sur la décentralisation des services de santé au Sénégal*. Réseau national de recherche sur les politiques sociales.
- IOG (Institute On Governance). (1996). *Developing Capacity for Governance: An Action-Research Program of the Institute on Governance*. Ottawa.
- ICHRP (International Council on Human Rights Policy). (2005). *Assessing the Effectiveness of National Human Rights Institutions*. Geneva: ICHRP.
- ICHRP (International Council on Human Rights Policy). (2004). *Performance & Legitimacy: National Human Rights Institutions*. Geneva: ICHRP.
- ICHRP (International Council on Human Rights Policy). (2003). *Duties sans Frontières: Human rights and global social justice*. Geneva: ICHRP.

- ICHRP (International Council on Human Rights Policy). (2002). *Local Rule: Decentralisation and Human Rights*. Geneva: ICHRP.
- ICHRP (International Council on Human Rights Policy). (2001). *Racial and Economic Exclusion*. Geneva: ICHRP.
- ICHRP (International Council on Human Rights Policy). (2000). *Local Perspectives: Foreign aid to the justice sector*. Geneva: ICHRP.
- ICHRP (International Council on Human Rights Policy). (2000a). *The Persistence and Mutation of Racism*. Geneva: ICHRP.
- ICG (International Crisis Group). (2004). *Devolution in Pakistan: Reform or Regression?* ICG Asia Report No 77: Islamabad/Brussels. 22 March.
- Johnson, C. (2001). "Local Democracy, Democratic Decentralisation and Rural Development: Theories, Challenges and Options for Policy", *Development Policy Review*, 19, 4, 521-532.
- Kälin, W. (16 December 2000). *Decentralised Governance in Fragmented Societies: Solution or Cause of New Evils?* Bonn: Center for Development Research.
- Kjoer, M., and K. Kinnerup. (2002). "Good Governance: How Does It Relate to Human Rights?". In Sano, H-O., and G. Alfredsson (Eds.). *Human Rights and Good Governance: Building Bridges* (pp. 1-18). The Hague/London/New York: M. Nijhoff.
- Koch, I. E. (2002). "Good Governance and the Implementation of Economic, Social and Cultural Rights". In Sano, H-O., and G. Alfredsson (Eds.). *Human Rights and Good Governance: Building Bridges* (pp. 73-94). The Hague/London/New York: M. Nijhoff.
- Litvack, J., J. Ahmad and R. Bird. (1998). *Rethinking Decentralization in Developing Countries*. Washington: World Bank.
- Lloyd-Sherlock, P. (2000). "Failing the Needy: Public Social Spending in Latin America", *Journal of International Development*, 12, 101-119.
- Löffler, E., T. Bovaird and S. Parrado Diez. (2004). "The evaluation of local governance in Europe: some lessons from different state traditions", *IX Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administracion Publica*, Madrid: 2-5 November, 2004.
- March, C., I. Smyth and M. Mukhopadhyay. (1999). *A Guide to Gender-Analysis Frameworks*. London: Oxfam.

- Martin, M. (2002). "Debt Relief and Poverty Reduction: Do we need a HIPC III?". Paper presented to the North South Institute Global Finance Governance Initiative Workshop, 1-2 May 2002. Retrieved on 22 September 2004, from www.nsi-ins.ca
- Mathew, G. (2001). "Panchayat Raj Institutions and Human Rights in India". Geneva: ICHRP. Retrieved on 29 September 2004, from www.ichrp.org
- McGee, R., N. Bazaara, J. Gaventa, R. Niervas, M. Rai, J. Rocamora, N. Saule, E. Williams and S. Zermeo. (April 2003). *Legal Frameworks for Citizen Participation: Synthesis Report*. Sussex: Institute for Development Studies. Retrieved on 30 June 2004, from www.ids.ac.uk/logolink/index.htm
- Montréal. (2003). "Draft for a Montréal Charter of Rights and Responsibilities". Retrieved on 24 September 2004, from www2.ville.montreal.qc.ca/asurveiller/pdf/charter_of_rights.pdf
- Naudé, W., and L. Jansen van Rensburg. (2002). "Understanding Poverty as a Human Rights Violation: The case of legal reform and local economic development in South Africa". Paper prepared for the Sixth Annual Conference of the Centre for the Study of African Economies, 18-19 March. Oxford, United Kingdom.
- Nicksonm, R.A. (1995). *Local Government in Latin America*. Boulder: Lynne Rienner.
- Office de la consultation publique de Montréal. (2004). *Proposition de Charte montréalaise des droits et responsabilités. Rapport de consultation publique*. Retrieved on 16 Septembre 2004, from www.ville.montreal.qc.ca/ldvdm/jsp/ocpm/ocpm.jsp
- The PHILJA Judicial Journal*, 4, 12, April-June 2002.
- Ribot, J. (2002). *African Decentralization. Local Actors, Powers and Accountability*. Geneva: UNRISD.
- RMAP. (2004). *Consolidated Report of the Municipality Assessments in Bosnia and Herzegovina*.
- Rowland, A. (2001). "Population as a Determinant of Local Outcomes under Decentralization: Illustrations from Small Municipalities in Bolivia and Mexico", *World Development*, 29, 8, 1373-1389.
- Ruddle, K., and D. Rondinelli. (1983). *Transforming Natural Resources for Human Development: A Resource Systems Framework for Development Policy*. Tokyo: United Nations University.
- Sano, H-O., and G. Alfredsson (Eds.). (2002). *Human Rights and Good Governance: Building Bridges*. The Hague/London/New York: M. Nijhoff.

- Schou, A. (2000). "Democratic Local Government and Responsiveness: Lessons from Zimbabwe and Tanzania", *International Journal of Comparative Sociology*, XLI, 1, 121-143.
- Sen, A. (2005). "Human rights and capabilities", *Journal of Human Development*, 6, 2, 151-166.
- Sen, A. (1999). *Development as Freedom*. Oxford, Oxford University Press.
- Tendler, J., and S. Freedheim. (1994). "Trust in a Rent-Seeking World: Health and Government Transformed in Northeast Brazil", *World Development*, 22, 12, 1771-1791.
- Totté, M., T. Dahou, and R. Billaz (Eds.). (2003). *La décentralisation en Afrique de l'Ouest*. Paris: Karthala.
- UNDP (United Nations Development Programme). (April 2004). *Decentralised Governance for Development: A Combined Practice Note on Decentralisation, Local Governance and Urban/Rural Development*. New York: UNDP.
- UNDP (United Nations Development Programme). (June 2003). *Human Rights-based Reviews of UNDP Programmes: Working Guidelines*. New York: UNDP.
- UNDP (United Nations Development Programme). (1998). *Integrating Human Rights with Sustainable Human Development*. New York: UNDP.
- UNDP (United Nations Development Programme). (1997). *Reconceptualising Governance*. Discussion Paper 2. New York: UNDP.
- WHO (World Health Organization). (2002). *25 Questions & Answers on Health & Human Rights*. Geneva: WHO.
- World Commission on Environment and Development. (1987). *Our Common Future*.

SUGGESTED WEB SITES

Center for Economic and Social Rights – An Activist’s Manual on the International Covenant on Economic, Social and Cultural Rights

<http://cesr.org/node/view/741?PHPSESSID=a1c8c4dee957eab36b493e99a9e00207>

Centre for the Future State

www.ids.ac.uk/gdr/cfs/index.html

Centre for Human Rights and Global Justice (New York University)

www.nyuhr.org

The Child Friendly Cities Initiative

www.childfriendlycities.org/about/index.html

Cities Alliance

www.citiesalliance.org

Cities for Human Rights

http://portal.unesco.org/en/ev.php-URL_ID=23842&URL_DO=DO_TOPIC&URL_SECTION=201.html

Commonwealth Local Government Forum

www.clgf.org.uk

Council of Cities and Regions of Africa (CCRA)

www.ccra-africa.org

Council of European Municipalities and Regions

www.ccre.org

Development Research Centre on Citizenship, Participation and Accountability

www.drc-citizenship.org

Federación Latinoamericana de Ciudades, Municipios y Asociaciones (FLACMA)

www.flacma.org

Human Rights Cities

www.pdhre.org/projects/development.html

Institute of Development Studies

www.ids.ac.uk/ids/

International Council for Local Environmental Initiatives (ICLEI)

www.iclei.org

KIT (Royal Tropical Institute of the Netherlands)

www.kit.nl

United Cities and Local Governments
www.iula.org

United Nations Development Programme (UNDP) Governance Unit
www.undp.org/governance

World Association of the Major Metropolises
www.metropolis.org/index.htm

World Bank Decentralization and Subnational Regional Economics web page
www1.worldbank.org/publicsector/decentralization/

Case studies undertaken for this report

On file at the International Council on Human Rights Policy.

APPENDIX I

The following human rights are protected under international law:

Life, liberty and physical integrity of the person

This includes the right to be treated with humanity and dignity and with due process of law, and prohibitions on arbitrary killing and detention, torture and other cruel treatment.

Civic freedoms

Basic freedoms protected include freedom of thought, opinion and expression, freedom of religious belief and practice, of movement within a state, and the right to peaceful assembly and association. Other civil rights include the protection of privacy and family life, and the right to equality before the law.

Political rights

In addition to freedom of speech and association, international law protects rights to participate in public affairs, and to vote in free and fair elections.

Women's rights

Women's right to equality, and to non-discrimination in the enjoyment of human rights, are protected, and there are also strong prohibitions on gender-specific forms of harassment, violence and exploitation.

Worker's rights

International law protects workers' rights to associate, to organise and bargain collectively, and to a safe and healthy work environment and provides guarantees for a living wage and reasonable working hours.

Economic and social rights

International law guarantees the right to education, to work, to the highest attainable standard of physical and mental health, and to an adequate standard of living, including food and housing.

Right to a clean and healthy environment

This right is protected especially in situations where environmental hazards harm other rights, including to life, health or privacy.

Children's rights

In addition to the general protection of human rights law, children enjoy particular rights including the right to have decisions made in their best interests.

Access to information

This includes the right to receive information held by public or private bodies where key public interests are at stake or where it is essential to protect other human rights.

Rights of special groups

International law protects the rights of indigenous peoples, linguistic, religious and racial minorities, the disabled and elderly. It prohibits discrimination and exploitation of such groups.

Right to justice

This includes the right to redress for victims of human rights abuses, punishment for perpetrators and access to courts and other procedures.

International law prohibits discrimination

This includes prohibition on grounds including race, colour, sex, language, religion, political opinion, national or social origin, birth or other status.

ENDNOTES

- 1 For a list of human rights, see Appendix I.
- 2 Almost four fifths of the world's states have ratified the two major UN human rights treaties. A higher percentage have ratified UN treaties to protect women's and children's rights, and prohibit racial discrimination. Regional human rights treaties have also attracted significant support.
- 3 Ratifications as of 09 June 2004.
For more information, see www.unhchr.ch/pdf/report.pdf
- 4 ICESCR, General Comment 13 (1999), *The right to education* (article 13 of the ICESCR), E/C.12/1999/10, para. 50.
- 5 Here is included most of the "how-to" publications on decentralisation by international institutions such as the World Bank, the regional development banks, and the UNDP, as well as much of the discussion in the journal *Public Administration and Development*. See for instance UNDP, 1997; Litvack et al., 1998; Burki et al., 1999.
- 6 UNDP, 1997, p. 31, for instance, refers to citizens as "customers" of government.
- 7 Ibid., p. ix.
- 8 Organisation for Economic Co-operation and Development's (OECD) Development Assistance Committee (DAC), 2003, p.14.
- 9 UNDP, 2004, p. 3.
- 10 For example, Sano and Alfredsson, 2002.
- 11 Kjoer and Kinnerup, 2002, pp. 12 and 15.
- 12 Ibid., p. 93.
- 13 See World Commission on Environment and Development, 1987.
- 14 UNDP, 1998, p. 32.
- 15 March et al., 1999, p. 18.
- 16 See Sen, 1999.
- 17 Sen, 2005, p. 151.
- 18 We have focused on these three human rights principles because they are particularly relevant to local government. On other issues it would be logical to prioritise different principles. In its work on development, for example, the UNDP focuses on: universality and inalienability; indivisibility; inter-dependence and inter-relatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law. Other organisations working on torture or detention could naturally emphasise other values or principles within the human rights system.
- 19 ICESCR, General Comment 15 (2002), *The right to water* (articles 11 and 12 of the ICESCR), E/C.12/2002/11, paras 24 and 37.
- 20 Ibid., para. 48.
- 21 ICESCR, General Comment 14 (2000), *The right to the highest attainable standard of health* (article 12 of the ICESCR), E/C.12/2000/4, para. 54.
- 22 ICESCR, General Comment 3 (1990), *The nature of States parties obligations* (article 2(1) of the ICESCR), E/1991/23, para. 10.
- 23 ICESCR, General Comment 3 (1990), *The nature of States parties obligations* (article 2(1) of the ICESCR), E/1991/23, para. 5.
- 24 Ibid.
- 25 ICESCR, General Comment 15 (2002), *The right to water* (articles 11 and 12 of the ICESCR), E/C.12/2002/11, para. 51.
- 26 Such an analysis was carried out in Ecuador in a project funded by UNICEF and implemented by civil society organisations using data from the Ministry of Finance and Economy. It resulted in the establishment of a national monitoring system to track social investment at the national and sub-national levels. See UNOHCHR document HR/SEL/GG/SEM/2004/BP.3.

- 27 ICESCR, General Comment 3 (1990), *The nature of States parties obligations* (article 2(1) of the ICESCR), E/1991/23, para. 1.
- 28 This description is largely based on the *Human Development Strategy* of the City of Johannesburg. City of Johannesburg, 2005.
- 29 Ibid., p. 69.
- 30 Local ordinance no 128-98 enacted in April 1998.
- 31 Borger, 2005.
- 32 For further details on the right to education see ICESCR, General Comment 11 (1999), *Plans of action for primary education* (article 14 of the ICESCR), E/C.12/1999/4; Report submitted by the Special Rapporteur, Katarina Tomasevski, The right to education, E/CN.4/2004/45; General Comment 13 (1999), *The right to education* (article 13 of the ICESCR), E/C.12/1999/10.
- 33 Report submitted by the Special Rapporteur, Katarina Tomasevski, The right to education, E/CN.4/2004/45, para. 26.
- 34 Ibid., para. 35.
- 35 For further details on the right to health see ICESCR, General Comment 14 (2000), *The right to the highest attainable standard of health* (article 12 of the ICESCR), E/C.12/2000/4.
- 36 Ibid.
- 37 Ibid., para. 27.
- 38 Ibid., para. 64.
- 39 For further details on the right to housing see ICESCR, General Comment 4 (1991), *The right to adequate housing* (article 11(1) of the ICESCR), E/1992/23; General Comment 7 (1997), *The right to adequate housing* (article 11(1) of the ICESCR): *forced evictions*, E/1998/22 annex IV.
- 40 ICESCR, General Comment 4 (1991), *The right to adequate housing* (article 11(1) of the ICESCR), E/1992/23, para. 7.
- 41 Forced eviction is defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." ICESCR, General Comment 7 (1997), *The right to adequate housing* (article 11(1) of the ICESCR): *forced evictions*, E/1998/22 annex IV, para. 3.
- 42 Ibid., para. 17.
- 43 Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, E/CN.4/2003/5, paras 15 and 16.
- 44 For further details on the right to water see ICESCR, General Comment 15 (2002), *The right to water* (arts. 11 and 12 of the ICESCR), E/C.12/2002/11.
- 45 Ibid., para. 21.
- 46 Burki et al., 1999.
- 47 IAGU, 2000.
- 48 Eaton, 2003, pp. 477 and 485.
- 49 ICG, 2004, p. 18.
- 50 CIET, 2002, p. 65.
- 51 Löffler et al., 2004, p. 2.
- 52 www.naga.gov.ph/cityhall/index.html
- 53 The issue of culture deserves fuller treatment, which we are not in a position to do here, given its complexity.
- 54 UNDP, 2003, pp. 62-63.
- 55 See footnote 88 for an explanation of the HIPC programme.
- 56 EEDI, 2004.
- 57 Of the some 700 respondents, 550 declared that they always or often experience corruption in public health and education institutions.

- 58 The few examples cited in the Ukraine Human Development Report on decentralisation (UNDP, 2003, pp. 69-70) simply serve to highlight the paucity of such initiatives.
- 59 ICG, 2004.
- 60 Bierschenk et al., 2000.
- 61 The notion is from the authors of our case study on Tanzania, Rwekaza Mukandala and Chris Maina Peter.
- 62 ICHRP, 2000 and 2001.
- 63 As noted by the CESCR in its general comment on the right to education, the adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after their objectives have been achieved. ICESCR, General Comment 13 (1999), *The right to education* (article 13 of the ICESCR), E/C.12/1999/10, para. 32.
- 64 Mathews, 2001.
- 65 David Ondracka of Transparency International. Comments made at a review meeting, June 27-28, 2004 at the offices of the International Council.
- 66 The issue of justiciability of ESC rights in the Philippines is discussed by several articles in *The PHILJA Judicial Journal*, a theme issue on "Economic, Social and Cultural Rights (ESCR)". *PHILJA* is the Philippine Judicial Academy, the education and training arm of the Supreme Court.
- 67 *Laguna Lake Development Authority vs. Court of Appeals*, 231 SCRA 292 (1994).
- 68 As cited by Atty. Rene V. Sarmiento, "Rights, Obligations and Remedies: International and Domestic Experiences" in *The PHILJA Judicial Journal*, pp. 107-08.
- 69 *Louie Soriano vs. Araceli R. Pineda*, G.R. No. 110702, August 10, 1994.
- 70 *Ibid.*, p. 108.
- 71 Naudé and Jansen, 2002, p. 17.
- 72 *Olga Tellis v. Bombay Municipal Corporation*, 1985 (3) SCC 545.
- 73 *Municipal Council, Ratlam v. Vardhichand*, AIR 1980 SC 1622.
- 74 Law Commission of India, 186th Report, Proposal to Construct Environmental Courts, September 2003.
Available at: <http://lawcommissionofindia.nic.in/186th%20report.pdf>
- 75 ICHRP, 2002, pp. 26-28.
- 76 Even where states, such as Pakistan, have not ratified this instrument, they are considered bound to similar obligations by virtue of their adhesion to the Universal Declaration of Human Rights, which refers to economic, civil, social, political and cultural rights.
- 77 The provisions of equality and non-discrimination are subject to judicial remedy as per the ICCPR. Further, the Committee maintains that "there are a number of other provisions in the International Covenant on Economic, Social and Cultural Rights, including articles 3, 7(a)(i), 8, 10(3), 13(2)(a), (3), (4) and 15(3) which would seem to be capable of immediate application by judicial and other organs in many national legal systems. Any suggestion that the provisions indicated are inherently non-self-executing would seem to be difficult to sustain". ICESCR, General Comment 3 (1990), *The nature of States parties obligations* (article 2(1) of the ICESCR), E/1991/23, para. 5.
- 78 See ICESCR, General Comment 9 (1998) *The domestic application of the Covenant*, E/CN.12/1998/24, paras 2, 9, 10 and 14.
- 79 *Ibid.*, para. 10.
- 80 ICHRP, 2002, p. 28.

- 81 ICESCR, article 2(1) "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". See ICHRP, 2002.
- 82 The UN Committee on economic, social and cultural rights has called on governments and international organisations to integrate human rights in such policies. In ICESCR, General Comment 2 (1990), *International technical assistance measures* (article 22 of the ICESCR), E/1990/23, para. 9, it reaffirmed that structural adjustment policies should not undermine realisation of economic and social rights for people in affected countries. In ICESCR, General Comment 15 (2002), *The right to water* (articles 11 and 12 of the ICESCR), E/C.12/2002/11, para. 35, it stated that "With regard to [...] international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water." The same General Comment (as do earlier ones) mentions that lending policies of IFIs should take account of economic and social rights such as health, education and water (para. 36).
- 83 Ashley, 2002. Available at www.lgib.gov.uk/eis/issues/231/articles/articles1.html
- 84 GATS Watch, "GATS and local communities: what do local decision makers need to know about GATS?" Available at www.gatswatch.org/locgov-info.html
- 85 The only case brought under GATS to date concerned Mexico's telecommunications industry. Although this case does not directly concern local government, it does bode ill for any government control of services, because it obliged the Mexican government to eliminate provisions for national control of the industry. Available at www.hors-agcs.org/agcs/article.php3?id_article=35
- 86 In Senegal, decentralisation occurred after the government had effectively abandoned its responsibilities to other actors in much of the interior. Whereas two-thirds of the population is illiterate, the whole reform process was conducted exclusively in French. ICHRP, 2000.
- 87 In West Bengal, the Philippines and South Africa decentralisation followed a strong popular demand for democratisation.
- 88 Governments approved the Highly Indebted Poor Countries Initiative (HIPC), proposed by the World Bank and IMF, in 1996. It is designed to provide USD30b. in debt relief to some of the poorest countries. The sums saved on debt service must be used for poverty reduction by the receiving country, which must also engage in a participatory process involving government, the private sector and civil society. For an outline of the programme, see www.worldbank.org/hipc/about/hipcbr/hipcbr.htm. The HIPC Programme's shortcomings are discussed in Martin, 2002.
- 89 See ICHRP, 2000.
- 90 Few development agencies have adopted the human rights framework formally but some are operationalising use of selected human rights methods and tests. The Development Assistance Committee of the OECD, which represents all the major bilateral donors, is examining how to integrate human rights in aid programmes. The United Nations agencies recently decided to integrate human rights in all their development programmes and agreed that "Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process" (UNDP, 2003, p. 3). At bilateral level, see, for example, the UK Department for International Development Strategy for Human Rights (DFID, 2000) and the Canadian International Development Agency Child Rights Strategy (CIDA, 2001).
- 91 International responsibility and its limits is discussed in ICHRP, 2003.

- 92 See the Barcelona Agreement (Cities for Human Rights, 1998) and the Draft of the Montreal Charter of Rights (Montréal, 2003).
- 93 CIET, 2002.
- 94 CIET, 2004, p. 14.
- 95 For an analysis of why local government reform is relevant to the work of human rights NGOs, see ICHRP, 2002.
- 96 See ICHRP, 2004.
- 97 For more information visit the People's Movement for Human Rights Education at www.pdhre.org. There is also the *Cities for Human Rights* movement; this is centred around the "Barcelona Commitment of the Cities for Human Rights" signed by 41 Mayors of European Cities on 17 October 1998. www.bcn.es/ciutatsdretshumans/
- 98 Various approaches to human rights indicators are discussed in another Council publication, ICHRP, 2005.
- 99 In this study, we have used the standards as originally set out by the Special Rapporteur on Education. The Special Rapporteur on Health also uses the standards in his work, but he has slightly modified the terminology. He uses the standards "availability" and "accessibility", but often groups the other two under the single category of "quality".
- 100 See, for example, Boex, 2003, p. 381 (on Tanzania); Crook, 2003, p. 79 (on Africa); Crook and Sverisson, 2001; and Lloyd-Sherlock, 2000, p. 114 (on Latin America).
- 101 The expression is from Walter Kälin, Advisor to this project.
- 102 See Cities for Human Rights, 1998.
- 103 See for example, Montréal, 2003.

ABOUT THE COUNCIL

The International Council on Human Rights Policy was established in 1998 following an international consultation that started after the 1993 World Conference on Human Rights in Vienna. It conducts practical research into problems and dilemmas that confront organisations working in the field of human rights.

The Council starts from the principle that successful policy approaches will accommodate the diversity of human experience. It co-operates with all that share its human rights objectives, including voluntary and private bodies, national governments and international agencies.

The Council's research agenda is set by the Executive Board. Members of the International Council meet annually to advise on that agenda. Members help to make sure that the Council's programme reflects the diversity of disciplines, regional perspectives, country expertise and specialisations that are essential to maintain the quality of its research.

To implement the programme, the Council employs a small Secretariat of six staff. Based in Geneva, its task is to ensure that projects are well designed and well managed and that research findings are brought to the attention of relevant authorities and those who have a direct interest in the policy areas concerned.

The Council is independent, international in its membership, and participatory in its approach. It is registered as a non-profit foundation under Swiss law.

How to order Council publications

All Council publications can be ordered through the Secretariat at:
International Council on Human Rights Policy
48, chemin du Grand-Montfleury
P. O. Box 147, 1290 Versoix
Geneva, Switzerland
Phone: (+41 (0) 22) 775 3300
Fax: (+41 (0) 22) 775 3303

All our publications can also be ordered through our web site at **www.ichrp.org**
A link on the home page will direct you to a list of all the publications, then simply follow the instructions. The publications can also be accessed in PDF format on the web site.

For more information about the International Council and its work, please contact us at **info@ichrp.org**

Health, education, water supply, housing, policing, roads: the services that local governments deliver determine our quality of life. Despite this, local government and human rights are rarely linked – human rights activists normally focus on central government while local government reformers tend to apply development and governance models.

Local Government and Human Rights: Doing Good Service suggests how human rights principles and methods can strengthen public accountability and participation and assist officials to plan, implement and evaluate services for which they are responsible. Used thoughtfully, the framework provides practical, specific tools that can help local governments to be effective.

As states decentralise, local governments' influence is increasing almost everywhere. National as well as local officials, and human rights organisations, should look more closely at how they apply and respect human rights.

ICHRP

48, chemin du Grand-Montfleury
P. O. Box 147, 1290 Versoix
Geneva, Switzerland

Phone: (+41 (0) 22) 775 3300
Fax: (+41 (0) 22) 775 3303
ichrp@ichrp.org
www.ichrp.org

