Local Rule

Decentralisation
and Human Rights

ABOUT THE PROJECT

This short report is the outcome of a project that began in January 2001. Decentralisation is proceeding in dozens of countries – but the implications are receiving little attention from human rights advocates and scholars. Wishing to do some work on the relationship between local government and human rights, but conscious that the subject is not well mapped, the Council decided to begin with a modest survey of the issues.

An initial paper surveying decentralisation and human rights issues in the Philippines was commissioned in January 2001. This paper was circulated during the Annual Meeting of the International Council in March 2001, held in Jakarta, where a session was devoted to examining decentralisation issues in the context of Indonesia's political reform process.

In June 2001 we commissioned several additional papers. The researchers were asked to report on the decentralisation process in their country and the extent to which links between human rights and local government were being addressed. They were also asked to identify areas where future research on these links might be useful. The countries were chosen to reflect a range of experiences with decentralisation and to represent diverse regions.

Draft versions of this report were discussed at meetings with the Swiss Agency for Development and Co-operation (SDC) in May 2002 and the Swedish International Development Agency (SIDA) in June 2002. Comments arising from those discussions were then incorporated in the final version.

NEXT STEPS

The Council hopes to carry out further research in this area. At present, work is underway to design a project that would examine the circumstances under which local governments are best equipped to ensure basic economic and social rights. The project might begin later in 2002.

We would be very pleased to hear from individuals or organisations with an interest in such a project and its outcomes.

THE 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 intergovernmental 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.

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INTRODUCTION

The international political system is constructed around states. Grounded in international law and institutionally represented by the United Nations, the system presumes that national governments (whether or not they are elected) represent their societies in international decision-making and assume the duties and privileges of states. At a time of global economic integration, when it is increasingly necessary to find international solutions to environmental, economic, political and social problems, the international system still considers states to be pre-eminent.

In the real world, however, national (or central) governments rarely exercise direct power over the issues that are of most immediate concern to the vast majority of the world's people. Local, municipal or regional governments often matter more. They tend to control the operation of schools, hospitals and health centres, grant or withdraw entitlements to land, water and other resources, recognise property rights and licenses, settle local disputes, and enforce personal civil laws (marriage, divorce etc.). Highly visible on the world stage, central or national governments are much less apparent in the towns, villages and rural settings where most people live.

Indeed, central governments are notoriously remote, especially in countries that have large territories and populations. To overcome the widely observed governance deficiencies that result, in recent years a concerted attempt has been made to decentralise government. In broad terms, decentralisation is a process of reform designed to strengthen local governments and enable them to deliver the specific services for which they are responsible to populations living in the areas they administer. Local officials are accountable to those who elect them, where they are elected. At the same time, their powers are always limited and, in essential respects, local government remains accountable to central government. In the context of this report, decentralisation is a *process*, which increases the power or responsibilities of local governments, which are *institutions*.

Underway since the 1970s, local government reforms have accelerated in the last decade and decentralisation has occurred in numerous countries and in very different regional and political contexts. It is a key plank in the good governance agenda that has been promoted by United Nations and international financial institutions and, because it focuses development priorities and aid at the local level, it is widely seen to be an effective approach for reducing poverty. Also, where minorities exist, decentralisation and local autonomy offer alternatives to political secession and are believed to reduce conflict.

Given this investment, it is not surprising that decentralisation and local government have attracted considerable political and academic attention in recent years. Analysts and development agencies have studied and promoted local government with the aim of improving the effectiveness of poverty-reduction strategies and delivery of basic services. Political scientists and legal scholars have studied decentralisation in relation to governance and the role it can play in democratic reform.

However, except in relation to self-determination and minority rights, little effort has been made to examine local government or decentralisation in relation to human rights. This is somewhat surprising, because human rights have also become more prominent during the period that decentralisation programmes have developed. Both are associated with the ideas of democratic reform and with theories of good government that emerged at the end of the Cold War. These came to dominate the reform agendas that Western governments and Western donor agencies promoted. Core UN human rights treaties enjoyed unprecedented acceptance and ratification during the 1990s. When Kofi Annan took office as UN Secretary General in 1997 he called for human rights to be "mainstreamed" across the UN system. Many international agencies and institutions made formal commitments in this period to apply human rights criteria in their programmes.

There is little information, however, about how human rights and decentralisation affect one another. Does decentralisation help people to enjoy their rights? If so, which ones? Does adoption of a human rights approach strengthen the performance of local governments? If so, in what respects? The work that has been done tends either to romanticise the merit of all that is 'local' or to disparage devolution of power on the grounds that it empowers 'local elites'. Research shows that, where decentralisation is properly designed and implemented, it can promote democracy and a broad 'good governance' agenda.[1]

This is doubly unfortunate. First of all, human rights advocates have generally not considered the effects of devolving substantial power to lower levels of government, even though such a process is likely to create both new opportunities to promote human rights and also some threats to their protection. As a rule, human rights advocates have focused excessively on central government. Few have considered whether they should be lobbying for certain forms of decentralisation, where evidence shows these are effective in securing respect for rights, and against others.

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[1] Richard C. Crook, Decentralization and Good Governance in Federalism in a Changing World –Learning From Each Other, Conference Reader for International Conference on Federalism 2002, St. Gallen, Switzerland.

For their part, few proponents of decentralisation have considered whether the adoption of a human rights approach might strengthen local government's performance and widen the appeal of their argument for local government reform. Putting decentralisation within a human rights framework may help win public support. Use of a human rights approach might also help to overcome some of the obstacles that officials face when they try to implement local government reform.

Purpose of the report

This short report therefore names and explores some of the links between decentralisation, local government and human rights. It is addressed in particular to advocates of human rights on one hand, and people working in local government on the other. The report addresses the following questions:

- What links can be made between efforts to promote effective local government and efforts to protect human rights?

- When do processes of decentralisation tend to promote respect for human rights, or threaten their protection? When might adoption of a human rights framework assist local governments to perform their functions effectively?

- When human rights advocates consider local government, what should they focus on? When local government officials consider human rights, what should *they* focus on? What practical research is needed?

The aim is to develop a clearer picture of what human rights organisations should consider when they think about local government, and what local government officials should consider when they look at human rights. In both cases, serious examination of the performance and responsibilities of local government can only be relative. In the end, their responsibilities and performance can only be judged in the context of central government's responsibilities and performance. We have not attempted such an ambitious analysis. The report is a first step. It provides some basic points of reference for those interested in human rights and/or local government. It will have met its objectives if it usefully indicates some of the effects that local government reform may have on the enjoyment of rights.

Outline of the report

Section one primarily addresses readers who are unfamiliar with decentralisation and theories of decentralisation. It describes what its proponents consider to be the main advantages and what critics believe to

be its weaknesses. Section two summarises – for non-specialists – key human rights concepts and the scope of human rights guarantees.

The third section describes how decentralisation and the powers of local government may influence respect for human rights, noting positive and negative effects. It emphasises that, whether or not the effects are positive, the links between decentralisation and human rights deserve attention. It also looks beyond outcomes and suggests how a human rights framework might help overcome some of the common obstacles to effective decentralisation.

Section four discusses the issues that human rights advocates might take up if they focused their advocacy on local government. The concluding section suggests areas for further research and study.

I. DECENTRALISATION – an overview

Defining terms – decentralisation and local government

Decentralisation is generally understood to involve transfer of power and responsibility from national (or central) government to subsidiary levels, which may be regional, municipal or local. Federal states constitutionally divide power between a federal, central or union government and constituent provinces, states, or cantons. In such federal states, decentralisation usually refers to transfers of power from the primary and/or secondary level of government to tertiary levels. In non-federal states, devolution may be to secondary levels – to districts or regions or *départements* – as well as sub-levels such as city, town or village councils.

"Decentralisation has quietly become a fashion of our time. It is being considered or attempted in an astonishing diversity of developing and transition countries … by solvent and insolvent regimes, by democracies (both mature and emergent) and autocracies, by regimes making the transition to democracy and by others seeking to avoid that transition, by regimes with various colonial inheritances and by those with none. It is being attempted where civil society is strong, and where it is weak. It appeals to people of the left, the centre and the right, and to groups which disagree with each other on a number of other issues".[2]

These distinctions are not clear-cut, however. Where states have a tradition of strong central government (especially where this is or was authoritarian), any transfer of power away from the centre is likely to be described in terms of decentralisation. In Russia, for example, the debate on decentralisation centres on the powers of the eighty-nine constituent republics of the Russian Federation that emerged after the fall of the Soviet system. Elsewhere, there is argument over whether, to be successful, the division of powers between central and local government requires constitutional protection. Some believe that, in the absence of constitutional protection, local governments merely exercise "borrowed power" that can be recalled at whim by central government.[3]

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[2] J. Manor, *The Political Economy of Democratic Decentralisation*, Washington DC: World Bank, 1999, p. 1.

[3] See debates in Uganda in 1994, Josephine Ahikire, "Decentralisation in Uganda Today: Institutions and Possible Outcomes in the Context of Human Rights", paper prepared for the International Council on Human Rights Policy, Spring 2002, p. 6.

Commentators generally distinguish decentralisation from *deconcentration*. The latter term describes situations in which central government offices are moved to the regions but remain under the control of central government.

Commentators refer to three types of decentralisation: *political*, *administrative* and *fiscal*. Political decentralisation involves transfer of power; it occurs whenever political relations and responsibilities between new or existing levels of government are redefined with the effect of increasing the power of lower-tier authorities. Administrative decentralisation occurs when government offices and infrastructure are established in local communities or regions and control over staffing passes to local or regional governments. Fiscal decentralisation occurs when financial resources are transferred to local authorities and when these are granted power to raise taxes. Most agree that successful decentralisation requires action in all three areas.

Decentralisation

"… a process of transferring power to popularly elected local governments". [4]

Discussion of decentralisation often assumes the transfer of power to *democratically elected* local officials. Is there a *necessary* link between democratic election and a reform process designed to empower local authorities? There seems to be no over-riding reason to assume that central government power cannot be transferred to lower levels of government in the absence of free and fair elections. Historically, examples of such processes can be found (for example, during processes of state and imperial expansion). In political terms, however, there is a crucial difference. In the absence of democratic elections, officials are accountable upwards, to central government authorities. By contrast, elected officials are also accountable downwards to those who elected them and for this reason they may be protected (at least to some degree) against arbitrary removal by higher authority. Democratic accountability, achieved by local election, is an essential element of most contemporary models of genuine decentralisation.

A final point is worth mentioning. The literature tends to portray decentralisation as a planned and rational process, undertaken by central government as a matter of policy (policy that, in many countries, is often spurred forward by donors). In fact, the process is not always orderly. Some countries have "decentralised by default" after the collapse of central government or central government authority. This was the case in Russia after the Soviet Union

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[4]   USAID Center for Democracy and Governance, *Decentralization and Democratic Local Governance Programming Handbook*, Washington DC: USAID, May 2000, p. 6.

dissolved. Decentralisation may also occur *de facto*, for example when local authorities claim and secure new powers without the approval of central government.

The process may also be highly politicised. In Chile, for example, decentralisation was initiated by the Pinochet regime in order to weaken the powers of Chile's state – which traditionally had managed many essential services. Local government was subsequently reinforced by the democratic government that replaced the military dictatorship, with the aim of restoring many social services and benefits that the central government no longer provided.[5] In Russia, the state lost power to regional authorities that were generally not accountable either to the population or central government. In many instances, these regional governments stripped resources and authority from city and lower-tier authorities which (with most Russians) therefore tended to welcome the efforts of President Putin to restore state authority and bring them under control.[6] In Uganda, decentralisation was initially promoted to win political support for the National Resistance Movement as it consolidated its grip on power.[7]

Debating the role of local government – purposes and powers

Decentralisation of power to local authorities is thus undertaken for a variety of reasons. To assess its impact or value, one may look at purposes and objectives. One may also look at practical effects and impacts. In either case, it is important to understand the broader context in which decentralisation is being proposed.

Powers of local government vary, and decentralisation processes differ substantially in the type and scope of power that is devolved. In Mali, local governments were assigned responsibility for delivery of basic services, including health care, education, water, maintenance of roads and common land. In India, local authorities manage many aspects of economic development, including agriculture and fishing, land improvement, minor irrigation systems and water management, rural housing and electrification, and welfare programmes. When democracy returned to Chile, as noted, local authorities vastly increased their responsibility for social investments and services. Some local governments (usually at regional level) promote and

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[5] José A. Abalos König, "Development, Decentralisation and Human Rights: Some Precedents from the Chilean Experience", paper prepared for the International Council on Human Rights Policy, Spring 2002.

[6] Tanya Lokshina, "Decentralisation and Human Rights in Contemporary Russia", paper prepared for the International Council on Human Rights Policy, Spring 2002.

[7] Ahikire, "Decentralisation in Uganda Today".

manage significant private sector investment programmes. Powers in relation to land use and planning, and authority over the maintenance of water resources, may also be devolved. Though central governments often retain control over mines, minerals, and the environment, responsibility in these areas may sometimes be devolved to district or state level authorities.

Decentralisation according to its proponents

Proponents argue that decentralisation will improve the efficient provision of services, the quality of governance, economic development and efforts to alleviate poverty.[8]

DECENTRALISATION[9]

For	Against
• Promotes democracy because it provides better opportunities for local residents to participate in decision-making.	• Undermines democracy by empowering local elites, beyond the reach or concern of central power.
• Increases efficiency in delivery of public services – delegation of responsibility avoids bottlenecks and bureaucracy.	• Worsens delivery of service in the absence of effective controls and oversight of standards.
• Leads to higher quality of public services, because of local accountability and sensitivity to local needs.	• Quality of services deteriorates due to lack of local capacity and insufficient resources.
• Enhances social and economic development, which rely on local knowledge.	• Gains arising from participation of locals offset by risks of increased corruption, and inequalities between regions.
• Increases transparency, accountability, and the response capacity of government institutions.	• Promises too much and overloads capacity of local governments.
• Allows greater political representation for diverse political, ethnic, religious, and cultural groups in decision-making.	• Creates new or ignites dormant ethnic, religious rivalries.
• Increases political stability and national unity by allowing citizens to better control public programmes at the local level.	• Weakens states because it can increase regional inequalities or lead to separatism or undermine national financial governence.
• Spawning ground for new political ideas, leads to more creative and innovative programmes.	• Gains in creativity offset by risk of empowering conservative local elites.

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8   Paul Smoke, "Beyond Normative Models and Development Trends: Strategic Design and Implementation of Decentralization in Developing Countries", paper prepared for UNDP, November 2000, accessed at www1.worldbank.org/wbiep/decentralization/library1/smoke.decentralization.pdf on 5 July 2002.

9   Information gathered from: FAO, "A History of Decentralization", accessed at www.ciesin.org/decentralization/English/General/history_fao.html on 5 July 2002; World Bank, "What is Decentralization?", accessed at www.ciesin.org/decentralization/English/General/Different_forms.html on 5 July 2002; and Lidija R. Basta, "Decentralization – Key Issues, Major Trends and Future Developments", accessed at www.ciesin.org/decentralization/English/General/SDC_keyissues.pdf on 5 July 2002.

The argument from efficiency

With regard to efficiency, proponents argue that local governments – *because* they are local – are better placed than central government to know what public services are needed, by whom, and how best to deliver them. This leads, in economic terms, to *allocative* efficiency. Proponents say, further, that where a local authority is genuinely accountable to a local electorate, it will have more incentive to improve the services for which it is responsible. They believe that accountability is essential to improved performance and that accountability is stronger when authorities and those they govern are proximate. The electorate can apply their electoral power more effectively on governments that are local – and elected officials will be more sensitive of their reputation if they belong to the local communities they serve.

Poverty alleviation

Central to this analysis is the notion of participation – the idea that development programmes will be more successful if the communities that benefit are directly involved in their design and implementation. Clearly, meaningful participation of this sort will be easier to achieve at local level. Citizen participation does often appear to be effective, and to reduce costs. The World Bank has found that, although initial training costs can be high, participatory projects are substantially cheaper in the long run and tend to be better maintained. For example, Nicaragua's municipal development program, which was participatory, completed projects 20 per cent faster than predicted and had a 50 per cent higher rate of return than expected.

> *"Decentralisation can be powerful for achieving development goals in ways that respond to the needs of local communities, by assigning control rights to people…who have the responsibility for the political and economic consequences of their decisions".*[10]

Local government – an essential democratic right?

Some proponents claim that devolution should be promoted, not just because it strengthens the performance or *quality* of democracy, but because democracy itself *requires* devolved government. They affirm the principle of *subsidiarity*, according to which decisions should be taken at the lowest possible level, and decision-makers should be accountable at that level. This

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10   World Bank, *World Development Report 2000/2001*, Washington DC: World Bank, 2001, p. 106.

position is adopted, for example, by the European Charter on Local Self-government, a treaty adopted and promoted by the Council of Europe.[11] Article 4(3) states that "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen" and its preamble defends the principle of enhanced democracy as an over-riding aim of decentralisation:

> Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe … [and] that it is at local level that this right can be most directly exercised.

The Worldwide Declaration of Local Self-Government goes further. Adopted by the governing council of the International Union of Local Authorities (IULA), it makes an explicit link between local government and political rights by "recalling" in its preamble that "Article 21 of the Universal Declaration of Human Rights [recognises] that the will of the people is the basis of authority of government …".[12]

Support for this view can be found in the many instances where decentralisation has been undertaken as part of a democratisation process. Examples include Burkina Faso, Mali, the Philippines, and Indonesia, where decentralisation was a key component of reforms designed to re-establish democratic rule.

Decentralisation – according to critics

Decentralisation also has detractors. Some argue that decentralisation has been imposed on many countries by foreign governments and donor agencies as "…one of the cornerstones of the contemporary good governance agenda…".[13] From the perspective of these critics, weakened central government and economic liberalisation are closely associated – and both trends are negative. They argue that, in many instances, decentralisation has coincided with efforts to liberalise the economy, lower trade barriers and privatise state-owned industries. Some claim that decentralisation assists foreign companies to invest on more favourable terms because local officials have less expertise, experience or authority.

Critics also point out that decentralisation may increase the power of central government. Some believe this is indeed one intention. Where government authority reaches partially, if at all, into remoter rural communities, the insertion

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[11]   The Charter can be accessed at www.htmh.hu/dokumentumok/851015.htm

[12]   The Declaration can be accessed at www.iula-int.org/iula/policies/docs/iula-lsg-uk.pdf

[13]   Goetz (2000) in Ahikire, "Decentralisation in Uganda Today", p. 2.

of local tiers of government may increase the power of national officials. In some cases, indeed, the introduction of new local government institutions may subvert or destroy the authority of older, traditional systems. In so doing, even though these institutions may be elected, such reforms can reduce real local accountability. Other critics note the fragility of reform processes when central government retains its power to define the authority of lower-tier institutions. They argue that, when local governments have no constitutional or parliamentary protection against the arbitrariness of central government, their powers are merely 'borrowed' and that decentralisation on such terms is unlikely to bring the long-term benefits it envisages.

> *"Decentralisation sometimes may be a way for the state to penetrate and control the (rural) society … [and] to enhance the leading role of the dominant party or the government".* [14]

National governments can also use decentralisation to slip out of their responsibilities. Where governments are no longer able to provide basic services effectively, because they are indebted, impoverished or mismanaged, national officials will be tempted to transfer responsibility for those services to local government. Critics point out that, in such a context, ill-conceived decentralisation programmes will enable central government to evade its responsibilities while discrediting local democracy and local government reform at the same time.

Others point out a different danger, that secessionist groups may take advantage of decentralisation to promote their cause. Local autonomy may become a step towards eventual dismemberment of the state.

Finally, it is clear that strengthening local institutions can also create new opportunities for graft and abuse of all kinds. All the country studies prepared for this report highlighted cases of corruption, discrimination, electoral manipulation or other violations of rights for which local politicians and officials had been responsible. We return to the problem of local authoritarianism in section three.

Broader trends

Some attribute the popularity of decentralisation to broader causes, in particular the failure of state socialism and the spectacular demise of most of the highly

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[14]   DAC, *Evaluation of Programs Promoting Participatory Development and Good Governance – Synthesis Report*, Paris: OECD, 1997, p. 57.

centralised regimes with which it was associated. The end of the Cold War allowed the re-emergence of a host of minority ethnic, indigenous, religious and linguistic claims for autonomy or secession. In this context, decentralisation of power has been promoted as a way of assisting states that have diverse populations to survive. Widespread and growing scepticism of formal politics is another factor. This is detectable across states in all stages of development and regardless of the ideology of the government in power. Low voting rates in many established democracies are often cited as an indicator of this trend. Disenchantment is perceived to grow as government becomes remote (geographically and in terms of ability to influence its behaviour). In these terms, enhancing the role of local government is part of a more general strategy for reconstructing the legitimacy of government.

"… the mere introduction of decentralisation could fuel unrealistic demands…that local problems would be solved. Of course, the reality was found to be much different. The capacity, resource and administrative constraints that had existed at the central level more often than not carried over to the local level".[15]

This brief report does not explore, let alone resolve, these various controversies. At the outset, however, it may be said that not all the claims that proponents of decentralisation make can be taken at face value. As a USAID manual noted: "Decentralisation is about potential. It guarantees nothing". Equally, some of the criticisms of decentralisation are not generally applicable. The argument, for example, that decentralisation may increase the power of national government must be balanced against the fact that in a number of countries (for example, the Philippines and Indonesia) it has been initiated by reformist governments entering office after periods of authoritarian rule.

Particular decentralisation reforms promise different things. This said, the promises frequently include wider and deeper democratic participation in government, and improved delivery of basic services. Sometimes rather practical objectives are advanced – in Uganda's case, for example, "to reduce the work-load on central government" and "free local managers from central constraints so as to develop structures suited to local circumstances".[16]

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[15]   UNDP-Government of Germany, "Decentralization: A Sampling of Definitions", executive summary of joint UNDP-Government of Germany evaluation of the UNDP role in decentralization and local governance, October 1999, p. ix.

[16]   Ahikire, "Decentralisation in Uganda Today", p. 7.

In some countries, the experience has, on balance, been positive and in others much less so. After a decade of experience, the verdict in the Philippines was that "decentralisation was here to stay, with continued success in local governance and local ownership of appropriate national programmes" because by 2000 one could see "tangible improvements in local governance".[17]

"In Burkina Faso as in Mali, the existence of local authorities in itself enables various rights to be promoted. For the first time in the history of these countries, modern government at a given level has a socio-political homogeneity that allows proper weight to be given to various traditional elements of social and political equilibrium, such as the role of elders, the role of traditional chiefs, the place of discussion in management of the community etc. As a result, local authorities are naturally better accepted than central government, which is distant, nameless and 'foreign' ".[18]

[17]   Santos, "Local Government and Human Rights", p. 6.

[18]   Alain Edouard Traore, "Decentralisation et Protection des Droits de l'Homme: Etude Basée sur les Expériences au Burkina Faso et au Mali", paper prepared for the International Council on Human Rights Policy, Spring 2002, p. 7.

II. UNDERSTANDING HUMAN RIGHTS

Those working in local government or involved in decentralisation processes may be unfamiliar with human rights concepts and with the international system that defines and protects these rights. Our starting point for defining 'human rights' is international human rights law – standards negotiated and agreed by governments that set out rights deserving international recognition and protection as human rights.

The first UN document to define human rights was the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. It recognises all the main human rights, including civil and political rights (such as the right to life, to free speech, to freedom of religion and to take part in government), and economic and social rights (such as the right to health, to social security and to education). The Universal Declaration takes the form of a resolution passed by the UN General Assembly. It is not a treaty that states formally ratify. The main UN human rights treaties include the International Covenant on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.[19]

Some of these treaties have been accepted by almost every state, and most have been accepted by a solid majority of states. More states ratify the treaties every year. In addition, the International Labour Organisation has adopted dozens of treaties that define the rights of workers. These particularly cover health and safety issues, prohibitions on forced and child labour, and the right to organise unions.

States have also formed regional inter-governmental organisations and some of these have adopted human rights treaties. The main regional human rights treaties are: the African Charter on Human and Peoples' Rights, adopted by the Organisation of African Unity, a regional organisation of all African states; the American Convention on Human Rights, adopted by the Organisation of American States, which includes almost all states in North, Central and South America; and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), adopted by the Council of Europe, an

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[19]   All of these treaties, and many other international human rights standards, can be found on the web site of the UN High Commissioner for Human Rights (www.unhchr.ch).

organisation covering Europe that now includes states formed after the collapse of the Soviet Union.

A selected list of human rights

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.

Employees' 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. Discrimination in employment and in the workplace is prohibited.

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. International law also prohibits child labour, employment that might endanger their health or safety, and the exploitation of children.

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 or racial minorities, the disabled and the elderly. It prohibits discrimination and exploitation of such groups.

Right to justice

This includes the right to redress for victims of human rights abuses, and punishment for perpetrators. International law also guarantees access to courts and other procedures, so that further abuses can be prevented.

International law prohibits discrimination

This includes on grounds including race, colour, sex, language, religion, political opinion, national or social origin, birth or other status. It also prohibits forced or bonded labour, and slavery.

Scope of human rights protection

Human rights as protected in international law are not absolute. Most rights are subject to restrictions where public security or the rights of others require it. Many rights can be further restricted in situations of national emergency.

With respect to economic, social and cultural rights, it is recognised that states' duties are subject to resource constraints. States are expected to realise these rights progressively.

III. LINKS BETWEEN DECENTRALISATION AND HUMAN RIGHTS

In what ways does devolution of power influence respect for human rights? What opportunities arise for human rights advocacy in relation to local government? Our point of departure is that impacts may be positive, negative or both. We certainly do not assume that decentralisation *necessarily* improves respect for human rights. In many situations, the effect may be negative – and this risk will no doubt be greater where decentralisation is designed and implemented without taking account of human rights. We begin, however, by discussing ways in which decentralisation may have a positive effect on respect for human rights. Later on, we list some of the risks that may occur when powers of local government are increased.

When might decentralisation improve protection of human rights?

When it enhances political rights

As noted above, the Universal Declaration of Human Rights protects "the right to take part in the government of [one's] country" and provides that "[t]he will of the people shall be the basis of the authority of government…" When decentralisation establishes local democracy where none existed before, this will be a definite gain for democratic rights. (It has also been noted that sometimes the introduction of *formal* democracy may undermine traditional decision-making systems that are legitimate, and in so doing weaken local democracy in certain respects.)

In India, for example, decentralisation considerably widened "the democratic base of the Indian polity".[20] Every five years some 3.4 million representatives are elected if one includes all the village councils, and district, city and town authorities.

When it leads to more effective government

Decentralisation ought to improve governance and public administration. Where power is devolved and exercised closer to the population served, at least in theory those in authority should be in a better position to act responsibly and accountably than office-holders who operate at a greater distance.

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[20] George Mathew, "Panchayatri Raj Institutions and Human Rights in India", paper prepared for the International Council on Human Rights Policy, Spring 2002, p. 2.

Effective enjoyment of rights requires governments to administer many types of programmes and institutions. Fair trials and due process of law require effective courts. Basic civil rights require the establishment and maintenance of official records (of births, marriages, land holdings etc). Freedoms of assembly and association, and rights to privacy and protection from harassment, require effective police forces. The protection of health and provision of education require governments to finance and administer health centres and schools, and provide sanitation and water supplies, veterinary services etc. All these services may be managed more accountably and efficiently at local level. Where this is achieved, devolution of responsibility should lead to improved respect for human rights.

When it helps achieve economic and social rights

It is usually claimed that decentralisation will deliver basic services more *efficiently*. These services normally include housing, education, and health care. As noted above, international law protects basic economic and social rights. If a rural population has better access to schools and health centres, or safe drinking water, as a result of decentralisation, then decentralisation can be seen to have improved protection of these rights. In the Philippines, survey respondents have consistently said that health services have improved since local governments assumed responsibility for them. Further, "while there is no systematic data yet, anecdotal evidence indicates that the socio-economic benefits from decentralisation appear quite strong".[22]

"In less than ten years of decentralisation, more than 90% of newly created urban communes provided themselves with health, education, commercial and sanitation services, which the state had not managed to plan in these places during 40 years of independence".[21]

When it promotes accountability

If government becomes more democratic – at regional, district and village level – people are more likely to believe that they can influence decisions that affect them, and to act accordingly. The notion of accountability is one of the core justifications for empowering local government, and accountability is exercised by participation. Through participation in elections and official

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21   Traore, "Decentralisation et Protection des Droits de l'Homme", p. 9.
22   Santos, "Local Government and Human Rights", p. 7.

meetings, members of the public can ensure that their views are sought and heard.

The idea that governments (and other powerful actors) should be accountable, and that any person may properly seek remedies when their rights are abused, is central to human rights. If populations, which have been marginalised or have never exercised political influence, perceive that they can influence decisions through local democracy, they are likely to be more willing to assert their rights. There is no surer way to retard respect for human rights than spreading the belief that speaking up is pointless.

In the Philippines, "Nation wide survey data shows that citizens are more satisfied with their local governments than with the national government and feel they are more able to influence the former than the latter".[23] Similarly, in China, elections have been permitted at village level, where citizens are able to vote for candidates of their choice. Outside observers have detected in this process the "signs of a democratic spirit" which, if developed, could have far reaching implications in the country.[24]

When it increases local autonomy and empowers disadvantaged group

In certain cases, decentralisation and increased autonomy – for minority linguistic, religious or ethnic groups – may be linked explicitly. District and regional boundaries may be redrawn to ensure that a particular group is in the majority. In Uganda, eleven entirely new districts have been formed in the past five years specifically to give a political and territorial form to ethnic or linguistic groups. Where the population of rural areas is predominantly indigenous, or otherwise distinct from the urban population, establishing local democracy can enhance their autonomy and their control over policies that affect them.

The best planned decentralisation processes widen and deepen democracy. This creates opportunities to bring disadvantaged or marginalised groups into the electoral process. A proportion of seats on local councils may be reserved for women, indigenous groups or lower castes. In India,

> A large number of formerly excluded groups and communities are now included in these decision-making bodies. As the Indian population has 14.3% Scheduled Castes (SC) and 8% Scheduled Tribes (ST),

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23 Santos, "Local Government and Human Rights", p. 6.

24 Amy Epstein Gadsden and Anne F. Thurston, *Village Elections in China: Progress, Problems and Prospects*, International Republican Institute, 2001.

about 660,000 elected members, i.e., 22.5% of the total membership in the rural and urban local bodies will be from Scheduled Castes and Tribes.

The right of women to vote may first be recognised at local level. Broadening democracy creates real opportunities to improve protection of women's rights. Where women have been prevented from participating in national politics, their involvement in local elections may be promoted. In India, for example, one-third of all seats and all chairpersons are reserved for women – so over one million women are elected to 3 tiers of panchayats (local government institutions). Even where affirmative action programmes are not in place, women often participate more actively in local politics. In the Philippines, women make up 25% of elected local government officials. When Bolivia decentralised, it legally recognised local forms of organisation and involved them. The law on citizen participation affirmed that civil society organi-sations, including ethnically-based ones, were the principal discussion partners of local government. As a result many indigenous and peasant organisations have participated in the work of local authorities and in managing their affairs. Bolivia's experience has confirmed that, while the process is a long-term one, local actors have been willing to assume responsibility and take care of the institutions and financial resources that decentralisation has made available.

"Women's political empowerment in the last nine years through the Constitution Amendments has exploded several myths, like the belief that they are passive and disinterested in political institutions; only the well to do, upper strata women will come through reservation; only the kin of powerful politicians will enter panchayats through political connectivity to keep the seats for them; and lastly and most importantly, women are only proxy – 'namesake' – members and they do not participate in the panchayats. Without discounting the existence in panchayats of some women who do fit into this patriarchal framework, one can say that these myths have now been buried. Today the buzzword is that women can do it". [25]

No guarantees

It must be stressed that none of these outcomes is assured. Proper design of decentralisation is essential. In the next section, we examine some of the risks that may accompany decentralisation and empowerment of local government.

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[25]   Mathew, "Panchayatri Raj Institutions and Human Rights in India", p. 11.

When might decentralisation undermine protection of human rights?

Central government – as force of modernisation?

In Section four we look more closely at the relationship between central and local government. From a human rights perspective, central government has always traditionally been treated as the primary *protector* of human rights and also the primary *abuser* – in both cases by virtue of its untrammelled power over judicial and armed force. Modern *legal* theories of human rights often argue that nation states require a strong central government to curb the abuses of local powers and religious authorities, alongside strong restraints on central government to curb it from abusing the rights of citizens and other independent institutions. This is why the rule of law is a central theme of human rights. It is assumed that fairness and justice can only be achieved if laws are administered consistently and independently and that this requires a central authority and requires the central authority to submit itself to its own law.

Historically, this idea took root within national jurisdictions, to end misrule by arbitrary and 'backward' local powers. Central government protected citizens against abuses by powerful landlords, barons, military chiefs and other local actors.

More recently, central government came to be perceived as a modernising force, responsible for establishing and protecting security and for developing and sustaining economic activity. More recently still, the state claimed an essential role in promoting literacy and health, eradicating poverty, providing social welfare for the elderly and other vulnerable groups, and protecting minorities from discrimination and intolerance.

In this context, the countryside, the village, and that which is 'local' have been associated with abuses that the rise of central government was meant to check. This experience is not merely a European one. According to BR Ambedkar, the drafter of the Indian constitution, "villages were the ruination of India because a village in India is a den of ignorance, communalism and corruption".[26]

When power is devolved and passes back to local government, might the result not be to undo or reverse progress due to the interventions of central governments? Might devolution re-empower traditional forces that, historically, have been associated with abuses of human rights? Or weaken the administration of justice? Or re-create conditions in which economic and social

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[26] Mathew, "Panchayatri Raj Institutions and Human Rights in India", p. 7.

inequalities are addressed unevenly or not at all? The remainder of this section examines such questions.

A core assumption is that central government's role remains essential following decentralisation. Local authorities are unlikely to perform well if central government does not fulfil its own responsibilities. In this sense, devolution is not about reducing the *responsibility* of central government, though it is about increasing the powers of local government. Decentralisation is not a zero-sum game.

We also distinguish between intended and unintended violations of human rights. Descriptions of local government reform frequently mention intentional abuses: diversions of public funds, corrupt allocations of public contracts, manipulation of local elections, discrimination against minorities, biased appointments, corrupt officials and police etc. Some failures of policy, however, which lead to violations of rights, are unintended. Clearly, both problems invite and require a political response, from central government, from the local authorities concerned and from the populations affected. The frequency of intended abuse, however, should not blind us to the importance of unintended violations of rights. These are likely to be particularly important in relation to economic, social and cultural rights. We try to identify and distinguish both problems in the discussion that follows.

When local populations are disempowered

Strengthening local government can promote political participation. At the same time, it might entrench the power of local elites and fiefdoms which can stifle the political process. This problem may be particularly common in poorer rural areas (though cities can clearly be sewn up by political elites as US experience in the early 20th century demonstrates). Without forms of regulation, in fact, decentralisation is as likely to produce bureaucratised and corrupt local elites as it is to promote local democracy. (See below for a longer discussion of this problem.)

A less obvious risk is that national institutions may be weakened, reducing effective public participation in national political life. National institutions, such as professional associations and trades unions, are often bureaucratic and insensitive to change. They can be corrupt and discriminatory as well. At the same time, they are in a position to reflect the interests of different groups in the country, to set national standards, and they can provide clear lines of accountability. Where they can negotiate effectively with central government, they can often achieve policy decisions that are fairer, for their members as a whole, than numerous local agreements.

When national institutions are disempowered

Another unintended effect of decentralisation may be to weaken or fragment national institutions, thereby damaging the capacity of government (central or local) to deliver services or protect rights. For example, devolving authority over the police may improve their effectiveness. It may also lower standards of training, reduce levels of independence and accountability, or increase corruption. In the case of the police, the effect of lowering standards of performance are obvious and serious. For most people all over the world, levels of human rights violations are directly associated with the quality of policing.

When decentralisation exacerbates social divisions

It has been noted that decentralisation may be employed as a tool to manage and address linguistic, ethnic and cultural divisions. In doing so, it may exacerbate or create new tensions. When 'minority' groups are empowered, as a result of transferring political power to local institutions in which they command a majority, new minorities may be created – which may be marginalised or oppressed in their turn. Uganda, for example, has a complex ethnic composition. Some observers argue that decentralisation reproduces at local level new ethnic and cultural divisions. "… [T]he notion of territoriality and homogeneity embedded within the logic of decentralisation in Uganda creates an unending chain of marginalisation and the quest for autonomy".[27] When an ethnic group dominates in a particular district, it tends to favour its own people and marginalise smaller ethnic or immigrant groups. In some cases, such groups are effectively excluded from access to local services.[28] Similar problems, on a different scale, have been observed in Russia, where numerous regional or city authorities (in Astrakhan, Krasnodar, Tatarstan, Khabarovsk, Moscow, Rostov etc) have passed laws restricting the residence or political rights of "outsiders".[29]

At its worst, decentralisation may promote separatism and thereby worsen levels of human rights abuse. Decentralisation helped aggravate conflict in eastern Uganda, for example, because the nomadic Karamoja were increasingly excluded by local officials from access to land and resources.[30] "This is a very clear case of the potential risks of decentralisation, which has created a strong identity of small "nation states" at the local level, further

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[27] Ahikire, "Decentralisation in Uganda Today", p. 15.

[28] Ahikire, "Decentralisation in Uganda Today", pp. 15-16.

[29] Lokshina, "Decentralisation and Human Rights in Contemporary Russia", pp. 16-17.

[30] Ahikire, "Decentralisation in Uganda Today", pp. 17-18.

problematising the relationship between nationality and citizenship".[31] It would certainly be unfortunate if promotion of decentralisation led people to overlook the fact that notions of national citizenship are important for stability and for building and strengthening national institutions.

When it deepens inequality

Decentralisation may cause or increase inequalities between regions. Richer regions and districts get off to a fast start and have the capacity to maintain and attract investment, which in turn provides the tax base to expand and further improve the quality of education and other government services. Poorer regions begin with less capacity and fewer resources and cannot compete. The problems they face are often exacerbated by geography and climate.

When inequalities increase between regions and communities within a single state, the longer-term political consequences can obviously be serious. Regional tensions and mistrustfulness may increase, social problems in poorer regions may worsen (especially if living standards actually fall following a decline in investment from the centre), national institutions (parliament, army, police) may fracture, and forms of local nationalism and secessionism may emerge or become more prominent.

This is not an abstract concern. Economic disparities have clearly increased in some of the countries where decentralisation has occurred. It has been a problem in Russia, for example, where the removal of state subsidies to poorer regions led to widening disparities in capacity, tax income and services – eventually causing a 'tax war' in which different tiers of local and regional government competed for control over sources of revenue.[33] In Uganda,

"A strong case can be made that granting greater autonomy to local jurisdictions … can exacerbate territorial inequality".[32]

too, "decentralisation has widened the gap between rich and poor districts, making the former richer and the latter poorer".[34] In Chile, local and regional tiers of government were given more resources by the incoming democratic government that replaced the military regime in 1990. Nationally, levels of poverty fell sharply and indicators of social development (access to housing, health services, schooling etc) improved. Nevertheless, some regions

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31   Ahikire, "Decentralisation in Uganda Today", p. 18.

32   USAID Center for Democracy and Governance, May 2000, p. 65.

33   Lokshina, "Decentralisation and Human Rights in Contemporary Russia", pp. 6-8.

34   F. Muhereza et al. in Ahikire, "Decentralisation in Uganda Today", p. 18.

advanced far faster than others and some population groups were isolated from the rest of the country's economic and social progress. Whereas Santiago, and the regions of Tarapaca, Antofagasta and Magallanes (all with mining economies), benefited strongly, "rural communities, especially the ones situated in isolated territories, mainly in the furthest removed regions and provinces, with indigenous populations, have the worst poverty indicators, along with high emigration rates, particularly of young people or people with high educational levels".[35]

When it lowers standards – when economic and social rights regress

Many central governments have failed to deliver basic services to the people they govern. But there is no guarantee that local governments will do better. Where central government fails to set and effectively monitor standards for local government, and other forms of accountability are absent, it is clear that devolving power to such local authorities may cause standards to fall.

Three kinds of problem may emerge in such cases. In many instances, standards of provision fall because local officials drain money from the budget into their pockets, or allocate public contracts corruptly (leading to substandard or overpriced work), or exclude minority or marginal groups from access to services. These are problems of intentional abuse.

In a second group of cases, the decline in provision is due to shortfalls in income. In some instances, the central government ceases to transfer resources to local authorities which then cannot raise an equivalent income from taxes.[36] In others, income levels remain stable (or fall) but the demands made on local governments increase, for example because the national government (or the local authority itself) passes new laws.[37] In still others, budget allocations agreed during decentralisation fail to reflect the real obligations that local authorities must meet.

In relation to health, for example, both Bolivia and the Philippines applied fixed funding formulas to allocate national revenue between local governments. These failed to take into account the level of existing health facilities that local governments inherited and the services they were expected to provide. As a result, local authorities inherited expensive new responsibilities, such as hospitals, and were often unable to maintain the level of service previously provided. In Papua New Guinea, several provincial governments failed to pay

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[35]   König, "Development, Decentralisation and Human Rights", sections 4.1 – 4.3.

[36]   Ahikire, "Decentralisation in Uganda Today", p. 10.

[37]   Lokshina, "Decentralisation and Human Rights in Contemporary Russia", p. 7.

for nurse aide training which had been decentralised to them. Within four years, the training capacity for this important staff category fell from 13 government schools with 135 annual graduates to 3 schools with 13 graduates.

With respect to education services, evidence about the impact of decentralisation is mixed and limited. In Brazil, overall access (enrolments) increased, but decentralisation has done little to reverse persistent regional differences in access to schooling, per capita expenditure, and quality. Chile's experience suggests that, where adequate resources are made available through local authorities, decentralisation can indeed have a positive effect on education, poverty, housing, etc. As noted, however, it remains difficult to remove or reduce regional income inequalities: poorer communities continue to have poorer services. These results are supported by experiences in Zimbabwe and New Zealand.

Local governments are rarely able to cover the costs of their budgets – including their statutory obligations – from local resources. Usually they remain financially dependent on central government, and this is especially true of poor regions, which do not have a strong tax base. Central government policy plays a crucial role in this area. The provision of additional resources, targeted particularly at poorer communities, is probably a necessary component of most decentralisation programmes.

Additional issues arise in relation to strategic investments (roads, railways, airports, telecommunications networks etc), that require central government involvement because of their cost and because they are of national interest. Central government has a responsibility to ensure that poorer regions also benefit from national investments of this kind, and that local authorities are assisted adequately to manage their impact.

The third problem also concerns the relationship between national and local government. In some instances, standards fall because a service provided locally is less efficient, or excellent, than a service provided nationally. This can be due to loss of economies of scale, or because local services are simply less professional. There appears to be a strong case for saying that certain functions and services are best retained by the centre. This might be true of curriculum design in education, for example; of auditing and standard setting; and professional training in some fields. Particular problems can arise when environmental regulation is locally devolved.[38] It is not simple to say which functions and services the centre is likely to manage better. The question deserves further research.

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[38] Ahikire, "Decentralisation in Uganda Today", p. 18.

When it provokes violence

In some cases, decentralisation has been followed by increased violence. We have already noted Uganda's experience in relation to treatment of the Karamojong. This was attributed essentially to conflicts between social (ethnic) groups and to some extent competition for resources.[39]

In India, local elections are marked by violence in many areas; newly elected councillors have been intimidated, beaten and killed, and the police have been ineffective in pursuing those – usually from upper castes – who are responsible for the violence.

> There has been a sharp increase in violent manifestations of casteism in local communities ever since the local government system got strengthened through the Constitution amendments. When the panchayati raj institutions have been seen by the upper castes as the tool for the lower castes to assert their right as individuals living in a democratic polity the latter have become targets of caste based discrimination and violence.[40]

In India's case, violence has increased because local government reform threatens the power of a traditional elite. Democratic reform is not discredited, of course, because a privileged group violently opposes it. Nevertheless, in the absence of effective state action to prevent such violence, it is likely that many local people will perceive decentralisation to have threatened their physical security.

When it empowers local elites

It is obvious that local governments – whether new or not – may be led badly, by people who oppress those they govern and suppress rights. Decentralisation may allow local forms of abusive or corrupt rule to (re)assert themselves. Local government institutions may be captured by individuals or political parties that do not subscribe to human rights, resent national laws, are intolerant

"In a traditional society any change that has structural implications involves conflict".[41]

of minority communities, or have no intention of serving the needs of those under their authority. The result is "local authoritarianism", which may be class, ethnic, or gender-based.[42] Once the mechanisms of local government are

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39   Ahikire, "Decentralisation in Uganda Today".

40   Mathew, "Panchayatri Raj Institutions and Human Rights in India", p. 4.

41   Mathew, "Panchayatri Raj Institutions and Human Rights in India", p. 13.

42   USAID Center for Democracy and Governance, May 2000, p. 65.

within their control, the patronage opportunities offered can enable an elite to sustain its control without the need for violent or even overtly illegal methods. Such elites may entrench old forms of discrimination within new institutions. As we have seen, new forms of discrimination can also emerge, when new boundaries create new minorities and a new dominant group. Many authors, including all the country researchers commissioned to write background papers for this survey, have noted serious problems of this kind. There is much debate, too, about whether transfer of power from central to local government increases corruption and misuse of public authority. Where traditional forms of authority do reassert themselves, women's rights and gender equality are particularly at risk. Clear examples were provided from Uganda and also India. In both cases, many women have been elected to local government positions following decentralisation, but there is concern that, at the same time, old traditions of gender subservience are being reintroduced by local governments.

"Although corruption is prevalent at the higher levels, when it happens at the grassroots level its impact is felt more on the poor and their right to livelihood".[43]

As previously noted, central government clearly has an essential responsibility in relation to abuses of local power. Some of the ways it can intervene without improperly undermining the decentralisation process are discussed below and in the next section. They include regulation, audit, investigation of allegations of abuse (by officials, police, etc), and development of institutions that monitor human rights (ombuds offices, human rights commissions, etc). Of course, one (wo)man's authoritarian is another's traditionalist. The example given above of the imposition of 'traditional' gender roles signals an issue that needs careful attention. When central government sanctions the conduct of local officials, who decides that it is acting responsibly rather than interfering or being offensively insensitive to local values? Where the law is evidently broken, the issues are less thorny;

"Decentralisation creates a space for cultural expression that rearms those who are in a position to determine the 'common good'. The ways in which tradition could reposition itself within this relatively democratising trend may have far reaching impact on women's rights, threatening to undermine the progress that is already registered nationally.... ".[44]

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43   Mathew, "Panchayatri Raj Institutions and Human Rights in India", p. 7.

44   Ahikire, "Decentralisation in Uganda Today", p. 20.

even so, many crimes – like 'corruption' – are often slippery concepts to apply. How is accountability in relation to central government (national standards) to be reconciled with accountability to the local population (local standards), when there are important differences of opinion?

When might human rights be good for decentralisation?

We asked above whether decentralisation might be good for human rights. The question can be reversed: when might adoption of a human rights approach and human rights principles help decentralisation? Adoption of a human rights approach may be particularly relevant with regard to four risks associated with decentralisation (three of which have already been mentioned):

- where local participation is weak or civil society is marginalised;
- where power is captured by local elites;
- where decentralisation worsens local or regional economic inequalities; and
- where a solid legal framework is absent.

This list is not complete. A human rights approach may also be helpful in relation to other challenges that decentralisation encounters. In these four areas, nonetheless, it is clear that applying a human rights approach might help to overcome particular difficulties.

Enhancing local participation

In Section 2 we noted that local government is less likely to achieve its objectives in the absence of greater local involvement in planning and decision-making processes. Most evalua-tions and surveys of decentralisation conclude that active civil society involvement in the process of decentralisation and in mechanisms of local governance are essential to the success of any reform process. Adopting a human rights approach might strengthen participation, and should strengthen the association between decentralisation and participation, in three ways. Firstly,

"Perhaps the key challenge in building decentralisation is to stimulate local people to use their local governments to help meet their needs more fully. …".[45]

the human rights approach is centrally about empowering the individual in relation to political authorities. Human rights standards provide a specific list of rights and freedoms that the individual can legitimately claim. They focus

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[45]   Smoke, 2000.

primarily on rights in relation to central government, but the principles of human freedom that human rights standards define can be applied equally well to local authorities. In sum, the human rights approach empowers because it promises people that they can make legitimate claims. It does not render them passive (as the language of charity or relief aid does), nor is it technical (as the language of administration is). Because it emphasises freedom to speak and act, its language can be inspirational. In addition, it has legal weight.

Secondly, human rights standards provide a specific list of responsibilities and duties that (local) government authorities ought to fulfil. Adoption of a human rights approach enables voters, consumers and citizens to assess the performance and behaviour of local government and local government officials in ways that are relatively precise and transparent – and also have some legal weight. It should be stressed that this is useful to local government officials as well. To the extent that both parties – the providers of services, and the consumers of services – can agree what is expected of local government, local participation in raising and maintaining standards is helpful to both sides.

Thirdly, the human rights approach is characterised by an explicit and persistent interest in discrimination and, by extension, tolerance of difference. Human rights principles emphasise the importance of balancing the rights of different people and groups, as well as protecting those who suffer disadvantage and discrimination. As we have seen, many of the worst violations or abuses of rights (unintended as well as intended) affect people who belong to poorer communities, to minorities, and to social groups that are relatively powerless. Use of human rights standards to assess the perform- ance of local government and the effects of local government policies would highlight many of the instances of inequity and

"Local government is owned more by the people than central government is, and helps citizens' movements to emerge more quickly".[46]

discrimination that we have discussed, and would help national and local officials (and the public) to identify where reform or intervention is required. The principle of tolerance is particularly important to participation. If the purpose of decentralisation is to invigorate the democratic process, precautions are necessary to protect the freedoms of those who are in a minority. The human rights approach provides strong justifications of tolerance in terms that have legal weight.

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[46]   Traore, "Decentralisation et Protection des Droits de l'Homme", p. 7.

Checking local abuses

How might the adoption of a human rights approach help reduce the influence of local elites and officials who abuse their powers? First of all, as already noted, the human rights approach attributes specific duties to specific authorities and it affirms specific rights that individuals can claim. Together, these provide rather practical measures of performance by which to judge the behaviour of local (as well as national) officials and policies.

Secondly, the human rights approach has identified the importance of monitoring and reporting. This tradition is well-developed, and human rights advocates and activists are used to collecting and presenting facts, and assembling arguments based on fact. It provides a methodology for assessing performance, and is useful also because it causes those using a human rights approach to press government (local and national) to keep records and statistics and monitor performance. In this instance, it would be important not only to encourage local authorities to keep good statistics and records, but to encourage national authorities to do so.

Thirdly, the human rights approach emphasises the importance of freedom of speech and communication of information.

Combined, these elements provide tools for (a) identifying the abuses of local elites transparently, (b) monitoring and describing those abuses objectively, and (c) publicising them. Taken together, and presuming public support, they provide local accountability. It is likely, however, that in many cases this will not be enough. No doubt, central government must also play a role in keeping local elites in check. Central government can apply the same principles to achieve upward accountability. It can use human rights standards to identify violations and abuses committed by local officials; it can establish institutional arrangements for regular monitoring and reporting; and it can strengthen public understanding and support for local government by making public the actions that central government takes to prevent abuse and corruption. Abusive local officials who are subject to downward (local) and upward (national) accountability effectively are likely to be squeezed out of existence.

Focusing on equity

Avoiding inequitable economic development is perhaps the most difficult problem that decentralisation programmes face. The merit of applying a human rights approach to this challenge is that human rights principles would oblige central government to consider this complex issue carefully. It would equally oblige local government officials to avoid obvious forms of economic and social discrimination.

With respect to central government, human rights standards require governments to make progress in providing their peoples with access to adequate education, health care, housing and other social and economic rights. This obligation means that they have a responsibility to ensure that where the population of a region have worse education, health, housing etc than before decentralisation occurred, they should take action to restore their access to these services. They also have an obligation to ensure that other parties, including local government officials, do not harm the access that people have to education, health, housing and other economic and social rights that people should enjoy. They have an obligation to ensure that such institutions respect certain standards.

As a result, when it devolves power to lower-tier governments, central government is obliged to monitor the effects on services to which people have access. It is required to take steps to ensure that decentralisation does not damage the rights of particular groups or particular regions. The services to which people have access should not worsen. This implies making provision for targeted subsidies and special provision for poorer regions and vulnerable groups. In addition it must make sure that investments in crucial areas, including education, health, water, housing, communications etc, are such that enjoyment of those rights will improve rather than regress in the future. All this implies a reporting and an enforcement system. Without information, central government cannot tell whether it is meeting its obligations or not. Without an enforcement system, it cannot take action to stop violations or abuses (both intended and unintended), where they occur.

The responsibilities of local government can be similarly described, if they adopt a human right approach. They too will be obliged to ensure that they monitor the impact of their policies on the populations they govern. They will need to ensure that their policies do not harm the access of those people to education, health, housing and other rights. They will need to invest adequately in provision of essential services, and to ensure that people's access to rights progresses rather than regresses. They will need to put in place information systems, to establish whether their policies have a positive or negative effect, and enforcement systems to stop violations (intended or unintended), when they are detected.

Overall, adoption of a human rights approach would require both central and local authorities to act in ways that would promote equitable outcomes for all the people they govern. The approach also provides central and local authorities with a language that justifies support for measures that oblige richer communities and regions to transfer resources to poorer regions and communities, and protect traditionally disadvantaged groups against direct and indirect forms of economic and social discrimination.

Promoting a strong legal framework

Decentralisation stands a better chance of success where the process, the authorities it creates, and the allocation of powers are grounded in a solid legal framework. Some commentators believe the best guarantee of success in this regard is to anchor the rights (and duties) of local authorities in the constitution. Whether this is essential is disputed; most agree, however, that there ought to be some clear legal mandate that moves the process forward and provides an essential – and neutral – reference point for resolving the inevitable disputes that arise.

Here too, a human rights approach may assist decentralisation. Human rights are normally protected in constitutions, and national laws and practices that fall foul of those rights must necessarily be amended or rescinded. The *legal* protection of human rights is essential. Indeed, it is what distinguishes human rights claims from the advancement of other moral claims. Were decentralisation explicitly linked to human rights, the case for its legal foundation would be strengthened.

Essentially, we return here to the crucial importance of the rule of law. Many of the problems that occur in the course of decentralisation are about uneven effects: the uneven effects of local government reform on regions that are impoverished and prosperous; the uneven influence of local government policies on different groups, notably on poorer and more prosperous communities; and the creation of disadvantage and advantage by discrimination and exclusion. Such unevenness – or injustice, or inequity – can only be removed by policies that vigorously promote fair and consistent effects. In practice, such policies do not 'stick' in the absence of an enforcement process that is effective and a legal framework that is independent of political powers.

No sure outcomes

It may be helpful to emphasise that what is being recommended above is a methodology. Use of a given approach does not by itself guarantee a positive outcome. Actual outcomes depend on numerous factors. It is not therefore being argued that adoption of a human rights approach will automatically or necessarily resolve the difficulties that occur in the course of decentralisation. We make the less ambitious and less romantic claim that a human rights approach will be useful, certainly where it can be applied in favourable political contexts.

IV. ON CENTRAL AND LOCAL –
positioning human rights advocacy

At different points in this report, we have alluded to the role of central government in decentralisation and, more generally, to the relationship between central and local governments.

For historical reasons, as noted, most human rights law was conceived with national governments in mind. As a result, official international scrutiny of a country's human rights record focuses almost exclusively on the performance of central government. When states ratify most UN human rights treaties, they agree to at least limited forms of supervision by expert panels set up to monitor their implementation. These "treaty bodies", however, only meet with central government authorities. When UN experts visit countries to investigate human rights, they usually raise complaints with central government, even if the abuses are being carried out by lower levels of authority.

For similar historical reasons most human rights NGOs also focus their work on central government. In preparing this report, we asked those preparing country papers to describe the extent to which human rights NGOs in their countries were actively following debates on decentralisation, or were engaged in lobbying and advocacy work with local governments. With very few exceptions, they reported that human rights NGOs are only fitfully involved in debates on decentralisation. Where federal states exist, both national and international human rights NGOs give some attention to their constituent republics, states or provinces. Even in these cases, however, they are presumed to have secondary responsibility.

Most of those consulted would probably agree with the conclusion, reported from the Philippines, that, although both human rights and decentralisation are prominent issues, debated over many years,

> … there has not been much interface, especially conscious and deliberate, between the two. What is immediately striking about the Philippine experience with both local government and human rights, is that these two tracks hardly interrelate, at least not through concerted efforts. This is true not only among those who have gone deeply into either field, but also among those who have had substantial exposure to both fields. The connection is simply not readily made.[47]

It is also the case, as we noted at the beginning, that the wide and varied literature on decentralisation makes almost no reference to human rights.

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[47]   Santos, "Local Government and Human Rights", p. 7.

NGO advocacy and local government

What accounts for the fact that those promoting human rights seem relatively uninterested in decentralisation processes? Why are promoters of local government not consciously advancing human rights goals or placing decentralisation in a human rights framework? The linkages identified in Section 3 appear straightforward. Different reasons might explain this apparent gap in understanding. It is worth examining, to get some sense of whether in practise the gap can be narrowed.

Human rights advocacy is anchored in and inspired by efforts led by the UN, to define and protect these rights in international law. The protection and promotion of human rights is driven forward at international level. The system is built on inter-state relations and the idea that 'states' alone can be held accountable at this level. Diplomatic protocol requires that, where it is appropriate to raise human rights issues, this must be done with 'state' representatives. 'States' ratify international human rights treaties and states report to the official bodies set up to monitor these treaties. Foreign ministry officials from central government represent states in the international forums where human rights are discussed and debated.

International actors, whether official or NGO, also face practical difficulties when they address concerns at sub-national levels of government. Limited time and resources mean that it is difficult to identify and address the range of local officials that might have some responsibility for a pattern of abuses (unless the abuse in question is strictly limited to a particular local authority). The fiction that the 'state' and the central government that represents it is responsible for all that happens in the territory is convenient for international advocates. In addition, both national and international human rights advocates, have good reasons to focus on central government. Legal protection is an essential feature of securing respect for human rights, and in most countries constitutions protect these rights and grant to the national parliament and a single supreme court the ultimate authority for amending or interpreting these rights. The three branches of government (executive, national parliaments and constitutional courts) will be located in a capital city, and national NGOs will also be based there.

"Human rights concerns and advocacy in Uganda have therefore concentrated at the centre/national level and the question of local government has largely been left to scholars of public administration who tend to concentrate on managerial performance and efficiency".[48]

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[48]   Ahikire, "Decentralisation in Uganda Today", p. 3.

Further, traditional human rights advocacy has focused on civil and political rights, and especially around the abuses of military and security forces that tend to be the exclusive responsibility of central government. Police forces too, long a focus of concern, tend to be the predominant concern of national governments, or, in federal states, state legislatures.

The need for more attention

While one can explain past inattention, it is difficult to justify continued neglect of decentralisation and local government by human rights advocates. As already noted, decentralisation processes create both risks and opportunities for human rights protection. In relation to both, those concerned with human rights have cause to give greater attention to local government.

It might at first be assumed that giving more attention to local government implies lessening the focus on central government. Some human rights organisations would certainly be concerned if that was the outcome. This is not the conclusion to draw, however. The argument of this report is that, while decentralisation can strengthen public accountability by strengthening public participation in government, the role of central government remains essential to its performance. Where central government fails to fulfil its own responsibilities, or fails to regulate and audit the performance of local authorities, local governments are unlikely to deliver the benefits that decentralisation promises.

Local governments remain elements in a larger polity: they are not independent but politically and usually economically dependent and they enjoy limited not sovereign powers. The quality of the relationship between central and local government is crucial to local government's performance, just as a local government's relationship with its electorate is crucial to its political legitimacy.

In broad terms, of course, central governments also determine the political character of most decentralisation processes. While some argue that human rights advocates ought to support democratic decentralisation because the concentration of political power in a single national government has often led to authoritarian rule or dictatorship, others can say that decentralisation was first introduced in Chile by a dictatorial regime in order to destroy the influence of central government. In Chile and in the Philippines, supporters of decentralisation can be found on both left and right. Decentralisation cannot be tagged politically in a simple manner. It can equally be argued that well-governed states positively influence the effects of decentralisation in numerous ways by establishing a coherent political framework for local governments, making them properly accountable, and providing the financial resources they need.

Neither local nor national governments are ideal institutions. Both can be authoritarian, corrupt, discriminatory, and anti-democratic – or support opposite values. What is the proper relationship between them? Which tasks does each tend to fulfil better? How can they best be organised to act in a complementary manner that promotes respect for human rights? In this report, we have argued that local government may well be able to fulfil certain tasks better than central government. The merits of greater participation are evident. Other tasks – the judicial system, auditing and financial controls, education and health standards, certain kinds of professional training, monitoring of discrimination and human rights violations by specialist national organisations such as ombuds offices – may be better done centrally.

The essential point to make is that giving more attention to local government is complementary to monitoring central government – not least because central government should be monitored in relation to its management of local governments. These are not alternatives; attending to one does not imply lessening attention to the other – merely a differently defined focus.

"The hypothesis is that the realisation of human rights – including economic, social, cultural, political and other rights – implies the recognition of peculiar local realties faced by certain social groups and individuals. This demands that the responsiveness of the state – responsible for the public good – is flexible, localised and fully participatory. In other words, it requires decentralised public action".[49]

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[49] König, "Development, Decentralisation and Human Rights".

V. AREAS FOR FURTHER STUDY

This report has a modest aim. We hope it argues persuasively that links between decentralisation and human rights deserve further analysis. We suggest four areas where further work might be particularly relevant.

Local government and economic and social rights – risks and opportunities

Although the powers of local governments differ widely, decentralisation processes typically devolve the provision of basic services. Local governments are increasingly responsible for basic health care, primary and secondary education, housing, water supply, sanitation and so forth. As noted above, many of these services correspond to economic and social rights guaranteed by international law. Many evaluations and studies of decentralisation have examined the costs and benefits of decentralising responsibility for basic services, but very little analysis has been done of results in terms of human rights.

What are the strengths and weaknesses of local governments in this area? If decentralisation of powers were understood to involve transferring responsibility for the implementation of rights, what difference would it make? How can governments strike an appropriate balance between catering to local needs and guarding against lowering of standards?

In the countries we looked at, commentators suggested that, if a rights-based approach were to be included in decentralisation programmes, some services would probably be delivered more efficiently and fairly. In the Philippines, for example, "[h]uman rights advocacy provides the way wherein non-empowered or less empowered sections of the people, particularly those at the grassroots, could intervene in development projects that change their very lives". Human rights might provide a helpful and practical approach for solving some of the difficulties and disputes regarding social and economic development that local and central authorities confront.

What evidence can be found for this claim? What risks might arise, not least for local authorities? These might face many new claims, based on rights, that they could neither afford nor manage.

Local government and protection of women's rights

Some decentralisation processes have increased opportunities for women to participate in local politics. Others have not, and some have even strengthened patriarchy. In many countries, women's rights have been won by persuading

central government to pass and then enforce laws that protect women's rights. For many women, the 'local' is not an emancipated space but a place of struggle.

On the other hand, examples from India and elsewhere clearly show that opportunities for working for women's equality can be created through local government. Where have decentralisation processes resulted in net gains for women's rights? If the link between decentralisation and human rights was stronger, might this check abuses?

Human rights advocacy and local government

We noted above that international human rights NGOs rarely focus on local government. Official UN and other Intergovernmental (IGO) scrutiny of human rights practices is devoted almost exclusively to central government. At least in the countries we examined, most national human rights NGOs also focus almost exclusively on central government.

Where NGOs have focused on local government what have they learned? What models of advocacy have proved effective? Could local government be scrutinised more effectively, by central governments, by human rights organisations and by other bodies?

Relations between central and local government

Central government plays a necessary role in regulating the environment in which local governments operate. They have a responsibility to monitor performance, audit accounts, provide financial assistance where required, supervise elections, detect instances of discrimination and violations of rights, etc. With regard to human rights, the following questions might be addressed. What are the parameters of a sound relationship between local and central government? What services do local authorities provide more efficiently than central government? What services and oversight functions should remain in the hands of central government?

PUBLICATIONS BY THE INTERNATIONAL COUNCIL

This publication

Local Rule: Decentralisation and Human Rights, 2002, ISBN 2-940259-34-8, CHF 24 (Swiss Francs) plus postage. Available in English.

Forthcoming

Human Rights After September 11, 2002 ISBN 2- 940259-31-3. CHF 24 (Swiss Francs) plus postage. Available September 2002.
Drawing on papers and discussions from an international meeting, the report analyses the longer term implications for work on human rights of the attacks and their aftermath.

Already published

Human Rights Crises: NGO Responses to Military Interventions, 2002, ISBN 2-940259-35-6, 66pp., CHF 24 (Swiss Francs) plus postage.
Looks at how human rights NGOs deal with situations in which military intervention is proposed to protect civilian lives.

Journalism, Media and the Challenge of Human Rights Reporting, 2002, ISBN 2-940259-23-2, 140pp., CHF 40 (Swiss Francs) plus postage. (Summaries available in French and Spanish.)
Analyses how the media report human rights, by examining a range of geographical and thematic case studies.

Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies, 2002, ISBN 2-940259-19-4, 174pp., CHF 36 (Swiss Francs) plus postage. (Summaries available in French and Spanish.)
Examines the basis in international law for extending legal obligations to companies in relation to human rights.

Racial and Economic Exclusion: Policy Implications, 2001, ISBN 2-940259-27-5, 32pp., CHF 15 (Swiss Francs) plus postage. Also available in French and Spanish.
Examines the economic factors that contribute to racial discrimination and identifies a combination of policies to remedy the exclusion that occurs when racism and economic disempowerment combine.

The Persistence and Mutation of Racism, 2000, ISBN 2-940259-09-7, 26pp., CHF 15 (Swiss Francs) plus postage. Available in English, French and Spanish. Also available in Arabic from the Human Rights Information & Training Centre, PO Box 4535, Taiz, Yemen, Tel: 9674-216277, Fax: 9674-216279, hrtic@y.net.ye.
Surveys some of the main issues that preoccupy people who suffer from racism or who study its effects.

PUBLICATIONS – continued

Ends and Means: Human Rights Approaches to Armed Groups, 2000, ISBN 2-940259-02-X, 79pp., CHF 36 (Swiss Francs) plus postage. (Summaries available in French and Spanish.)
Discusses strategies for preventing human rights abuses by armed group, and the obstacles NGOs face in confronting such abuses.

Local Perspectives: Foreign Aid to the Justice Sector, 2000, ISBN 2-940259-04-6, 125pp., CHF 36 (Swiss Francs) plus postage. (Summaries available in French and Spanish.)
Examines the effectiveness of human rights assistance programmes from the perspective of beneficiaries. Research focused on the administration of justice in several countries.

Performance and Legitimacy: National Human Rights Institutions, 2000, ISBN 2-940259-03-8, 132pp., CHF 36 (Swiss Francs) plus postage. (Summaries available in Bahasa, French and Spanish.)
Assesses the extent to which national human rights institutions are acquiring social legitimacy and meeting the needs of vulnerable groups. Field research was undertaken in Indonesia, Mexico, and Ghana.

Hard Cases: Bringing Human Rights Violators to Justice Abroad – A Guide to Universal Jurisdiction, 1999, ISBN 2-940259-01-1, 57 pp., CHF 15 (Swiss Francs) plus postage. Also available in Spanish from: Instituto de Defensa Legal, José Toribio Polo 248, Lima 18, Peru. Tel: 5114-410192, Fax: 5114-424037.
Summarises arguments in favour of universal jurisdiction and sets out the issues that need to be considered when prosecuting human rights violators abroad.

Taking Duties Seriously: Individual Duties in International Human Rights Law – A Commentary, 1999, ISBN 2-940259-00-3, 80pp., CHF 13.50 (Swiss Francs) plus postage.
Collects together the references to individual duties in international human rights standards.

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The World Bank maintains a very useful web site on decentralisation at http://www1.worldbank.org/publicsector/decentralization/

Local governments run services that are vital to the quality of people's lives: schools, health centres and hospitals, water supply, sanitation, roads, street lighting, local policing, settlement of land and family disputes. To promote development, and strengthen democracy, in recent years numerous governments have reformed local-tier authorities and strengthened their powers.

Development and governance experts have studied decentralisation extensively. Its influence on human rights, by contrast, has received little attention. What happens when local authorities assume responsibility for education, policing or land use? Are minorities and poor communities better protected after decentralisation? Does devolution genuinely improve political accountability or does it entrench the power of local elites?

This short report argues that local government officials and human rights advocates should think more seriously about the links between local government and human rights. Drawing on seven case studies – Russia, Mali, Uganda, the Philippines, Chile, India and Burkina Faso – it identifies some of the key issues and suggests that adopting a human rights approach might make decentralisation efforts more successful.