

## Local Government and Human Rights: Doing Good Service

Summary

## ACKNOWLEDGMENTS

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## THE PROJECT

The services that local governments provide determine our quality of life. They include health, education, water supply and sanitation, housing and policing among many others. Moreover, because most countries have recently devolved new responsibilities to local government, their influence is growing. Local elections have been introduced almost everywhere and local government has become a testing ground for new policies to promote political empowerment, citizen involvement and public services. This summary presents the findings of a report by the International Council on Human Rights Policy that explores how human rights can help local governments become more effective and legitimate in the work that they do.

The human rights framework asserts that every person has certain freedoms and economic, social and political entitlements, by virtue of being human. Human rights instruments and standards protect these. States are primarily responsible for enforcing human rights standards, because they ratify them; but their accountability extends to all levels of government as well as other institutions to which states devolve authority.

Until recently, local government and human rights rarely connected. Human rights activists concentrated on the performance of national government while local government reformers applied development and governance models. This report argues that the human rights framework is not only relevant to local government but, used thoughtfully, can improve the delivery of key services.

Officials can find benefit too, because its emphasis on non-discrimination, participation and accountability offers tools they can use to plan, implement and assess their programmes. Moreover, by drawing attention to issues and groups of people that are invisible or electorally marginal, it can help to identify risk.

In these and other ways, human rights can improve local governance and enhance public satisfaction and engagement. Human rights tests can identify defective policies and help set them right; they can be used by civil society organisations, national government and donors to demand improvement where necessary.

Local democracies and governments are complicated to run, and officials can draw usefully on many approaches, such as good governance. The report does not suggest the human rights framework should supplant other methodologies; but, used well, it can enrich and complement them and has distinctive strengths of its own.

## THE RESEARCH PROCESS

This project began in November 2003, when the Council commissioned research on up to three rural, urban or peri-urban districts in each of seven countries. Though Bolivia, India, Pakistan, the Philippines, Senegal, Tanzania and Ukraine differ in many respects, all have devolved political, administrative and fiscal decisions below state or province level.

In most cases, the Council selected local administrations that were relatively successful, as it is rather simple to identify failure and its causes, whereas the ingredients of successful local government are harder to detect and less understood.

Because few local officials use human rights explicitly, the project appointed governance and human rights researchers in each team, to encourage dialogue and learning. The researchers met initially to agree a research framework and a method for analysing the role of human rights. They met again, with external experts and some local officials, to review the completed country studies. The review meeting identified key issues, conclusions and recommendations and made important contributions to the final report.

The research teams consulted local officials, civil society organisations, communities, and national officials to establish whether certain services had improved or regressed after reform and to explain the result. In addition, they identified where local officials might deliver services more efficiently and equitably if they used human rights methods. To do so, they examined the quality of services, the quality of local governance, and the influence of central government on local government performance.

Research teams focused particularly on the experience of very poor people, women and indigenous communities. Such groups have acute needs and their interests are least likely to be adequately addressed. We evaluated the services they received to 'test' the extent to which local governments in practice respected human rights principles.

A draft report was circulated for comment to approximately five-hundred individuals and organisations in 81 countries. The responses received were integrated in the final report which was completed in August 2005. Published with the report, this Summary is available in English, French, Spanish and Russian.

## RESEARCH FINDINGS

Assessing local government performance using human rights standards reveals a mixed picture of both positive and less positive outcomes.

The Council's research suggests that local government reform brings definite progress in some areas. Specifically, local governments tend to deliver more after reform – more primary schools, health posts, clean water outlets, public housing. This evidence suggests that decentralisation increases public access to services, and their availability, thereby promoting economic and social rights. In many cases, poor and excluded people also benefit.

The record on qualitative progress is less positive. The research indicates that services are rarely adapted to meet local needs or cultural expectations and that most local governments do not promote participation, prevent discrimination well or act as accountably as they should. These are key human rights values. Where participation increases following reform, because new opportunities are created, particular groups are often excluded or are unable to make use of them. With respect to non-discrimination, more services and mechanisms of participation are available but many poor people, rural communities, women, and ethnic minorities are unable to take advantage because most are not designed with them in mind. Accountability reveals the clearest gaps. Few local governments hold themselves accountable to human rights norms; and enforcement is weak everywhere.

These findings underline the importance of accurate reporting and monitoring systems, as well as access to information. Without public information and adequate monitoring by central government, performance is unlikely to improve.

# WHERE HUMAN RIGHTS CAN STRENGTHEN LOCAL GOVERNANCE

## **THE HUMAN RIGHTS FRAMEWORK**

- empowers citizens and voters who stand at its heart;
- requires governments to act consistently and prevent discrimination;
- affirms that government has a legal obligation to observe its human rights commitments;
- recognises that rights are linked (so that, for example, economic and social rights cannot be achieved when rights to information or free speech are obstructed).

## **Agency not welfare**

Local governments are more effective and legitimate if they involve citizens in decisions that concern them. That people should be entitled to voice opinions, express dissent and argue for priorities is a vital element of the rights framework. Meaningful participation empowers them to take decisions and accept decisions taken by those who represent them. In practice, participation also implies co-operation. Human rights cannot be achieved in the absence of co-operation between government, civil society and other actors.

## **Consistent and inclusive decisions**

A fundamental principle of human rights is that all individuals have dignity. In practice, the test of this principle is whether systems protect the rights of people who are poor, unpopular or excluded. This explains why human rights prohibit discrimination. In this respect, human rights offer a counterforce to pressure-group models of local government or traditions that privilege those who are powerful. It offers tools to identify people who are excluded, assess whether discrimination has occurred and compensate those whose rights have been violated. So-called “process rights”, including the rights to expression, information and participation, are among the most important of these tools.

## **Obligation not discretion**

Human rights standards require governments to provide access to certain services, including primary education and health, housing, and potable water. This duty is not discretionary. While it is accepted that many rights cannot be achieved instantly, governments must plan for their achievement, must do as much as they can, and must not allow standards of provision to fall. Under all circumstances, they must assure a minimum service, act equitably and prevent discrimination, and make judicial remedies available for rights considered justiciable. When states devolve powers to local government, these duties stand – implying that states must monitor local administrations in relation to rights and ensure that the latter have sufficient financial resources to provide at least the same standard of service.

Four tests are used in the report to assess state obligations to provide economic and social rights. They ask whether services or rights are

- *available?* Do they exist?
- *accessible?* Can they be obtained?
- *acceptable?* Are they in a form that people find appropriate?
- *adapted to context?* Do they match local needs and cultural expectations?

## **Sustainability not opportunism**

High standards in education, health, environmental protection, and other core social policies cannot be achieved quickly, or within a single electoral cycle: they require political and economic investment over many years. Local governments are under constant pressure to act in the short-term, to attract key political constituencies or distinguish their policies from those of their predecessors. In this respect, the human rights principle of progressive realisation is a safeguard, because it requires local governments to maintain and gradually improve essential services. Central government has a double responsibility; to monitor local government performance to ensure that rights are respected, and to enable local governments to perform their duties by providing them with adequate powers and resources.

## **ENHANCED ACCOUNTABILITY**

Accountability is a key element of both the human rights and good governance frameworks. As used by the World Bank, good governance emphasises that the rule of law is vital for investment and the security of private property, that transparent public access to information helps prevent corruption, and that accountability guarantees the proper management of public and aid funds.

Applied in the human rights context, accountability is no less important; rather, it is constructed differently. It relies first on the duty of states to protect, fulfil and promote rights that they have internationally ratified. This understanding of entitlement and obligation takes human rights part of the way towards a model of political accountability. As noted, it extends to local governments and other institutions to which government devolves powers.

As a further step, the human rights system provides that claimants may seek legal recourse: local and national officials may be taken to court and sanctioned if, because of their actions or culpable inaction, rights are violated or unmet. For this, however, court systems need to be functional.

Thirdly, a cluster of “process rights” (referred to above) drives human rights accountability. The most important are the rights to free expression, to be informed, to participate in political life, and to associate freely with others. They are called process rights because, though valuable in themselves, their exercise creates the conditions in which other rights can be met, including most economic and social rights.

Combining these rights, actively exercised, with the principle of legal recourse and the core notions of entitlement and government obligation, provides the human rights framework with a strong and dynamic vision of accountability that highlights the quality of decision-making processes as well as outcomes.

It is useful to stress that, because it sets out precise and limited standards, the framework determines not only what officials have a duty to do but the limits of that duty. This means that, from an official perspective, human rights offer protection against arbitrary and unreasonable criticisms of official institutions. This is a considerable strength.

## **OTHER FACTORS**

Many other factors influence the performance and legitimacy of local governments. They are often independent, beyond the remit or influence of human rights.

The political commitment of officials, their administrative competence and their political skills, all obviously influence outcomes.

The availability of resources is equally vital. The human rights framework calls for proper allocation of resources but cannot generate them. As noted, central government has a key role in this matter.

Territorial organisation and electoral systems: The human rights framework certainly addresses issues of equity and discrimination in these matters, but does not prescribe how local governments should organise themselves.

Civic pride and an active civil society: Local governments are often most successful where citizens show commitment to and pride in their community and its services, often rooted in a deep culture of popular involvement in civic affairs. Human rights methods encourage but cannot immediately create such traditions.

It must also be acknowledged that there are limits to what local government can do. Local governments cannot replace or compensate for responsible and effective central government policies: they will only perform well when central government fulfils its own responsibilities – not least those it has in relation to local government.

## **OTHER ACTORS**

The quality of decentralised service delivery does not depend solely on local government officials and citizens. Central government, in particular, has a legal duty to ensure that international human rights commitments are respected within its territory; where it devolves responsibilities to local governments it must ensure that services do not deteriorate as a result. Local civil society, including human rights defenders and national human rights institutions, have an important watchdog role to play. Donors can also ensure that processes they support systematically integrate human rights.

## RECOMMENDATIONS

### FOR LOCAL GOVERNMENT OFFICIALS

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

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

## **FOR CENTRAL GOVERNMENT**

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

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

### **Information and reporting**

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

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

### **Judicial remedy**

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

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

## **FOR HUMAN RIGHTS NGOS AND CIVIL SOCIETY**

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

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

## **FOR NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS)**

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

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

## **FOR INTERNATIONAL DONORS**

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

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

## CONCLUSIONS

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

It also suggests that a human rights-based approach can be used more broadly to inform policy making by public officials, politicians and development specialists, enabling them to take certain decisions better and more quickly, and avoid risk.

Few local governments have adopted policies that explicitly draw on human rights. Some have joined the *Cities for Human Rights* movement and are working towards the development of a Charter of Human Rights in the City.<sup>1</sup> Others are developing local Charters.<sup>2</sup> Despite these explicit commitments, none at present use international human rights to inform their planning and programming. Such initiatives by individual local governments, or by local government networks, should explicitly address the international human rights obligations of local governments.

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

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1 See: Cities for Human Rights. (1998). "Barcelona Agreement".

2 See for example Montréal. (2003). "Draft for a Montréal Charter of Rights and Responsibilities". Retrieved on 24 September 2004, from [www2.ville.montreal.qc.ca/asurveiller/pdf/charter\\_of\\_rights.pdf](http://www2.ville.montreal.qc.ca/asurveiller/pdf/charter_of_rights.pdf)

## **CORE RIGHTS**

### **Life, liberty and physical integrity of the person**

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

### **Civic freedoms**

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

### **Political rights**

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

### **Women's rights**

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

### **Worker's rights**

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

### **Economic and social rights**

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

### **Right to a clean and healthy environment**

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

### **Children's rights**

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

### **Access to information**

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

### **Rights of special groups**

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

### **Right to justice**

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

### **International law prohibits discrimination**

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

## **ABOUT THE COUNCIL**

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

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

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

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

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

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

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

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

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