

## 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.<sup>19</sup>

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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<sup>19</sup> 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](http://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”.<sup>20</sup> 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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<sup>20</sup> George Mathew, “Panchayati 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

*“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”.*<sup>21</sup>

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”.<sup>22</sup>

### **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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<sup>21</sup> Traore, “Decentralisation et Protection des Droits de l’Homme”, p. 9.

<sup>22</sup> 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".<sup>23</sup> 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.<sup>24</sup>

### **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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<sup>23</sup> Santos, "Local Government and Human Rights", p. 6.

<sup>24</sup> 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 organisations, including ethnically-based ones, were the principal discussion partners of local government. As a result many indigenous and peasant

*“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”.*<sup>25</sup>

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.

### **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.