

Comments of Habitat International Coalition to the Human Rights Council Advisory Committee report on human rights and local government

Cairo, 14 July 2015

Para. 6.

For the citizen, local governance is the nearest of the various distinctive, interdependent and inter-related spheres of government within a territorial state.¹ In unitary states, local governance usually comprises one of two or three spheres of government; whereas, in federal states, local governance constitutes one of three, or sometimes four spheres of government.²

The concept of “spheres” of government offers an alternative to the hierarchy implied by the reference to “tiers” and “layers” of government. That terminology, often portraying local government as the “lowest” form, distorts the perception of more integrated approaches to governance. From the perspective of most citizens, local government/administration is actually the most proximate sphere of contact with the state’s public institutions. From the human rights perspective, local government/administration is also the most-immediate and most-constant duty holder in day-to-day life.

The particular terminology and concepts defining “local administration” and “local government” distinguish the former is a generic term that may or may not constitute “government” as defined in representational terms.³ Both forms of governance possess certain powers conferred upon them by legislation or directives of the higher levels of government. These powers consist, in substance, in regulating and managing certain public affairs and delivering certain public services.

The extent of powers of local governance should be analyzed always in the context of relations between local authorities and central government and/or regional authorities (in federal states). One of the important features of local “government” is that it has a specific, subsidiary regulatory power for the exercise of its functions, which is, however, subject to compliance with national law.⁴ Whether or not local administration exercises these regulatory powers and meet the definition as “governments,” the human rights obligations of each sphere of administration remain constant.

Para. 7. ...Local governments exist geographically both in urban and rural settings.

The study could draw attention to jurisdiction and spatial governance as encompassing areas that are both rural and urban; or urban areas and the rural hinterlands; city-regions is the current term of art for planning that encompasses the rural-urban nexus (term used in the Habitat III process) and recognizes habitat as a “metabolism,” in the social movements’ preferred terminology.

Para. 19....To comply with their human rights responsibilities, local authorities should have necessary powers and financial resources....

And decision-making capacity

24. ...Actually, it is difficult to imagine a situation of human rights being realized where there are no local authorities to provide the necessary services . Local officials are thus responsible for a wide range of human rights issues in their day-to-day work. However, this work is rarely perceived as human rights implementation, neither by the authorities, nor by the public. Consequently, human rights remain distant as a frame of reference or analysis in most policies and practices at the local level, while they may actually be human rights in practice. In this regard, it should be borne in mind that the real effect of human rights is experienced locally.

The AC should consider that international policy-making bodies in the UN create clear mandates, or guidance for local authorities/governments, or at least include them in the “responsibility” sections. Nonetheless, the follow-up and implementation of those norms has not happened in the case of Habitat II commitments made 20 years ago. UN implementing bodies need to be more mindful of their stewardship role in operationalization human rights where they have a role to play a local role in integrating a developed, secure, human rights state.

25. ... *The duty to fulfil means that local government must take positive action to facilitate the enjoyment of the rights and freedoms. For example, local authorities are obliged to fulfil the right to education by sustaining a good educational system. To comply with the duty to fulfil the right of individuals not to be discriminated against, local human rights mechanisms such as ombudsmen or specialized anti-discrimination agencies can be established.*

It may be possible to elaborate: In order to accomplish local governments' human rights duties (respect, protect and fulfil), they must cooperate with CSOs and social movements, at local levels, encouraging and supporting their participation.

25. *Human rights duties of local government may be classified in three main categories: the duty to respect, the duty to protect and the duty to fulfil. The duty to respect means that local officials must not violate human rights through their own actions. It requires local government to refrain from interfering with the enjoyment of the rights and freedoms of all persons within its jurisdiction. For example, in relation to the freedom of religion, local government may not prohibit religious communities, beyond the permissible limitations, to use public squares or municipal buildings for religious celebrations. Regarding the right to health, local government may not deprive certain communities or groups of access to health care facilities. The duty to protect requires measures to ensure that third parties do not violate the rights and freedoms of the individual.*

In the international human rights system, states and their components actually bear four dimensions of obligation in the interstate system: (1) individual obligations, (2) collective obligations, (2) domestic obligations and (4) extraterritorial obligations. International law establishes these multifaceted obligations in international human rights instruments and declaratory law, as well as through long-established general principles and peremptory norms.

Each and every human right enshrined in the relevant international Covenants and Conventions corresponds with both domestic and extraterritorial obligations to protect and respect the right. In certain cases, states also can bear a responsibility to fulfil rights extraterritorially. Potentially, any such treaty governing relations between the state and individual or collective subjects (vertical effect) also entails third-party consequences (horizontal effect) on other state parties and legal obligations on private law interactions of private persons in their relationships among themselves.⁵

➤ *Extraterritorial Human Rights Obligations*

The actions and policies deriving from nonrecognition of, and nonassistance to an illegal situation leading to gross human rights violations, are actually measures fulfilling an *erga omnes* obligation of public bodies in international law. International instruments and human rights mechanisms affirm that vision, but also international practice operationalizes it as well.

Internationally recognized “effective measures” available to states, including local governments, include:

1. Suspend trade and investment;
2. Restrict sports and cultural relations;
3. Prohibit the sale of products from the illegal situation;
4. Sever diplomatic (e.g., twinning), trade and cultural relations with responsible parties;
5. Prohibit sales of goods or equipment that may be used to by perpetrators of human rights violations;
6. Suspend economic, financial and technological assistance to and cooperation with responsible parties.⁶

Examples abound of local governments exercising their extraterritorial human rights obligations through such locally mandated “effective measures.” These have been applied in response to apartheid, occupation, annexation, population transfer, colonization, illicit trade and other forms of cross-border organized crime leading to gross human rights violations.

29. ... *These are the key challenges faced by local government in the protection ~~promotion~~ and promotion of human rights: lack of political will, long-term vision/planning and/or commitment; lack of autonomy, ... lack of autonomy, institutional capacity, **decision-making capacity** and/or resources;*

Edit in red.

36. Measures should be taken, both nationally and internationally, to strengthen civil society capacity to monitor and engage with local government. International city networks such as the United Cities and Local Governments (UCLG) can play a key role in developing toolkits, foster research, provide opportunities for peer-to-peer learning and create communities for action.

It might not necessarily be the role of the city networks to build civil society capacity. Of course, there should be collaboration. It's good to emphasize the particular role that CSOs and social movements have in facilitating peer-to-peer exchanges, sharing global and national experiences, and building capacity to interface with LGs/LAs. Of course HIC is an historic example of such an organization. Many others proliferate and overlap, depending on capacity.

➤ *Conclusion*

Reflecting an emergent pattern of local government's extraterritorial human rights policy, these applications on the part of local governments coincide with the development of human rights-based governance at the municipal level. The notions of extraterritorial human rights obligations of local government also inform the concurrent human rights cities⁷ and the "right to the city" movement.⁸ This aligns also with a period in which cities have assumed multiple ties with extraterritorial local governments and other actors, multiplying their opportunities and effect at exercising their extraterritorial human rights obligations. The process toward Habitat III creates the opportunity for a flourishing of discourse on the local governments' local and extraterritorial application of human rights, right where we live.

¹ Education & Training Unit for Democracy and Development, "Three Spheres of Government" (South Africa), at: <http://www.etu.org.za/toolbox/docs/govern/spheres.html>.

² Human Rights Council Advisory Committee, "Local government and human rights," A/HRC/AC/13/L.4, 14 August 2014, para. 6, at: http://www.hlrn.org/img/documents/A_HRC_AC_13_L4_EN.pdf.

³ Ibid.

⁴ Ibid., para. 8.

⁵ Eric Engle, "Third Party Effect of Fundamental Rights (Drittwirkung)," *European Law/Europarecht* (), 2009 165–73, at: <http://www.hanselawreview.org/pdf8/Vol5No2Art02.pdf>; Malgosia Fitzmaurice, "Third Parties and the Law of Treaties," *Max Planck Yearbook of United Nations Law*, Vol. 6 (2002), at: http://www.mpil.de/files/pdf1/mpunyb_fitzmaurice_6.pdf.

⁶ Security Council resolution 569 (1985), 26 July 1985, at: <http://www.worldjii.org/int/other/UNSC/1985/10.pdf>; General Assembly, "The situation in the Middle East," A/37/123 (1982), 16 December 1982, para. 13, at: <http://www.un.org/documents/ga/res/37/a37r123.htm>.

⁷ Barbara Oomen and Moritz Baumgärtel, "Human Rights Cities," *The SAGE Handbook of Human Rights*, 2, at: <http://kks.verdus.nl/upload/documents/Oomen%20Baumgartel%20Human%20Rights%20Cities%20v2%20March%202013.pdf>.

⁸ See "Global Platform on the Right to the City," at: <http://www.righttothecityplatform.org.br/>.