

**DECENTRALISATION AND
HUMAN RIGHTS IN UGANDA:**

BEST PRACTICES FOR LOCAL COUNCILS

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ABBREVIATIONS AND ACRONYMS

CBO	Community Based Organizations
CSO(s)	Civil Society Organizations
HIV/ AIDS	Human Immuno-Deficiency Virus/ Acquired Immune Deficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Social Rights
IDP(s)	Internally Displaced Persons
IGG	Inspector General of Government
KCC	Kampala City Council
LCC	Local Council Court
LDU	Local Defence Unit
LG	Local Governments
LGA	Local Government Act, 1997
LGDP	Local Government Development Fund
LGTB	Local Government Tender Board
MGD(s)	Millennium Development Goals
NAADS	National Agricultural Advisory Services
NGO(s)	Non-Governmental Organizations
PEAP	Poverty Eradication Action Plan
PWD(s)	Persons with Disabilities
RDC	Resident District Commissioner
UDHR	Universal Declaration of Human Rights
UHRC	Uganda Human Rights Commission

PREFACE

Decentralisation has been a key feature of governance in Uganda since 1993. However, there has not been much effort by either the government or by Civil Society to incorporate human rights into decentralisation. This guide is an attempt to fill in this gap by providing an overview of human rights within the context of decentralisation. It is intended for use mainly by local governments, including councillors at all levels of decentralisation, as well as technical staff working at the District level. It may also be used by CSOs working at the local level. It is therefore written in a simple user-friendly manner. The guide is not intended for use as a legal or academic reference work.

The guide is intended to provide a general overview of human rights, and how human rights fit into decentralised governance. It begins with a brief overview and introduction to the concept of human rights. Part II then provides information on the human rights that are guaranteed under the Constitution of Uganda, and the mechanisms that have been put in place to enforce them. Part III describes the role of Local Governments in enforcing civil and political rights. Part IV provides information on the obligations of local government with respect to economic, social and cultural rights. Part V is geared towards assisting local governments to implement the right-based approach in their policies and programmes. The guide concludes with a summary checklist of what local governments should and should not do to promote human rights within the decentralised system of governance.

The guide was published as part of a larger research project on Decentralisation and Human Rights in Uganda. Detailed Working Papers on Decentralisation and Human Rights in the aftermath of the Political Transition; Enforcing Civil and Political rights under Decentralisation; Decentralisation, Service Delivery and Economic and Social Rights; and The Rights of Ethnic Minorities in a Decentralised System have also been published.

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I. INTRODUCTION

What are human rights?

Human rights have been defined as entitlements that accrue to human beings simply by virtue of being human. They are said to be universal, that is to say, they belong to all people at all time, everywhere, regardless of one's race, ethnicity, religious belief, political affiliation, social standing, or sex. Human rights are also said to be indivisible and interdependent, meaning that all rights are important and should be respected and no right or category of rights should be considered as more important than the other. They are inalienable, which means that no one can take them away.

Although the term “human rights” is commonly used today, it is only after World War II (1939-1945) that it was first used. Because of the atrocities and horrors that characterized that war, the international community strongly felt that such violations of human dignity should never happen again. In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), which is still recognized as one of the most important sources of international human rights standards. The rights in the UDHR were later incorporated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. The UDHR, ICCPR and ICESCR are collectively known as the International Bill of Rights.

Since 1966 to date, the United Nations (UN) has adopted numerous other conventions and treaties that protect and promote human rights. The key ones include:

- The Convention Against Torture (CAT) (1980)
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979)
- The Convention on the Rights of the Child (CRC) (1989)
- The Convention on the Rights of Persons with Disabilities (CRPD) (2006)

At the level of the African Union, member states have adopted other international documents that further protect human rights. The main human rights documents of the African Union are:

- The African Charter on Human and People’s Rights (ACHPR) (1980)
- The African Charter on the Rights of the Child (ACRC) (1990)
- The Protocol to the African Charter on the Rights of Women (Maputo Protocol) (2005)

There are many more treaties, conventions and declarations at the United Nations and African Union level that establish human rights standards that governments are required to comply with.

A government expresses its willingness to be bound by a human rights treaty through *signature* and *ratification* of the treaty. Thus, international human rights law envisages two main sets of actors: rights-holders, who are the individuals in society, and duty bearers, who are the States that sign and ratify treaties. As a member state of the United Nations and the African Union, Uganda has signed and ratified the above treaties, and the government and all its agencies, including local governments, are bound by international law to adhere to the standards laid down in these treaties. The obligation to adhere to international human rights standards has been further explained as the duty to respect, protect and fulfil human rights. This may be further explained as follows:

THE OBLIGATIONS TO RESPECT, PROTECT, PROMOTE AND FULFIL HUMAN RIGHTS

- ❑ The obligation to **RESPECT** rights means that local governments should refrain from interfering with the enjoyment of rights. Local governments should not take any action that would violate human rights, for example, forcefully evicting people from their homes to make way for a development project without providing those people with alternative accommodation or adequate compensation.
- ❑ Local governments have an obligation to **PROTECT** everyone from abuse of their rights by third parties that are not State agencies. The activities of individuals or companies may violate human rights, for example, a company’s activities may result in the pollution of local water sources, putting the health of the community at risk. Local Governments should play a role by ensuring that the relevant law is enforced to prevent acts by third parties that violate human rights.
- ❑ Local Governments have a duty to **PROMOTE** respect for rights and strengthen them by teaching and education. For example, educating people about primary health care, sanitation and hygiene is one way of promoting the enjoyment of the right to health. Effective human rights education is essential to promote responsible citizens who can claim for and enjoy their rights.
- ❑ Local Governments have a duty to **FULFIL** human rights by taking steps to ensure the realisation of rights. While it may not be possible to realise all rights at once, steps must be taken to implement them. For example, while it may not be possible to immediately provide housing and adequate shelter for citizens, local governments can push for the adoption of laws and policies that would prevent forceful evictions. Thus “taking steps” implies that indicators or “benchmark” procedures should be drawn up to allow progress to be checked.

Classification of Human Rights

Human rights are normally categorized as civil and political rights or economic, social and cultural rights as seen from the 1966 ICCPR and ICESCR. Civil and political rights are those rights relating to freedom and liberty. They are also referred to as “negative” rights, that is, rights that require the State to refrain from interfering in the lives of its citizens. Examples of such rights are:

- ❑ Freedom of speech including freedom of press and the media.
- ❑ Freedom of thought, conscience and belief.
- ❑ Freedom of religion.
- ❑ Freedom of assembly and freedom to demonstrate peacefully.
- ❑ Freedom of association, including freedom to join any political party, organisation or trade union of one’s choice.
- ❑ The right to participate in government either directly or through freely chosen representatives, including the right to vote.
- ❑ The right to access information in the possession of the State.
- ❑ The right to a fair trial under the law.
- ❑ The right to just and fair treatment in administrative decisions.

“Civil and Political Rights require the State to *refrain* from interfering in the lives of its citizens.”

Economic and Social Rights refer to those rights that guarantee the basic necessities of life such as food, shelter, clothing and medical care. They are “positive” rights which require the government to take action to provide services to its citizens. Thus, whereas civil and political rights can be realised immediately by the State simply refraining from abusing rights, economic and social rights require governments to allocate resources and take steps towards their realisation. They are thus “progressively realised” and cannot be fulfilled immediately. Examples of economic and social rights include:

- ❑ The right to the highest attainable standard of health.
- ❑ The right to education.
- ❑ The right to adequate food.
- ❑ The right to clean and safe water.
- ❑ The right to housing.
- ❑ The right to work and to just and favourable conditions of work.

Economic and Social Rights require the government to *take action to provide services* to its citizens

- The right to an adequate standard of living.

Sometimes human rights are categorized as individual rights vis-à-vis group rights or collective rights. The latter refers to rights that accrue to groups or communities as opposed to individuals. They include the right to peace, the right to development and the right to a clean and healthy environment.

II. HUMAN RIGHTS PROVISIONS IN THE LAWS OF UGANDA

Chapter 4 of the Constitution of 1995

As evidence of its commitment to the protection and promotion of human rights, the Government of Uganda included human rights standards in the Constitution of 1995, as recently amended in 2005. Chapter Four of the Constitution is devoted to the “protection and promotion of fundamental and other human rights and freedoms.” There are also provisions in the National Objectives and Directive Principles of State Policy that promote and protect human rights, even though they do not expressly place the State under a legal obligation to guarantee the rights.

The rights guaranteed under Chapter 4 of the Constitution are:

- Equality and freedom from discrimination (Article 21)
- The right to life (Article 22)
- Protection of personal liberty (Article 23)
- Respect for human dignity and protection from inhuman treatment (Article 24)
- Protection from slavery, servitude and forced labour (Article 25)
- Protection from deprivation of property (Article 26)
- Right to privacy of person, home and other property (Article 27)
- The right to a fair hearing, including presumption of innocence until proof of guilt (Article 28)
- Protection of freedom of co-science, expression, movement, religion, assembly and association (Article 29)
- Freedom of Movement (Article 29)
- Right to education (Article 30)
- Right to marry and found a family (Article 31)
- Affirmative action in favour of marginalised groups (Article 32)
- Rights of women to full and equal dignity with men (Article 33)
- Rights of children (Article 34)
- Rights of persons with disabilities (Article 35)
- Protection of minorities (Article 36)
- Right to culture, language and tradition (Article 37)

Decentralisation and Human Rights in Uganda

- Civic rights, including the right to participate in government and policy-making and implementation (Article 38)
- Right to a clean and healthy environment (Article 39)
- The right to work under satisfactory, safe and healthy conditions, to equal pay for equal work, and to rest and leisure. Women workers have a right to protection during pregnancy and after birth. (Article 40)
- Right of access to information in the possession of the State (Article 41)
- Right to just and fair treatment in administrative decisions (Article 42)

Note that the Constitution provides that "the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in Chapter 4 of the constitution should not be regarded as excluding others not specifically mentioned." This provision is particularly useful with regard to economic and social rights, which are glaringly absent from the Constitution.

Human Rights Enforcement Mechanisms in Uganda

In order for human rights to be meaningful, a person who claims that his or her right(s) have been violated should be able to obtain redress from the person(s) responsible for the violation.

The laws of Uganda provide a number of avenues for the enforcement of human rights. These avenues include the following:

□ *The Uganda Human Rights Commission*

The Uganda Human Rights Commission is an independent Constitutional body established to promote and protect human rights. It is established under article 51(1) of the Constitution of the Republic of Uganda (1995) and by the *Uganda Human Rights Commission Act No.4 of 1997*. The Commission is composed of a Chairperson, and not less than three other persons, appointed by the President with the approval of Parliament. Presently, there are six commissioners. The function of the UHRC is to empower the public by giving them basic knowledge about their rights. In addition, the UHRC is responsible for investigating violations of human rights. It has the powers of court to summon witnesses and receive evidence regarding human rights violations. Where a violation is proven, it can make an order for appropriate redress, like compensation. Another function of the UHRC is to ensure compliance with international treaties. Its headquarters are in Kampala, but it also runs regional offices in Gulu, Soroti, Mbarara, Fort Portal and Jinja.

□ ***The Office of the Inspector General of Government (I.G.G)***

The Inspectorate is an independent institution charged with the responsibility to protect and promote human rights, eliminate and foster the elimination of corruption and abuse of public office and also promote and ensure observance of the rule of law and justice in administration to enhance good governance and economic development. The office is provided for under Article 223 of the Constitution.

The IGG plays an important role in protecting human rights because it acts as a forum where any person aggrieved with a decision of a public official or authority can take his or her complaint for redress.

□ ***The Courts of Judicature***

The Judiciary is established under Article 126 of the constitution. The judiciary is made up of Courts of Judicature. Courts are the central means for dispute resolution, and the Constitution provides that any person, who claims that a fundamental or freedom guaranteed under the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress, which may include compensation.

The Courts of Judicature are:

- The Supreme Court of Uganda;
- The Court of Appeal of Uganda;
- The High Court of Uganda, and
- Magistrates' Courts.

The Supreme Court, the Court of Appeal and the High Court of Uganda are superior courts of record. This means that all their decisions are binding on the lower courts.

The High Court of Uganda has original and unlimited jurisdiction in all matters of a civil and criminal nature, and should be the court of first instance in a petition for the violation of human rights. The Court of Appeal is also the Constitutional Court, and entertains cases on appeal from the High Court. It also entertains original petitions concerning the interpretation of Constitutional provisions, including provisions on human rights. The Supreme Court is the final Court of Appeal, and only entertains original matters regarding presidential election petitions.

□ ***Tribunals***

The laws of Uganda provide for a number of specialized tribunals for resolving particular types of disputes. Tribunals are not courts of judicature, but are nevertheless important dispute resolution mechanisms to which a victim of a human rights violation may resort for redress. Tribunals are specialized dispute-resolution mechanisms which handle particular types of disputes. They include the Village, Sub-County and Land Tribunals established under the Land Act 1998; the Tax Appeals Tribunal which hears complaints from tax-payers who feel that they have been over assessed; the Communications Tribunal of the Uganda Communications Commission which entertains complaints from the Communications Sector; the Electricity Tribunal under the Electricity Regulatory Authority which hears complaints from that sector; and the Industrial Court which entertains labour disputes between trade unions and employers.

□ ***Local Council Courts (LCCs)***

The LC Courts are established under the Local Council Courts Act of 2006. Previously, LC Courts consisted of members of the Executive Committees of the Village and the Sub-County Councils. However, under the new law, members of the Courts will not be Local Councillors, but will be non-elected members of the community appointed by the Local Council. This is to ensure a separation of powers between those who make the laws, and those who will sit in judgment, in accordance with the rule of law. The new Act emphasises female representation in the Local Council Courts in order to make the courts more responsive to the needs of women. Local Council Courts have powers to resolve the following:

- Land disputes;
- Family disputes, and
- Other community-related conflicts which are not criminal in nature.

III. THE ROLE OF LOCAL GOVERNMENTS IN ENFORCING CIVIL AND POLITICAL RIGHTS

Local Governments have a role to play in promoting and protecting civil and political rights. Below are practical suggestions as to how local governments can enhance civil and political rights in their systems and processes.

□ The right to participation

As already mentioned, the system of decentralization is by its nature, meant to enhance the right to participation. However, while decentralization may be necessary for effective participation, it does not necessarily ensure it. In order to ensure effective participation of the citizens in the development process, local governments should ensure the following:

- Include marginalized groups such as women, youth, persons-with-disabilities and ethnic minorities in the operations of the local councils. Such groups should be given a more central role as decision-makers in the development process. Some of these groups have affirmative action seats on Local Councils while others do not. Care must be taken to also involve groups that have no affirmative action seats, such as ethnic minorities. Care should also be taken to ensure that the representatives of groups with affirmative action seats like women and PWDS are given a voice and participate effectively. Mere attendance at meetings is not enough.
- Local Government must go beyond perfunctory consultations in project and policy processes so that local groups can be involved in agenda-setting, decision-making and structures to hold government and donors accountable.
- Work effectively with Civil Society Organisations, including Non-Governmental Organizations (NGOs) and Community Based Organisations (CBOs) so as to foster a sense of active, informed citizenship.
- Recognize that it is not enough simply to “invite” communities to participate in agenda’s that have already been set. Local Governments must ensure that communities are actually part of setting the agenda. Councilors should consult the electorate before meetings and provide feedback after meetings.

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□ The right to liberty and security

Local Governments have responsibility over Local Administration Police (LAP) and Local Defence Units (LDUs). LAP and LDUs cooperate with the Uganda Police Force and other security organs. However, they also enforce Local Government Bye-Laws and Ordinances. Local Governments have a role to play in promoting and protecting the right to liberty and security by ensuring that:

- Local Administration Police and LDUs do not carry out wrongful arrests and detentions. Any person who is being arrested should be informed of the reasons for the arrest in a language that he or she can understand, and his or her next of kin should be informed of the arrest as soon as is practically possible.
- People arrested by LAP and LDUs should be detained only in places authorised by law.
- A person arrested should not be detained for more than 48 hours without being charged in a Court of Law.

Local Governments are liable to being sued before the Uganda Human Rights Commission or Courts of law if they violate this right.

□ Access to Justice and the right to a fair trial

Local Council Courts (LCCs) have been hailed for their role in promoting popular justice and allowing people to participate in resolving their own disputes. However, it has also been found that LCCs sometimes perpetuate injustice by not adhering to the principles of natural justice or by being biased towards women and other marginalized groups. Local Governments should promote access to justice and the right to a fair trial by ensuring that LCCs comply with the principles of natural justice in judging cases.

In procedural terms, Natural Justice means that a decision maker should not only act in good faith and without bias, but they should also grant a hearing to any person whose interests will be affected by the exercise of that decision before the decision is made.

Natural Justice means

“Justice that is simple or elementary as distinct from justice that is complex, sophisticated and technical”

Justice Meggry in John v. Rees [1970] Chancery Court of England

The Right to a Fair Hearing

- Every person who is charged with wrong-doing must be given reasonable notice of the charge against him or her, preferably in writing. Such notice should clearly indicate the specific complaint that is being brought against the person and should clearly indicate the time and place at which the hearing will take place.
- At the hearing, each party must be given a reasonable opportunity to adequately present their case. This includes the right to ask for an adjournment in case of any circumstance that would prejudice the party requesting the adjournment.
- All relevant information should be disclosed to the party that might be prejudiced by the concealment of such information.
- All Parties should be allowed to call witnesses in support of their case. Each party should also have the opportunity to cross-examine the witnesses of the opposing party.
- In making its judgment, the LCC should give reasons for its decision, in order to exclude any allegations of bias.

The rule against bias – No person should be a judge in his/her own cause

Any person who is presiding as part of the LCC should not be biased. This means that a person should not be a judge in his or her own cause. This is normally expressed through a popular local saying that *“A monkey cannot decide over the affairs of the forest.”* More practically, the rule that a person should not be a judge in his or her own cause implies the following:

- Any person presiding over a matter should not have any direct financial interest in the outcome of the proceedings; for example, he or she should not be the business partner of any of the parties to the proceedings.
- Any person presiding over the LCC should not have any other relationship with one of the parties that might lead to a suspicion of bias. Such relationships include blood relationship, personal friendship or hostility between the LCC member and one of the parties.
- An LCC member should not make pronouncements outside the Court that reveal that he or she is partisan or biased.
- An LCC member should always act in a judicial temper so as not give an impression of bias.

In any case where there is a likelihood of bias as result of any of the above circumstances, **the LCC member should disqualify himself or herself from presiding over the matter.**

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□ The right to just and fair treatment in administrative decisions

Administrative Decisions refer to decisions taken by public agencies, including local governments, in the course of administering public affairs. They include the following types of decisions:

- Decisions regarding the appointment, discipline and termination of public officers.
- Licensing and registration decisions.
- Awarding and removal of tenders.
- Rating decisions.
- Inspection and enforcement of standards with regard to public health matters, food, housing, education and other public services.
- Enactment of Bye-laws and Ordinances.
- Decisions made by Administrative Tribunals that work with or fall under Local Government such as the Valuation Court, Land Tribunals and LCCs also qualify as Administrative decisions of a judicial nature.

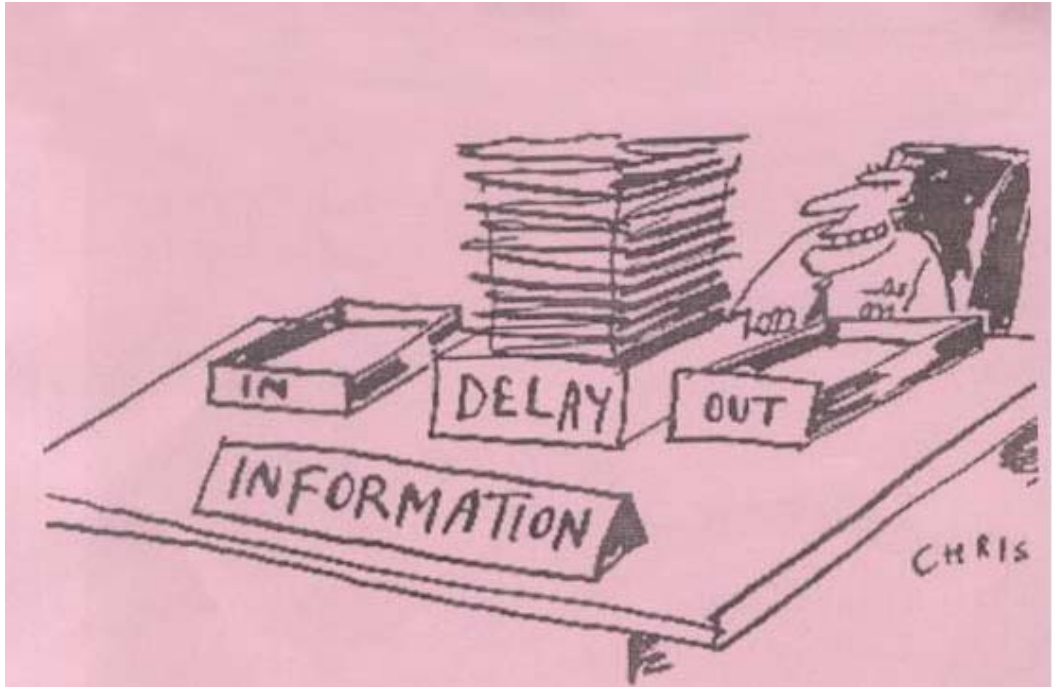
“Just and fair” treatment in administrative decisions means that natural justice must be applied in day-to-day administration. The failure to observe natural justice in administrative decisions renders the decisions of local governments and other public authorities liable to judicial review by the High Court. The High Court has powers under the Judicature Act to quash the decisions of Local Governments and other Public Authorities through orders of *Certiorari* or *Prohibition*. *Certiorari* is an order which quashes the decision of a public authority, rendering it void and unenforceable. *Prohibition* is an order which halts an unjust and unfair decision-making process that is still on-going.

□ The right to information

The Constitution (Article 41) and the Access to Information Act of 2006 guarantee citizens the right to access information that is in the possession of the state and its agencies. Local Governments must avail citizens and CSOs with information on their budgets, plans and programmes in accordance with this right, through publication, dissemination and education. Information must be availed in a timely and accessible manner. Therefore,

simply pinning up matters on Notice Boards at the District or Sub-County Headquarters may not suffice. Effective participation cannot be achieved without access to information. Access to information is also part and parcel of enhancing the accountability of duty-holders.

It may be necessary for summaries of key documents to be translated into the local language in order to enhance access to information and effective participation.



□ **The right of freedom speech, association and assembly**

Local Governments should respect freedom of speech, including freedom of the media. The media is an important arm of civil society which can be used for education and sensitisation of the population. The media can also enhance the accountability of local government by publicising anomalies, wrongdoing and shortcomings.

Citizens should be allowed to form and join organisations including political parties, community-based organisations, and other groupings that are allowed by law. Civil Society can play an important advocacy role through lobbying, demonstrations and campaigns. Such advocacy activities are part of the right to freedom of speech, expression and association. Local governments should recognise the important advocacy role that civil society plays in this regard and should play a supportive, as opposed to a repressive role.

Local government councillors and technocrats have the right of freedom of association and are free to belong to any political party of their choice. Political parties have the right to hold meetings, rallies and demonstrations.

Political party affiliation should not be taken into consideration when the District Service Commission is hiring Local government staff.

Voting patterns in Uganda show that different districts lean towards different political parties. Despite this, there may be individual councillors and officials who belong to a different political party than the majority. Councillors and officials with differing political leanings should respect each other's roles and be able to work harmoniously for the good of the district.

Local Governments also have a duty to increase awareness within their communities about the functioning of multiparty politics and the implications of the end of the movement system of government. Particularly in Districts where the leadership is part of the ruling party, care should be taken to clarify the role of political parties and the role of the opposition in a multi-party system of government.

IV. LOCAL GOVERNMENTS, SERVICE DELIVERY, AND ECONOMIC AND SOCIAL RIGHTS

One of the main reasons for the implementation of the decentralization policy was to ensure better service delivery. According to the Constitution and the Local Government Act, local councils are responsible for the provision of a wide range of services, including water and sanitation, health centres and primary and secondary education.

The service delivery functions of local councils are not merely services that the government bestows upon its citizens; they are human rights obligations which local governments must comply with. They are not favours from the ruling party or rewards for loyalty and support, but rights that all citizens are entitled to regardless of their social or economic status or political affiliation. Many of these rights are contained in the National Objectives and Principles of State Policy of the Constitution of Uganda. Furthermore, the Government of Uganda has ratified the ICESCR where services are given the status of rights.

Thus, local governments are obliged to respect, protect and fulfil human rights through their service delivery programmes. In addition, local governments must be accountable to the citizens regarding the availability and quality of services delivered. The government is currently pursuing a policy where service delivery is being privatised, and therefore the role of government is diminishing. In spite of the privatisation of service delivery, the government is still responsible to ensure the availability, accessibility and quality of services delivered.

The ICESCR recognises that social and economic rights can only be progressively realised in accordance with the resources available to a government. Article 2 thereof says that:

Each State Party to the present Covenant undertakes to take steps, individually and through international technical assistance and cooperation, especially economic and technical, to the maximum of its *available resources*, with a view to *achieving progressively* the full realisation of the rights recognised in the present Covenant *by all appropriate means*, including particularly the adoption of legislative measures.” [Emphasis added].

It is important to emphasise that the idea of “progressive realisation in accordance with the resources available” should not be used as an excuse for States to abdicate their responsibilities under the Covenant. Regardless of their resource constraints, States should be able to do the following:

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- To implement the Covenant *without discrimination*. Men, women, youth, and all people, regardless of their social or economic status, must be able to enjoy the right without discrimination.
- *To take steps* to implement the Covenant. Even though rights are achieved progressively, States must begin to take steps as soon as they ratify the Covenant.
- States must be able to prove that the number of people enjoying rights is increasing over time, and that the quality of services offered is also improving over time.
- States agree to *use all appropriate means, particularly the adoption of legislative measures*, to achieve economic and social rights. The phrase “all appropriate means” means that at the very least, any person whose rights are violated should be entitled to an effective remedy.
- States must *come up with clear strategies and programmes on how they will boost the resources* available to achieve economic and social rights over time. Whatever resources are available must be used diligently, putting them where they are most required. Thus, loss of resources through corruption, extravagance, and other forms of wastage is a human rights violation.
- Even during a time of severe resource constraints such as economic recession, States should ensure the protection of those who are particularly vulnerable, such as children, persons with disabilities, women and others.

Whereas the Central Government bears the primary responsibility for ensuring the above, as subsidiaries of central government, local governments can also play a role.

Not only have local governments been given planning and budgeting powers that can enable them to contribute to the realisation of social and economic rights, they have also been given direct responsibility for provision of a number of services.

Decentralisation and Human Rights in Uganda

Below is an illustration of the functions and services of local councils and the corresponding human rights obligations.

DECENTRALISED SERVICES AND FUNCTIONS	CORRESPONDING HUMAN RIGHTS OBLIGATIONS IN THE CONSTITUTION AND INTERNATIONAL LAW
<i>Preschool, Primary, Secondary and technical education</i>	The right to education (Constitution: 34, National Objective: XIV, ICESCR: 13)
<i>District Hospitals and Health Centres, Maternal and Child Welfare, Primary Health Care Control of Communicable Diseases, Vector Control</i>	The right to the highest attainable standard of health (Constitution National Objective: XIV, ICESCR: 12)
<i>Water Supply, Sanitation, Sewerage solid waste management and bulungi bwa nsi</i>	
<i>Agricultural extension services including soil erosion control, crops, animals and fisheries and famine control.</i>	The right to adequate food (Constitution National Objective: XIV, ICESCR: 11)
<i>Entomological services and vermin control</i>	
<i>Forests and Wetlands</i>	The right to a clean and healthy environment (Constitution: 39)
<i>Public parks, gardens and recreation grounds</i>	The right to rest and leisure (Constitution: 40, ICESCR : 7)

Through a series of *General Comments*, the United Nations Committee on Economic, Social and Cultural Rights has provided guidelines on what should be done to achieve the realisation of economic and social rights:

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	Local Governments should respect, protect, promote and fulfil by:
The right to Education	<ul style="list-style-type: none"> <input type="checkbox"/> Ensuring <i>availability</i> of functional schools with proper buildings, trained and well-paid teachers, teaching materials and other necessary facilities. <input type="checkbox"/> Ensuring accessibility of educational institutions and programmes to all. Accessibility means education is affordable to all and within geographical reach of all without discrimination. This requires special attention to vulnerable groups such as girl-children, children with disabilities, those with HIV/AIDS and children from minority groups. <input type="checkbox"/> Ensuring the <i>acceptability</i> of educational programmes, i.e. culturally appropriate and of good quality. <input type="checkbox"/> Ensuring <i>adaptability</i> of education services to fit the changing needs of society.
Health	<ul style="list-style-type: none"> <input type="checkbox"/> Ensuring <i>availability</i> of functional public health and health-care facilities in sufficient quantity, including safe and potable water, adequate sanitation facilities, hospitals and clinics with well-paid trained medical professionals, and essential drugs. <input type="checkbox"/> Ensure <i>accessibility</i> of health facilities, goods and services to all without discrimination. Accessibility means services should be within easy geographical reach, particularly for vulnerable and disadvantaged groups. They should also be affordable to all. <input type="checkbox"/> Ensure <i>acceptability</i> of services to all– they should be culturally appropriate, gender sensitive and of good quality. Medical ethics should be promoted and upheld. <input type="checkbox"/> Services must be of good <i>quality</i>, i.e. scientifically and medically appropriate. This requires skilled personnel, unexpired drugs that have been approved by the National Drug Authority, safe and potable water, and adequate sanitation.
Food	<ul style="list-style-type: none"> <input type="checkbox"/> Ensure <i>availability</i> of food in a quantity and quality sufficient to satisfy the dietary needs of individuals. It implies that land for cultivating food must be available, and food distribution, processing and marketing systems must be in place to enable all people to access the food they need. Food must be safe, i.e. free from adverse substances as well as nutritious <input type="checkbox"/> Ensure accessibility of food. Costs associated with acquiring food should be affordable to all. Special attention should be paid to the landless and other impoverished or disadvantaged persons. <input type="checkbox"/> Ensure acceptability of food, especially culturally.

Decentralisation provides a viable context within which to achieve many of the above parameters. For example, decentralisation makes it possible to pay greater attention to local peculiarities and preferences, thus putting local governments in place to ensure the *acceptability* of programmes. The notion of “bringing services nearer to the people” also promotes the physical accessibility of programmes.

Within the context where much of service delivery has been privatised, local government still bears the responsibility of ensuring that rights are realised because government is the main duty bearer under the rights-based approach. Local Governments should therefore take their inspection and licensing role more seriously and not grant or renew licences of any private actors who do not meet the required standards. For example, any schools, clinics or eating places which do not meet the standards under the law should be de-licensed and closed.

The Committee on Economic Social and Cultural Rights emphasises the adoption of legislative measures as a means to achieving economic, social and cultural rights. Thus, local governments can play a role in realising human rights by enacting Bye-laws and Ordinances that are not inconsistent with the Constitution or any other written law. For example, Bye-laws and/or Ordinances may be passed to enhance food security by creating collective farms, requiring compulsory storage of a portion of every harvest and prohibiting negative practices that impede agricultural productivity such as bush burning. Bye-laws and Ordinances can also be used to abolish negative cultural practices that impede the realisation of economic and social rights, for example, superstitions about nutrition, pregnancy and childbirth that put the health of pregnant mothers and infants at risk.

In conclusion, despite the resource and other constraints, Local Governments can play a role by minimising the wastage of resources, curbing corruption, and ensuring that the few resources available are used maximally to achieve economic and social rights. Local Governments also need to be innovative about boosting their resources, particularly given the inadequacy of central government funding and the recent abolition of graduated tax.

V. THE RIGHTS-BASED APPROACH AND DECENTRALISED GOVERNANCE

What is the rights-based approach?

In recent years, many international development agencies such as UNDP and UNICEF, as well as bilateral donors like DFID and DANIDA have adopted a rights-based approach to development assistance. They have encouraged the governments of countries such as Uganda to adopt a rights-based approach to development planning and programming.

A rights-based approach to development simply means that the achievement of human rights is set as the primary objective of development. Under this approach to development, the international human rights framework as contained in the Conventions and Treaties forms the legal foundation for development programmes, and development is synonymous with the achievement of rights.

The rights-based approach recognizes that achieving development by securing rights is essentially a political process, because the citizens, who are rights holders, must claim their rights from the State, which is the duty-bearer and must therefore deliver in accordance with the law.

The approach therefore entails a twin strategy of empowering rights-holders to claim their rights, while also building the capacity of the duty-bearer to fulfil its obligations. Thus, democratisation and development or rights realization must go hand in hand. The democratic principles of participation and accountability are central to the rights-based approach. Political participation is then not just a right in itself, but also the means by which citizens are empowered to claim their rights from the state. On the other hand, strengthening the duty-bearer's ability to fulfil its obligations does not only entail capacity building, but also strengthening the mechanisms by which the State is held accountable to the citizens. Thus, the rights based approach is premised on the active participation of citizens demanding rights from the government, as opposed to the needs approach where citizens are perceived as passive actors awaiting handouts from the government and other actors.

Decentralisation—which is promoted as a means of enhancing citizen participation at the local level—thus provides an excellent opportunity for implementing the rights-based approach. With government brought nearer to the people, not only can they participate more in achieving their rights;

but it also facilitates the government to be more responsive to people's needs in the delivery of public services. Decentralisation also makes it easier for the people to hold the government accountable. Accordingly, linking the rights-based approach to decentralization implies that the design and operation of decentralized governance must enhance civic participation, coupled with accountability. Additionally, it implies that local government plans and programmes must be geared towards the fulfilment of human rights as the principal objective.

Article 20(2) of the Constitution emphasizes that all persons, organs and agencies of government must respect, uphold and promote human rights. This means that Local Councils and Local Governments are obliged to respect, promote and uphold human rights in all their activities, decisions and processes. In short, Local Governments are obligated to adopt the rights-based approach.

Key Principles of the Rights-Based Approach:

The rights based-approach emphasises that in designing development programmes, local governments should ensure the following:

- *Empowerment* of the rights-holders to demand their rights from the duty bearers;
- *Participation* of individuals and communities in the design, implementation and evaluation of programmes;
- *Accountability* of the duty-bearers (States and all state agencies) with regard to their obligation to respect, promote and fulfil human rights, and
- Promoting *equality and non-discrimination* by paying special attention to the most vulnerable groups in society.

Practical Implications of adopting the rights-based approach in local government systems and processes

A rights-based approach uses the human rights treaties and the specific standards for monitoring the realisation of rights as a basis for development programming. Using human rights in development programming has the following implications:

□ A System of Analysis

Use the human rights standards to help define the specific problem, identify those responsible for action, and measure results in terms of the realisation of those standards. This analysis focuses not only on what actions need to be taken to improve the situation, but also on who, over the long-term should be leading the action and/or providing the services. It also inquires whether all groups in a society are able to access the quality of those services equally, and what process is in place for prioritising action and ensuring that all groups impacted have a role to play in determining and realising solutions. Conducting a *Human Rights Situation Analysis* should be the starting point of development plans and programmes, as opposed to a “needs assessment.” A human rights situation analysis can be illustrated as follows:

RIGHTS ANALYSIS

- Universality Who is being discriminated against and is not realising rights?
- Participation Quality, quantity, location and opportunity for participation.
- Indivisibility The extent to which the multiple interrelated rights, that is civil and political and economic and social are being addressed.
- Accountability The degree to which duty bearers are held responsible.

Examples of Analytical Questions:

What part of the human rights standards have been realised; what is missing?

Are all groups benefiting to the same degree? Who is missing, why?

Who is responsible for ensuring these standards are met? What are their current capacities, and how can these capacities be improved?

Who needs to be included in defining and working towards an improved situation, what needs to happen to ensure their involvement?

Adapted from: Council for International Development, (2005) *The Rights Based Approach to Development.*

□ Programme Design

The design of programmes at local government level should be as inclusive as possible and involve both duty bearers and claim holders. It calls for the strengthening of partnerships between local government and civil society. Below are some questions that can be used to ensure that programme design is in line with the rights-based approach:

- Does project design and implementation incorporate human rights standards as set out in international and regional conventions?
- Does project design and implementation incorporate principles of universality, indivisibility, inter-dependence, equality, participation, and accountability?
- Do both duty bearers and claim holders participate in project design, implementation, monitoring and evaluation?

Programme designing in line with the rights-based approach should also include setting priority areas so as to ensure that groups and individuals who are undergoing the most serious violations of human rights are catered for. For example, if violence against women is prevalent in the District, then programme design must incorporate strategies to address violence against women. The rights-based approach is therefore useful in enhancing equitable development both within particular districts and across the country in general because it enables a focused approach to the most serious violations of human rights.

□ Monitoring and Evaluation

Monitoring and evaluation is key in implementing the rights based approach because it provides the means by which to ensure accountability by the duty bearers. By use of indicators expressed in human rights terms, it is possible to measure and evaluate the progress that is being made towards the realisation of a particular right. Thus, programme objectives, indicators and other components of the programme design must be expressed both quantitatively and qualitatively in human rights terms in order to ensure a sustained, meaningful and consistent implementation of human rights. Below is an example of goals, objectives and indicators framed in human rights terms:

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Objective	Qualitative Human Rights Indicator
<ul style="list-style-type: none">▪ Enhanced realisation of the right to adequate food by increasing agricultural productivity and improving food storage facilities in homesteads	<ul style="list-style-type: none">▪ Evidence of more people in the district realising their right to adequate food by eating at least 3 nutritious meals a day.

Progressively realization implies that things must improve continually. Progress can be assessed by measuring, for example:

- Is the budget providing more funds for quality, accessible, available education than last year?
- Are health centers more evenly distributed throughout the District than five years ago?

□ Capacity Building

Implementation of the human rights-based approach calls for building the capacity of local government policy-makers and technocrats to understand the rights-based approach so that they can implement it. Unless capacity is built, it may be difficult for local government councillors and personnel to understand its relevance and to implement it in their work. There is therefore a need for training in human rights standards and principles and in the practical application of the rights-based approach at the local government level.

□ Enhancing Civic Participation

As previously mentioned, participation is one of the pillars of the rights-based approach. Participation means ensuring that national stakeholders have genuine ownership and control over development processes in all phases of the programming cycle: assessment, analysis, planning, implementation, monitoring and evaluation. For processes to be truly participatory, they should reflect the requirement for “active, free and meaningful” participation under the United Nations Declaration on the Right to Development. Participation is an objective, as well as a means, of development. From a human rights perspective, participation goes well beyond mere consultation. It means that the citizens must be able to engage critically in the whole development process, not just at the formulation stage.

Given the nature of Uganda’s society it is mainly through the advocacy efforts of civil society organisations that the people are given a voice. Civil

Society Organisations include NGOs, CBOs, Faith-Based Organisations (FBOs), professional associations such as the Uganda Law Society and the Uganda Medical Doctors' Association, business associations, labour unions and media organisations.

Whereas there has been a tremendous growth in the numbers of civil society organisations in Uganda, their impact on influencing and checking duty bearers has been rather limited. Many CSOs have concentrated on service delivery and have not engaged much in advocacy and lobbying activities. This is largely due to a fear by CSOs of being labelled “agents of the opposition” if they engage in critiquing government. There is a need to create a culture where government institutions accept criticism graciously, in recognition of their role as custodians and not owners of public resources.

On their part, Local Governments need to create an enabling environment for CSO operation in their districts by accepting criticism and responding adequately and in a timely manner to any queries that may be raised about their operations. Linkages with CSOs are therefore vital to enhancing the participation of the people as well as improving the mechanisms of accountability envisaged by the rights-based approach.

However, even in the absence of CSOs, local governments can do a lot to enhance the participation of citizens. Local Councillors at all levels of local governments are the representatives of the people and are supposed to ensure that the peoples' views are taken into account in planning and programming. Local Councillors can play a role by:

- Meeting the electorate before each council meeting;
- Consulting the people on issues to be discussed by the Council and collating their views, opinions and proposals, and
- Reporting to the electorate on the general decisions of the District and Sub-County Council Executive Committees and actions that are being taken to solve the problems and enhance the human rights of residents in their areas.¹

¹ Adapted from the Local Government Act 1993 of the Republic of Ghana.

□ **Promoting Accountability and Transparency under the Rights-Based Approach**

The rights-based approach to development emphasises accountability and transparency on the part of duty bearers such as local governments. As part of the process of accountability, rights-holders must be educated about their rights so that they can demand them from the government. In turn, duty bearers can enhance accountability and transparency by:

- Promoting transparent budgeting and building capacities for budget analysis;
- Ensuring the availability of information and statistics necessary to monitor the realization of human rights;
- Building capacities for policy analysis and social impact assessment among technical staff;
- Encouraging media freedom;
- Ensuring that people whose rights are violated have access to mechanisms of redress through the justice institutions, and
- Ensuring that private and non-government actors comply with human rights standards in their activities.

□ **Advocacy, awareness raising and influencing policy**

Although advocacy, awareness raising and influencing policy have traditionally been viewed as CSO activities, local governments have a role to play in advocating on behalf of their constituents, raising their awareness and influencing central government policy to take into account the interests of the people at the grassroots. Through their own programmes and through their linkage and interactions with CSOs, Local Governments are in a position to know what is going on at the grassroots and what solutions are necessary to improve the human rights situation at that level. Local Governments can then lobby Central Government directly or indirectly through the Resident District Commissioner (RDC) who is the Central Government Representative in the District, or through their Members of Parliament, who are ex-officio members of the District Council.

As the elected leaders of the people, Local Councillors can play a significant role in awareness raising on human rights and development issues. Local Councillors can also collaborate with CSOs to participate in education and sensitisation activities, thereby giving such activities greater legitimacy in the eyes of the people.

VI. PROTECTING THE RIGHTS OF VULNERABLE GROUPS IN A DECENTRALIZED SYSTEM OF GOVERNMENT

There is no universal checklist of who is most vulnerable in every given context. Rather, rights-based approaches require that such questions be answered locally: who is vulnerable here and now? However, vulnerable groups usually include women, children, persons with disabilities, persons living with HIV/AIDS, refugees, displaced persons and minorities.

Local Councils can play a role in protecting the rights of vulnerable groups by paying special attention to their needs in accordance with the rights-based approach. Unless special emphasis is given to vulnerable groups, their participation in government ends up being limited and their needs, problems and aspirations are not taken into account when designing policies and programmes. Local Councils can pay special attention to vulnerable groups in the following manner:

- Data and statistics should be disaggregated in terms of vulnerability indicators such as race, religion, ethnicity, language, sex and other categories of human rights concern;
- Inclusion of representatives from vulnerable groups in decision-making bodies and structures;
- Consultation and active participation of vulnerable groups in policy-making, planning and implementation, and
- Designing and implementing special programmes to address the unique needs and problems of vulnerable groups.

Although affirmative action ensures the participation of some vulnerable categories of people, there are some vulnerable groups that have not benefited from affirmative action. This does not mean that they should be left out of the development process.

□ Women

Some effort has been made towards improving the participation of women in local government, in the first instance by reserving one third of all positions of local councils for women. However, it is increasingly being emphasised that it is not enough simply to have women in office. They must also be equipped to and given space to participate effectively by allowing their voices to be heard.

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In addition, much more attention needs to be paid to the special needs of women and other factors that hinder their effective participation in local government budgets, plans and programmes. These include women's lack of or inability to access land, violence against women, including domestic violence, and women's reproductive and sexual health and rights. It should also be noted that many women suffer multiple forms of vulnerability, for example, women with disabilities, refugee women or women from minority groups.

□ Children and young people

The Local Councils have been given specific responsibilities regarding the care and protection of children under the Children Act. Local Councillors are responsible for preventing and addressing child abuse in their areas. Local governments are responsible for establishing children's homes and homes for child offenders.

With the recent abolition of Youth Councils, the participation of young people in the affairs of local government hangs in the balance. There is a need to ensure that despite such abolition, young people participate freely and effectively in local government affairs. More than half of Uganda's population is made up of young people, and it would be manifestly unjust and unfair not to give them a voice in the management of public affairs. Local governments should work with the youth to design innovative ways of handling special problems faced by young people such as redundancy and unemployment, and their sexual and reproductive health.

□ Refugees

Many districts in Uganda such as Hoima, Arua, and Mbarara host a significant population of refugees. They should not be left out in the management of local government affairs. Although they cannot run for local office or be employed by the local government, the rights-based approach emphasises that efforts should be made to improve their participation in local government and to take into account their needs in the design of programmes. Despite being non-citizens, refugees have rights which must be respected and upheld.

□ Displaced Persons

The displaced persons in northern and north-eastern Uganda face a host of unique problems. The insecurity, poor health, and lack of other facilities that characterises life in the IDP camps must be specifically addressed by local governments.

□ **Persons with Disabilities**

The Constitution recognises the need to pay special attention to persons with disabilities, and reserves affirmative action seats for them in Parliament and at Local Government level. This has played an important role in improving their participation. However, much still remains to be done to remove the stigma associated with disability, and to ensure that public services and facilities take into account their specific needs. There are few special schools for children with disabilities in this country, and many districts have none at all. This has made it impossible for many children with disabilities to take advantage of UPE since many UPE schools have no facilities or teachers for special needs education. Many public buildings have no wheelchair access or toilets for PWDs. Local Governments can play a role by ensuring that the needs of PWDs are taken into account in the design and construction of all public facilities.

□ **Minorities**

There is no universally accepted definition of “minorities.” Minority groups are formed according to shared ethnic, religious, linguistic or cultural characteristics, and members of the group acknowledge a common identity on this basis. Minorities can therefore be described as a non-dominant group of individuals, with characteristics different from those of the majority population. For example, in Uganda, the majority of the population describe themselves as Christians, and hence Muslims or traditionalists may form a religious minority.

In some districts, there is a dominant ethnic group living together with a much smaller ethnic group that has a different language and culture from the dominant one. Examples include the Baruli-Banyala in several districts of Buganda, the Nubians in Gulu and other districts, Asians in Kampala, and so on.

Minority groups require special attention because they tend to be left out of public affairs, either advertently or inadvertently. Because they are fewer in number, their access to public office is curtailed, and their participation in government limited. The 1995 Constitution recognises the need to redress this, and specifically provides that they shall participate in the decision-making process and their views and interests taken into account in the making of national plans and programmes (Article 36). However, in the absence of affirmative action in their favour, this provision may be difficult to implement. Local Governments can play a role by going out of their way to improve the participation of minorities in line with the rights-based approach.

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It is important for local governments to pay attention to ethnic minority groups because their marginalisation in local government affairs has been identified as one of the factors that has led to the proliferation of districts in Uganda. Whenever a particular ethnic group feels marginalized within the larger context of the dominant ethnic group in the District, they start clamouring for a new District. The proliferation of districts in turn has implications for public expenditure on public officials, as well as implications for national unity and building a common Ugandan identity.

□ Pastoralists and Fishing Communities

As mentioned before, defining who is vulnerable depends on the time, place and prevailing circumstances. Vulnerable groups are therefore not limited to the above categories. Some Fishing Communities, particularly those who live on isolated lake shores or isolated islands, as well as Pastoralist Communities who may be highly mobile and therefore easily excluded from local government plans and programmes, may be described as vulnerable. Fishing and pastoralist communities have special needs and concerns which must be taken into account in District Plans and programmes. For example, whereas national primary education statistics show a high school drop out rate for girls, in fishing communities, the reverse may be true. Boys may have a higher drop out rate because they spend all night fishing and are sleepy during the day. There would therefore be a need to address a high-school drop-out rate for boys in such a community. On the other hand, it may be difficult to include Pastoralist communities in development plans and programmes because they may move to another place during the implementation of a programme. This would call for innovative “mobile” and other programmes to take into account the needs of pastoralists.

The above categories are not exhaustive of vulnerable groups. It is also important to note the cross-cutting issue of HIV/AIDS, which would have the effect of increasing the vulnerability of the people mentioned above.

VII. CONCLUSION – A SUMMARY OF DOs AND DON'Ts FOR LOCAL GOVERNMENTS AND HUMAN RIGHTS

Decentralised Governance provides many opportunities for improving the realisation of human rights. The Government of Uganda has committed itself to fulfilling the human rights of its citizens, not only by ratifying international human rights treaties, but also by incorporating a chapter on human rights in the Constitution. Development practitioners, governments and civil society organisations are increasingly promoting the rights-based approach to development as a sustainable method of ensuring rights realisation as the goal of development.

As local governments seek to incorporate human rights concerns into their plans, policies, systems and processes, there are a number of things that local governments should and should not do. Below is a summary checklist of the dos and don'ts of local governments in adopting a rights-based approach.

Do

Make an explicit commitment to adopt the rights-based approach.

Support capacity building of local councillors, LCC members and local government staff to implement the rights-based approach.

Conduct a human rights situation analysis as a pre-condition for incorporating human rights into local government policies and programmes.

Re-design policies, programmes, procedures and practices to incorporate the rights-based approach.

Ensure statistics are disaggregated by ethnicity, age, race, sex, and other factors that result in vulnerability such as disability or HIV status.

Ensure regular monitoring and evaluation of local government programmes to assess progressive realisation of human rights.

Enact Bye-laws and Ordinances where necessary to enhance change.

Encourage civic participation by involving vulnerable groups and CSOs in the activities of local government.

Enhance access to information by timely publishing of information (budgets and plans) and having it translated into the local language where necessary.

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Ensure that meeting agendas are circulated to all stakeholders well in advance to ensure that Councillors meet and discuss with the electorate before attending meetings.

Ensure that meeting minutes are produced expeditiously and circulated to all stakeholders to enable Councillors to report back to the electorate.

DON'T

Interfere with the enjoyment of civil and political rights by muzzling the media, civil society or people with different political affiliation.

Assume that not prohibiting participation by vulnerable groups is sufficient to ensure that they will participate. Pro-activeness on the part of the local government is necessary in this regard.

Discriminate against sections of the population or individuals on grounds of sex, religion, ethnicity, political affiliation or any other reason.

GLOSSARY OF HUMAN RIGHTS TERMS

AFFIRMATIVE ACTION: Action taken by a government or private institution to make up for past discrimination in education, work, or promotion on the basis of gender, race, ethnic origin, religion, or disability.

AFRICAN CHARTER ON HUMAN & PEOPLES' RIGHTS

CIVIL AND POLITICAL RIGHTS: The rights of citizens to liberty and equality; sometimes referred to as first generation rights. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information.

COLLECTIVE RIGHTS: The rights of groups to protect their interests and identities.

COMMISSION ON HUMAN RIGHTS: Body formed by the ECONOMIC AND SOCIAL COUNCIL (ECOSOC) of the UN to deal with human rights; one of the first and most important international human rights bodies. [MT: THIS HAS SINCE BEEN CHANGED TO THE HUMAN RIGHTS COUNCIL: I SUGGEST YOU GOOGLE FOR A MORE APPROPRIATE DESCRIPTION]

CONVENTION: Binding agreement between states; used synonymously with **TREATY** and **COVENANT**. Conventions are stronger than **DECLARATIONS** because they are legally binding for governments that have signed them. When the UN GENERAL ASSEMBLY adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, MEMBER STATES can then RATIFY the convention, promising to uphold it. Governments that violate the standards set forth in a convention can then be censured by the UN.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: (Women's Convention) (adopted 1979; entered into force 1981): The first legally binding international document prohibiting discrimination against women and obligating governments to take affirmative steps to advance the equality of women.

CONVENTION ON THE RIGHTS OF THE CHILD: (Children's Convention) (adopted 1989; entered into force 1990): Convention setting forth a full spectrum of civil, cultural, economic, social, and political rights for children.

COVENANT: Binding agreement between states; used synonymously with **CONVENTION** and **TREATY**. The major international human rights covenants, both passed in 1966, are the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) and the INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR).

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CUSTOMARY INTERNATIONAL LAW: Law that becomes binding on states although it is not written, but rather adhered to out of custom; when enough states have begun to behave as though something is law, it becomes law “by use” and is one of the main sources of international law.

DECLARATION: Document stating agreed upon standards but which is not legally binding.

UN conferences, like the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing, usually produce two sets of declarations: one written by government representatives and one by NON-GOVERNMENTAL ORGANISATIONS (NGOs). The UN GENERAL ASSEMBLY often issues influential but legally NON-BINDING declarations.

ECONOMIC AND SOCIAL COUNCIL (ECOSOC): A UN council of 54 members primarily concerned with population, economic development, human rights, and criminal justice. This high ranking body receives and issues human rights reports in a variety of circumstances.

ECONOMIC, SOCIAL, CULTURAL RIGHTS: Rights that concern the production, development, and management of material for the necessities of life. The right to preserve and develop one’s cultural identity. Rights that give people social and economic security, sometimes referred to as security oriented or second generation rights. Examples are the right to food, shelter, and health care.

ENVIRONMENTAL AND DEVELOPMENTAL RIGHTS: Sometimes referred to as third generation rights, these rights recognize that people have the right to live in a safe and healthy environment and that groups of people have the right to cultural, political, and economic development.

GENOCIDE: The systematic killing of people because of their race or ethnicity.

HUMAN RIGHTS: The rights people are entitled to simply because they are human beings, irrespective of their citizenship, nationality, race, ethnicity, language, gender, sexuality, or abilities; human rights become enforceable when they are CODIFIED as CONVENTIONS, COVENANTS, or TREATIES, or as they become recognized as CUSTOMARY INTERNATIONAL LAW.

INALIENABLE: Refers to rights that belong to every person and cannot be taken from a person under any circumstances.

INDIGENOUS PEOPLES: People who are original or natural inhabitants of a country. Native Americans, for example, are the indigenous peoples of the United States.

INDIVISIBLE: Refers to the equal importance of each category of human rights law. A person cannot be denied a right because someone decides it is “less important” or “nonessential.”

INTERDEPENDENT: Refers to the complementary framework of human rights law. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life.

INTERGOVERNMENTAL ORGANISATIONS (IGOs): Organisations sponsored by several governments that seek to coordinate their efforts; some are regional (e.g., the Council of Europe, the African Union), some are alliances (e.g., the North Atlantic Treaty Organization, NATO); and some are dedicated to a specific purpose (e.g., The United Nations Education, Scientific and Cultural Organization, UNESCO, and the United Nations Children’s Fund, UNICEF).

INTERNATIONAL BILL OF HUMAN RIGHTS: The combination of the UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) and its Optional Protocol, and the INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR).

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR): Adopted in 1966, and entered into force in 1976. The ICCPR declares that all people have a broad range of civil and political rights. One of the components of the **INTERNATIONAL BILL OF HUMAN RIGHTS**.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Adopted 1966, and entered into force 1976. The ICESCR declares that all people have a broad range of economic, social, and cultural rights. One of the components of the **INTERNATIONAL BILL OF HUMAN RIGHTS**.

INTERNATIONAL LABOR OFFICE (ILO): Established in 1919 as part of the Versailles Peace Treaty to improve working conditions and promote social justice; the ILO became a specialized agency of the UN in 1946.

LEGAL RIGHTS: Rights that are laid down in law and can be defended and brought before courts of law.

MEMBER STATES: Countries that are members of the United Nations.

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MORAL RIGHTS: Rights that are based on general principles of fairness and justice; they are often but not always based on religious beliefs. People sometimes feel they have a moral right even when they do not have a legal right. For example, during the civil rights movement in the USA, protesters demonstrated against laws forbidding blacks and whites to attend the same schools on grounds that these laws violated their moral rights.

NATURAL RIGHTS: Rights that belong to people simply because they are human beings.

NONBINDING: A document, like a **DECLARATION**, that carries no formal legal obligations. It may, however, carry moral obligations or attain the force of law as **INTERNATIONAL CUSTOMARY LAW**.

NONGOVERNMENTAL ORGANISATIONS (NGOs): Organisations formed by people outside of government. NGOs monitor the proceedings of human rights bodies such as the **HUMAN RIGHTS COUNCIL** and are the “watchdogs” of the human rights that fall within their mandate. Some are large and international (e.g., the Red Cross, Amnesty International, the Girl Scouts); others may be small and local (e.g., an organization to advocate for people with disabilities in a particular city; a coalition to promote women’s rights in one refugee camp). NGOs play a major role in influencing UN policy, and many of them have official consultative status at the UN.

POLITICAL RIGHTS: The right of people to participate in the political life of their communities and society. For example, the right to vote for their government or run for office. See **CIVIL AND POLITICAL RIGHTS**.

PROTOCOL: A treaty which modifies another treaty (e.g., adding additional procedures or substantive provisions).

RATIFICATION, RATIFY: Process by which the legislative body of a state confirms a government’s action in signing a treaty; formal procedure by which a state becomes bound to a treaty after acceptance.

RESERVATION: The exceptions that **STATES PARTIES** make to a treaty (e.g., provisions that they do not agree to follow). Reservations, however, may not undermine the fundamental meaning of the treaty.

SELF-DETERMINATION: Determination by the people of a territorial unit of their own political and economic future without coercion from powers outside that region.

SIGNING, SIGN: The first step in ratification of a treaty; to sign a **DECLARATION, CONVENTION**, or one of the **COVENANTS** constitutes a promise to adhere to the principles in the document and to honor its spirit.

STATE: Often synonymous with “country”; a group of people permanently occupying a fixed territory having common laws and government and capable of conducting international affairs.

STATES PARTY(IES): Those countries that have **RATIFIED** a **COVENANT** or a **CONVENTION** and are thereby bound to conform to its provisions.

TREATY: Formal agreement between states that defines and modifies their mutual duties and obligations; used synonymously with **CONVENTION** and **COVENANT**. When **CONVENTIONS** are adopted by the **UN GENERAL ASSEMBLY**, they create legally binding international obligations for the **MEMBER STATES** who have signed the treaty. When a national government **RATIFIES** a treaty, the articles of that treaty become part of its domestic legal obligations.

UNITED NATIONS CHARTER: Initial document of the UN adopted in San Francisco in 1945 setting forth its goals, functions, and responsibilities;.

UNITED NATIONS GENERAL ASSEMBLY: One of the principal organs of the UN, consisting of representatives of all member states. The General Assembly issues **DECLARATIONS** and adopts **CONVENTIONS** on human rights issues, debates relevant issues, and censures states that violate human rights. The actions of the General Assembly are governed by the **UNITED NATIONS CHARTER**.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR): Adopted by the general Assembly on December 10, 1948. It is the primary UN document establishing human rights standards and norms. All member states have agreed to uphold the UDHR. Although the declaration was intended to be **NONBINDING**, through time its various provisions have become so respected by **STATES** that it can now be said to be **CUSTOMARY INTERNATIONAL LAW**.

FURTHER READING SUGGESTIONS AND SOURCES

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United Nations Human Rights Fact Sheets, published by the Office of the United Nations High Commissioner for Human Rights and available at www.unhcr.ch/html/menu6/2/fact.htm

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The following working papers can be downloaded online at www.ids.ac.uk/ids/particip/research/rights

Celestine Nyamu-Musembi and Andrea Cornwall ‘**What is the “rights-based approach” all about? Perspectives from international development agencies**’, Institute of Development Studies, Sussex, *IDS Working Paper 234*

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