

DECENTRALISATION AND LOCAL GOVERNANCE ENHANCEMENT: A Human Rights Checklist

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This paper offers brief recommendations for **UNDP decentralisation¹ programming** in the context of mainstreaming human rights in accordance with the UN Secretary General's 1997 programme of UN reform.² It provides checklists of questions for use in examining:

- processes used in the design and management of decentralisation support programmes for consistency with human rights principles³
- the sensitivity of a country strategy for decentralisation to country context
- the role of UNDP Country Offices in support of decentralisation with reference to:
 - programme identification and design
 - programme management considerations
 - monitoring and evaluation, reporting results

It should be read in conjunction with the recommendations cited below for discussions of these and other themes. Note that this document deals only with the *setting up* of decentralised governance and not with the operation of decentralised governance and the application of standards derived from the Universal Declaration of Human Rights. More extensive discussion is to be found in: UNDP, *Decentralisation Programming and Human Rights Mainstreaming: Report of a review of UNDP practice and country experience*, April 2003; UNDP, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies* (June, 2003); *Human Rights-Based Approach (HRBA) Checklist for Programme Staff* (June, 2003); *Practice Note on Poverty Reduction and Human Rights* (June, 2003)..

Decentralised participatory democracy is a human rights goal in itself—the right of self-determination. It is also a means to progress in the realization of human rights although these do not follow automatically from attempts to decentralise. Political resistance can result in a repressive response. Participation can be co-opted with more effective dominance by power holders. Popular interests may not focus on strategic human rights agendas. Transference of responsibility to less capable implementers or less effective accountability systems can lead to loss of efficiency and effectiveness, to waste, corruption, and a reversion to centralization. Access to services may not be improved, especially where scarce resources are spread too thinly.

¹ Decentralisation refers here to the *process* of moving towards decentralised governance—in which economic, political and administrative power, authority and resources are transferred from the centre to lower levels of governance—“the processes and institutions through which citizens and groups exercise their legal rights, meet their obligations and mediate their differences”. (Consultative Committee on Programme and Operational Questions. *Policy and Programme Matters: Governance*. Draft Matrix Governance. Geneva, 16th Session/2000, p.6.) From a human rights viewpoint, two governing principles of decentralisation are: participation and subsidiarity—conferring responsibility for decision and action as close to those affected as possible.

² This paper is a summary outline of some of the key points from *Decentralisation and Human Rights: A Systemic Approach* November, 2003. It focuses on Country Office programming and omits, in particular, consideration of the following topics treated in that document:

- the meaning, rationale, and significance of a human rights-based approach to development assistance as it applies to programming to support decentralisation and local government
- how to assess consonance between decentralised governance systems and human rights criteria

³ See UNDP, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies*, June, 2003]

Moreover, decentralisation in itself may be unable to effect change where national policies and political, administrative and judicial systems are unsupportive and the rule of law is not upheld.⁴

UNDP programming needs to be informed by these realities and especially by the understanding that there is a path of development for governance systems reflected in the development of societal norms and that fully-fledged participatory democracy may not be the next step on this path. This understanding is essential in resisting advocacy for preconceived forms of governance and seeking instead to support the exploration of developmental steps suited to the historical and cultural context faced, and the movement toward the relational norms required of participatory governance.

1. The process of programme identification

A primary goal of decentralisation is to strengthen participatory democracy. The process of programme formulation should reflect the same goal. For that reason, the support that UNDP provides should aim at strengthening national ownership of the programme and should model participatory democracy in its design. This means both that UN agency programmes will be country-driven and that the national programme itself will be publicly owned. The implications of this for UNDP activities are explored below.

UNDP's engagement in decentralisation⁵ may arise in the context of an existing country vision, commitment and programme, or in the absence to date of such a vision or commitment. Whatever the state of decentralisation, a rights-based approach would offer support for strengthening the country's own capacity for decision-making and action, including country capacity to manage the process of governance reform. Where appropriate, necessary, and requested, it would include support for a process to provide for a clearly expressed publicly generated vision of the reform—the nature of the governance system to be realized and the values it will embody. This would provide both direction and the public engagement needed for ownership and legitimacy. Moreover, a publicly generated vision is likely to be sensitive to the historical, cultural and institutional context. UNDP should be ready to support an effective visioning process within the country and avoid advocating for specific forms of decentralisation. A vision provides direction that then needs to be translated into action for change. Support may be required for a national team facilitating both the visioning and subsequent implementation of the change process.

Questions⁶:

- Are the CCA-UNDAF-CCF-PSD processes used to support the country to explore its need for rights-based governance, and the role of the UNS? Is the CCA country-driven?
- Does UNDP advocate only for human rights principles and avoid advocating for specific governance structures and processes?
- Is UNDP clear and firm in its position on the human rights requirements of decentralisation and the conduct of the change process? Does it invoke constitutional, legal, and treaty obligations as appropriate?
- Is a national visioning process timely? Does UNDP have a role in advocating for—is it ready to support—a national visioning process?
- If there already is government commitment to decentralisation, what drives it? Is it rights-based? Does UNDP respond by inviting a human rights-based approach?
- What is UNDP's role in the development of capacity to manage the visioning and/or change process?

⁴ See: International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights*, Versoix, 2002 and Annex 1 of *Decentralisation and Human Rights: A Systemic Approach* cited above.

⁵ Considerations regarding UNDP programming for decentralisation apply also to programmes for local governance enhancement.

⁶ These questions are intended to support reflection on the Country Office's approach. *Decentralisation and Human Rights: A Systemic Approach* cited above discuss the issues they raise.

2. Human rights-based UNDP programme design

A human rights-sensitive UNDP programme will be:

- human rights-based in intent, objectives, design and implementation processes
- designed to support development of the country's capacity to develop its own national governance reform programme and, to the degree appropriate in the country context, through an inclusive participatory process
- designed as a programme in which the country organizes its own reforms with outside support as requested
- strategic and evolving, sensitive to country context, rather than predefined

Responsibility for managing the change process will necessarily rest with the country. This calls for an evolving *programme* and funding to support specific capacity development activities as and when these become defined and requested by government. Thus, PSDs will not have a fully predefined set of activities to be carried out at specified times. A national unit may need to be created to guide the design process and the management of change. Process consultation for setting this up, for team-building and on-the-job coaching for the team, is likely to be a key programme element. This would then require core support for the continued operation of the team.

Check:

- Is UNDP advocating for a human rights-based approach? Does UNDP bring an external vision with preconception of the forms that rights-based governance might take or is it truly supporting the country to design its own rights-based forms?
- Is UNDP supporting the development of country capacity for the design and implementation of the decentralisation programme?
- Does UNDP offer process consultation and coaching rather than prescriptive expertise?

Authority and responsibility for change needs to be held at the highest levels of government since all branches and levels of government are affected. The nature of the *authority and mandate* given to pursue human rights-based decentralisation will determine the potential for success of the country's decentralisation programme.

Check:

- Is responsibility and authority for the national decentralisation programme held at an appropriate level, jointly as necessary (e.g. by Cabinet, Parliament and President's Office)?
- Does the national programme served by UNDP have a mandate that includes effective consideration of human rights issues relating to the form, content, and establishment of decentralisation?

Programs will be:

- designed to support changes in roles and norms

The roles of agencies, businesses, organisations and individual citizens will be changed with the devolution of authority and responsibility (and with the use of responsibilities—"duty-bearers" analysis). Decentralisation changes the roles not only of those in the local areas, but also those in central and middle level tiers of the governance system. Changing roles means changing relationships and this will call for changes in societal norms. Current norms need to be understood. The task of designing changes feasible in the light of these and of the possibilities of

progressive shifts in societal norms, as well as the task of promoting changes in norms, needs to be informed by explicit analysis.

There is likely to be a need for a national programme for new legislation. Public education is almost certain to be a component of a national programme. Modelling and coaching for the analysis of duty-bearers and rights-holders and for leading groups in systems analysis is also likely to be necessary.

Check:

- Is management of the change process informed by an explicit understanding of the dynamics of changing norms and the underlying values that they reflect? How is this accounted for in the design of the programme, the expertise brought to bear on the matter, and in the way the decentralisation process is managed?
- Is on-the-job coaching in the analysis of duty-bearers/rights-holders and the design of systemic intervention—critical to rights-based programming provided as needed?

Programmes will also be:

- concerned to provide the necessary preconditions for human rights-based decentralisation

Check:

- Is there an awareness of preconditions—steps needed to provide the foundation blocks for moving ahead? Check with respect to:
 - commitment of government to support self-reorganization process
 - key political parties' commitment to human rights-based decentralisation (so that progress is not vulnerable to disruption with a change of government)
 - the constitutional/legal framework, the judicial system, access to justice, rule of law, and the human rights system (human rights institutions, accountability processes, civil society underpinning)
 - prerequisite human rights and their protection (Might opponents of decentralisation infringe rights? Is there a danger of local authority becoming co-opted by local power holders? What provision is made to meet these contingencies?)
 - systems and competencies required of financial and performance accountability systems (Are accountability systems adequate to prevent corruption, misuse of resources, and abuse of administrative authority?)
 - readiness of government to respond to ministerial and other resistance to decentralisation and the redistribution of power
- The capacity for monitoring human rights concerns and for use of this information as the focus of development programming?

Not least, programmes will be:

- systemic in scope

All branches and levels of government are impacted by the adoption of human rights-based decentralised governance. Decentralisation changes the planning-budgetary process at all levels and its redesign is a critical element in human rights-based decentralisation since decentralised governance calls for top-down and bottom-up coordination of decision-making and a human rights focus for the planning process that changes the roles and functions of central and middle-level agencies and citizen forums. In particular, the interdependence of human rights has major significance for the design of intersectoral programming processes and implementation structures. (See *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies* on the interdependence of human rights.) It is

important to envisage support for intervention at all levels and engagement of all actors including NGOs, CBOs, universities and the private sector.

Check:

- Does the programme cover changes necessary to human rights-based decentralisation at central and middle levels of government as well as local?
- Does the decentralisation programme address the redesign of the policy-planning-programming-budgeting system and its operation at all levels from local to national?
- How does decentralisation relate to other government reform initiatives? (e.g. are there separate programmes for ministry restructuring or civil service reform?) What, if anything, needs to be done to harmonize these with human rights-based decentralised governance?
- Is programme development informed by an awareness of the interdependence of rights and the need for interagency coordination (national and international) of design and implementation of complementary programme components? Does it provide for intersectoral programme identification and design?
- Is support given to develop NGO, CBO, universities and private sector capacities to undertake their roles in support of human rights-based decentralisation?

3. Implications for performance assessment

UNDP should not be taking credit for the country's self-organising for human rights-based decentralisation but for the support it has given to capacity development for this. This affects the nature of performance reviews, as does the specific need to apply human rights criteria to performance assessment.

- Are human rights criteria established for the evaluation of Country Office and consultant performance? Do these criteria include checks on the application of a human rights lens in the process and content of programme development and implementation?
- Is it clear that the country's achievements in human rights-based decentralisation programmes are attributable to the country and that UNDP programme contributions to these achievements are distinguished, reported and assessed separately?