Global Platform for the Right to the City
Plataforma Global por el Derecho a la Ciudad
Plataforma Global pelo Direito à Cidade

HABITAT III

Policy Papers Frameworks

Review and Comments

February 2016

4.- URBAN GOVERNANCE, CAPACITY & INSTITUTIONAL DEVELOPMENT

Overview

1. The paper does not address the question of **Human Rights** standards as a guarantee of democracy for the Urban Governance. Urban governance should integrate HR principles through Charters for Human Rights (See UCLG Global Charter Agenda for Human Rights in the City) including the right to participate and mechanisms to make them judiciable and actionable by citizens. At the same, the paper makes no reference to the Right to the City (see Policy Paper N.1).

2. On the other hand, for the Habitat III process and outcomes to be credible, it is indispensable to assess implementation of the **commitments of Habitat II**, as promised in Habitat Agenda "G. Assessing Progress." In essence, the Habitat II achievements were: (1) an affirmation of the centrality of human rights, in particular the progressive realization of the human right to adequate housing (as provided in international instruments) in human settlements and (2) recognition of the principles of good governance in balanced rural and urban development. Those two pillars of the Habitat II Agenda are reflected in the Istanbul Declaration and Habitat II Agenda. Other detailed commitments demonstrate the continuity and integrity of 1st UN Habitat Forum (Vancouver, 1976) and Habitat II (Istanbul, 1996).

3. Habitat II enshrined eight principles of governance and committed states and their governments to at least 107 specific actions to achieve and sustain good habitat governance. These principles also included specific categories such as Indigenous people, woman, marginalized groups, and small farmers, among others that should be the priority of any plan of action.

4. Local government is the best *sphere* of government to ensure cross-sectoral integration. N.B.: the term "sphere" and not "tier" or "layer," is helpful. That subtle usage connotes a nonhierarchical approach to governance structures and allows for the recognition that local government, such as it exists, is the first sphere of interaction with the citizen and, therefore, at least as important to the citizen as central structures and functions. However, the PPF begins referring to "tiers" and "levels" of government (p. 6).

5. Nonetheless, this approach does not contradict the unitary or federated state structure of governance that integrates and coordinates among other spheres on national habitat-related policies, plans and strategies. As provided in numerous treaties and international instruments[1],

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[1] For example, International Covenant on Civil and Political Rights (1966), Article 50, and International Covenant on Economic, Social and Cultural Rights (1966), Article 28, affirm that "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." The International Law Commission has confirmed that the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State. Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: http://www.un.org/documents/ga/docs/56/a5610.pdf; and Commentaries, at: http://www.eydner.org/dokumente/darsiwa_comm_e.pdf. The nature of human rights treaty obligations is binding on "every State Party as a whole," ex-plains the UN Human Rights Committee further: "All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local -

local authorities and local governments are equally obligated to uphold international law: all of treaty law, general principles and peremptory norms of the unitary system of international law. For the citizen, local governance is the nearest of the various distinctive, interdependent and inter-related spheres of government within a territorial state[2]. As the governmental sphere closest to the citizens, local government is in a much better position than central government to deal with matters that require local knowledge and regulation on the basis of local needs and priorities. This axiom applies whether the local government operates in urban or rural settings[3].

6. *The human rights obligations of "local governments" (LGs) and "local authorities" (LAs):*
The two terms are not synonymous, and the PU should clarify this without using the two interchangeably. The distinction is important not to differentiate between the nature of the obligations, but to distinguish them by their respective type of governance. The particular terminology and concepts defining "local administration"/"local authorities" and "local government" distinguish the former as generic terms that may or may not constitute "government," as defined by representational criteria.[4] Both forms of governance possess certain powers conferred upon them by legislation or directives of the central spheres of government. Those powers involve regulating and managing certain public affairs and delivering certain public services.

7. Habitat III participants can inquire into the extent of local governance rights, powers and relations *vis-à-vis* local authorities and the central sphere of government and/or regional authorities (in federal states). One of the important features of local "government" is that it has a specific, subsidiary duty and regulatory power for the relatively autonomous exercise of its functions, which are, at the same time, subject to compliance with national law, policies and reasonable programs.[5] "Local government," or "local self-government," aims at bringing government to the grass-roots and enabling the citizens to participate effectively in the making of decisions affecting their daily lives and longer-term development. "Local authorities" may include forms of governance closely associated with, or directly extending from the executive-branch of central government. However, such models are inconsistent with the more-specific notion of "local government" (or "local self-government"), which involves actual local decision making within a state. In global practice, the majority of cities have elected mayors.[6] In some rare circumstances, constituents have declined their right to elect a municipal head, favoring instead

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are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally…may not point to…another branch of government as a

means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant."

Human Rights Committee (HRC), General Comment No. 31: "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (2004), para. 4, at:
http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0i
W6Txaxgp3f9kUFpWoq/hW/TpKi2tPhZsbEJw/GeZRASjdFuuJQRnbJEaUhby31WiQPl2mLFDe6ZSwMMvmQGVHA%3d%3d.

[2] Education & Training Unit for Democracy and Development, "Three Spheres of Government" (South Africa), at: http://www.etu.org.za/toolbox/docs/govern/spheres.html.
[3] Ibid., para. 6.
[4] Ibid.
[5] Ibid., para. 8.
[6] Andrew Stevens, "World mayors, their parties and politics," *City Mayors Politics*, No. 10 (28 July 2014), at: http://www.citymayors.com/politics/political-parties-mayors.html.

appointed local governing councils[7]. However, some systems indeed have central authorities assuming mayoral selections by political[8], military[9] or royal[10] appointment, rather than chosen through constituent elections.

Challenges

8. "Multi-level governance needs to take into account territorial cohesion to reduce inequalities between regions (e.g. poverty, demographic issues, infrastructure, etc.)" (p. 4). This aligns with the Habitat II commitment to "balanced rural and urban development," as pledged since Habitat I (1976)[11]. This principle should be linked with the right to the city elements (see Policy Paper N.1) and poly-centrality as main criteria.

9. Human settlements, as already established in the Habitat Agendas, should be perceived and governed as a metabolism (HIC, p. 4; IRP). Hence, the challenge of the needed (further) "Shift from governing location to governing flows" (p. 7).

10. On the other hand, effective institutional measures should be taken as to ensure that the interests of low income and marginalized groups, indigenous people and other disadvantaged groups, are part of policy and decision-making processes, as asserted in Habitat II (Art. 182.J, K and N).

11. The legislative and constitutional framework are not mentioned as a common constraint to autonomous and democratic local government, in general, as well as to participatory planning, budgeting and other governmental functions with the affected people.

12. The key challenge of capacity building accompanies the need for sufficient local resources, which central government spheres and functions typically either, provide, enable, impede or deny. At this juncture, the notion of the "rights *of* the city" come into view. This is a logical complement to, but an admittedly underdeveloped notion in, the "right to the city" discourse. At the same time, this is the link to PPF1 that argue for coupling the two in a single, integrated PU, rather than splitting organically linked subjects into distinct and multiple Pus, while neglecting the obvious and urgently needed Habitat III reviews of (1) population policies, (2) the human right to adequate housing and (3) the
financialization of housing, land and natural resources.

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[7] "Nine cities reject elected mayors," *BBC News* (4 May 2012), at: http://www.bbc.com/news/uk-politics-17949950.

[8] T.V.Dozhd, Catherine A. Fitzpatrick, transl., "Russia to Abolish Mayoral and City Duma Elections," *The Interpreter* (11 December 2013), at:
http://www.interpretermag.com/russia-to-abolish-mayoral-and-city-duma-elections/.

[9] "Local Government Acts 2013 and Province-Local Government Relations," *UNDP in Pakistan* (undated), at:
http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/development-advocate-pakistan/local-government-acts-2013-andprovince-local-government-relatio.html.

[10] Niels Karsten, Lex Cachet and LinzeSchaap, "The Dutch Anomaly: Appointed Mayors. Can Appointed Mayors Cope with Role Changes and Societal Demands?" *Lex &Localis*(14 April 2011), at:
http://pub.lex-localis.info/index.php/LexLocalis/article/view/243.

[11] Istanbul Declaration on Human Settlements [Istanbul Declaration] and The Habitat Agenda, paras. 29, 43(I), 43(k), 109, 111, 126, 156, 163–69, A/CONF.165/14, 14 June 1996, at: http://ww2.unhabitat.org/declarations/habitat_agenda.asp; Vancouver Action Plan (VAP), Recommendation
B.1 Settlement planning in national context (1976).

13. Arbitrary refusal of non-national citizen/residents to participate is an omitted challenge that finds remedy in some good practices in recent years. For example, the São Paulo council of migrants engaged in the local municipality is one innovative example.

14. Some "decentralization" methods have led to new opportunities for central authorities to manipulate local governance through appointments and electoral gerrymandering (as in 1990s Morocco).

15. Under b.1 Financial resources, *Multi-level governance:* (Should be *Multi-sphere governance*), "land added value capture" is cited. It would be useful to identify the commitments to land-value capture in the Habitat Agendas (VAP, Recommendation D.3 Recapturing plus value; H2, para. 76h).

16. Under the point d.1. SGD targets and indicators related (p.8) the paper offers an incomplete list. Indeed, all 17 Goals require multi-sphere governance.

17. A word on privatization and governance is in order. In particular, the PPF should incorporate the binding treaty obligation to ensure that any sphere of government relegating public functions to third parties does not result in retrogression in conditions (quality, affordability, acceptability, access, availability) of a public good or service. (See CESCR GC15, paras. 43, 44).

Priorities

18. Inequalities are embedded in the current urban development model. We need a change of paradigm based on the right to the city for all, where territories of the cities and their hinterlands are considered as spaces for the exercise and fulfillment of rights in order to ensure that people have access to the resources, services, goods and opportunities that the city offers in a fair, universal, democratic and sustainable way. (p.12)

19. Equity, economic development and environmental sustainability are among the key metropolitan challenges and problems that must be addressed. Polycentrism should be promoted as a way to build integrated metropolises with equal access to all. This should include fair local finances system (equitative tax system based on social criteria, state transfers, access to loans in sustainable conditions, etc.).

20. Throughout the PPF, the PU has ignored the human rights dimensions and corresponding obligations of all spheres of governance, as if the process were divorced from the UN purposes as set out in the UN Charter. This is a major structural and ideological deficit across the PPF. These involve the range of human rights treaties and the obligations of all spheres of government to respect, protect and fulfil the enshrined human rights. The PPF also should take heed of global and regional norms emerging over the past 20 years since Habitat II, as they link also to PPF1, including the "right to the city" and related practices, the UNHRC Advisory Committee study on Local Government and Human Rights and Local Government, as well as AMCHUD N'Djamena and Bamako declarations and the African Charter on Values and Principles of Public Service and Administration (11 January 2011).

21. Under "External factors," "Crisis as opportunity or big flagship events (Barcelona vs. Athens in the case of Olympics)" (p.13) may have inverted the issue. Another view has it that these Olympic opportunities and other mega-events actually pose, produce and/or deepen crises. Athens is the clearest example. The Barcelona legacy is also à propos, but the debate involves divergent tastes.

22. The sections on capacity building seem to refer to the local authorities/government staff to be the principal beneficiaries. Meanwhile, civil society and communities should benefit accordingly also, as Habitat II committed to also. Many countries suffer deficits in the capacity of their populations to exercise full citizenship, due to poor capabilities and shortcomings in civic education. The Habitat II Agenda aimed at "Develop education in citizenship to emphasize the role of individuals as actors in their communities" (See, article 180, C Habitat II Agenda) and "Undertaking civic and human rights education and training programs, using all forms of the media and education and information campaigns, to promote a civic spirit and an awareness of civil rights and responsibilities and the means of exercising them, of the changing roles of women and men and of issues relating to sustainable human settlements development and the quality of life" (See, article 182, E Habitat II Agenda). That means that the capacity building of government actors should bear two main dimensions: (1) the institutional development and capacity for network management, and the (2) development of the citizens' capacities.

23. Under Indicators of success (pp. 20–21) the papers omit any indicator for adequate housing and/or its constituent elements. (However, is does cite "The percentage of the urban population with access to secure tenure." Why only "access to" and not other qualities—e.g., legal protection, affordability, et al—mentioned is inexplicable.).

Implementation

24. We do not totally agree with the measure that sets that "Local government should decide on hiring, rewarding and firing their own staff, based on merits and transparency, to improve the quality of institutions." Most of the time, the decision of politicians to hire and fire their staff is creating "spoils" system, affecting the continuity of the public services. We should rather say that: Public servants should be independent and be evaluated in an objective way so that they can improve their professional performance, in benefit of the public.