

**DRAFT
GUIDELINES ON
DECENTRALISATION
AND THE STRENGTHENING OF
LOCAL AUTHORITIES**

INTRODUCTION

Sustainable human settlements development can be achieved “through the effective decentralization of responsibilities, policy management, decision-making authority and sufficient resources, including revenue collection authority, to local authorities, closest to and most representative of their constituencies”¹. The Habitat Agenda also recommends “Governments should examine and adopt, as appropriate, policies and legal frameworks from other States that are implementing decentralization effectively”.²

In recent years, the concepts of local autonomy or local self-government have been used to reflect, from a local authority perspective, the widely recognized need for decentralization. Effective decentralization is today regarded as an element of good governance and an expression of democratic practice and effective and efficient public administration. It is also recognized that elected local authorities, alongside national and regional authorities, are key actors in democratic governance and administration, which collaborate with national and regional authorities but also have their own autonomous spheres of public action. Local democracy thus constitutes an essential element of democracy itself whatever the form of the State, whether federal, regionalized or unitary.

It is further recognized that the process of decentralization requires concerted efforts in capacity-building and institutional reform and should therefore be associated with the strengthening of local authorities.

The present guidelines have been prepared by the members of the Advisory Group of Experts on Decentralization (AGRED), which was established by the Executive Director pursuant to resolution 19/12 of the Governing Council of UN-HABITAT. The mandate of AGRED is to provide advice on the international dialogue on decentralization by developing recommendations and documenting best practices.

The guidelines outline the main principles underlying the democratic, constitutional/legal and administrative aspects of local governance and decentralization. At the same time they must be applied to specific conditions of State form (federal, regionalized or unitary), with different State traditions (for example, Napoleonic, Germanic or Anglo-Saxon, as well as traditions found in Asia, or in the Arab world). For that reason they do not provide a uniform and rigid blueprint applicable to all Member States of the United Nations. They may be subject to national adaptations. Their main objective, however, is to support and guide legislative reform where necessary and appropriate.

The Governing Council at its twentieth session in Nairobi, 5 – 8 April 2005, recently adopted resolution 20/18 on “decentralization and strengthening of local authorities”, after taking note of the Report of the Executive Director on UN-HABITAT’s work in this context since the Habitat II Conference in 1996.

¹ Habitat Agenda, para 177.

² Idem, para 180.

The Governing Council in resolution 20/18 appreciated the draft of the “Guidelines”, which was annexed for its consideration to the Report of the Executive Director and invited Governments to provide further comments on that draft to the secretariat before the end of 2005, and to document cases of best practices for incorporation in the compendium of best practices in line with previous resolutions 18/11 and 19/12.

Resolution 20/18 in particular requests the Executive Director to take these comments into account and to revise and finalize the “Guidelines” during 2006 in consultation with the Committee of Permanent Representatives to UN-HABITAT and with the support of the members of AGRED and the collaboration of United Cities and Local Governments (UCLG), and to submit a final draft to the Governing Council for its consideration at its twenty-first session, in 2007.

In direct follow up to resolution 20/18, the Executive Director requested the secretariat to intensify efforts in mobilizing the members of AGRED and other partners to ensure a successful finalization of the proposed Guidelines. An exchange of correspondence was undertaken in consultations with Governments to solicit further comments and suggestions of good practices as requested in resolution 20/18.

At the recently concluded third session of the World Urban Forum, coordinated by UN-HABITAT at the invitation of the Government of Canada, in Vancouver from 18 – 23 June 2006, a special meeting of AGRED was organized to evaluate progress made in the finalization of the Guidelines and agree on the next steps.

The AGRED members after constructive discussions adopted the draft in its current format, which the secretariat has now released as the “Vancouver Draft”.

A. Governance and Democracy at the Local level:

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly non-governmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.
12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.
13. Mechanisms should be put in place to allow citizens to reinforce the code.
14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B. Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens³.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.

³ See Governing Council resolution 19/12 of 9 May 2003.

4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C. Administrative relations between local authorities and Other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.

11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions- if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D. Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.
14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic

freedom of local authorities to exercise policy discretion within their own jurisdiction.

17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
 18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.
 19. Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.
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