

## Human Rights Council Advisory Committee

### Local government and human rights

#### QUESTIONNAIRE

*As part of the consultations undertaken by the Human Rights Council Advisory Committee with international and regional organizations with a view to preparing a research-based report on the role of local government in the promotion and protection of human rights, pursuant to resolution 24/2.*

#### **Background:**

Human Rights Council resolution 24/2, adopted in September 2013, took note of the research proposals made by the Advisory Committee in August 2012<sup>1</sup>, which included a research proposal on local government and human rights, and mandated the Committee to prepare a research-based report on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services, with a view to compiling best practices and main challenges, and to present a progress report thereon to the twenty-seventh session of the Council (September 2014).

The Committee is also requested to seek the views and inputs of Member States, relevant international and regional organizations, the OHCHR and relevant special procedures, as well as national human rights institutions and non-governmental organizations, in order to prepare the above-mentioned research-based report.

It is therefore in this context that the Advisory Committee decided, at its twelfth session held in February 2014, to appoint a drafting group<sup>2</sup> in charge of the preparation of this report and elaborated the hereunder questionnaire for international and regional organizations.

#### QUESTIONNAIRE

#### **Submission of Habitat International Coalition NGO in consultative status (special) with ECOSOC since 1993**

*1. What normative/standard-setting, administrative, policy and other measures have been taken by your Organization to increase the role of local government in the promotion and protection of human rights?*

In our regular cooperation with the UN Human Rights Treaty-monitoring System, Habitat International Coalition (HIC) and its specialized Housing and Land Rights Network (HLRN) comply with and promote the guidelines for reporting to the Committee on Economic, Social and Cultural Rights (CESCR), which advises States parties to the Covenant on Economic, Social and Cultural Rights to take steps “to ensure coordination between ministries and regional and local authorities, in order to reconcile related policies (economics, agriculture, environment, energy, etc.) with the obligations under article 11 of the Covenant,” in particular the human right to adequate housing.<sup>3</sup> CESCR also has observed how fees imposed by local authorities and other direct costs may constitute disincentives to the enjoyment of the right to education.<sup>4</sup>

The Harmonized Guidelines on Reporting to the Treaty Bodies advises involving local governmental departments at the central, regional and local levels and, where appropriate, at the federal and provincial levels in the preparation of periodic reports.<sup>5</sup> CESCR’s current

<sup>1</sup> A/HRC/AC/9/6

<sup>2</sup> A/HRC/AC/12/L.5, 28 February 2014

<sup>3</sup> General Comment No. 4: “the right to housing” (1991), para. 12.

<sup>4</sup> General Comment No. 11: “Plans of action for primary education (art. 14),” para. 7.

<sup>5</sup> “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents,” HRI/MC/2005/3, 1 June 2005, para. 50, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/422/26/PDF/G0542226.pdf?OpenElement>.

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reporting guidelines are replete with questions for States about the progressive realization of economic, social and cultural rights through the rule of law, nondiscrimination, the maximum of available resources and international cooperation in the provision of local services and infrastructure.<sup>6</sup> This reflects the centralization of tasks, authorities and duties as a global practice of subsidiarity that diffuses burdens, responsibilities and functions.

The General Comment on the right to food stresses how responsibilities at multiple levels are essential to realizing that right. While “the State should provide an environment that facilitates implementation of these responsibilities,” increasingly local measures are needed to ensure food security and food sovereignty. In recent years, numerous good practices and policy models exemplify the pivotal role of local decision making and preparedness to ensure the right to food.<sup>7</sup> The Special Rapporteur on the Right to Food Olivier de Schutter also has noted the role of local government in ensuring realization of the right to food through an integrated national strategy.<sup>8</sup>

In the administration of land, water and other public goods and services one of the tools developed in recent years has been the FAO Voluntary Guidelines on Responsible Administration of Tenure of Land, Forests and Fisheries (VGGT). HIC and HLRN have played an active role on coordinating with Members and other organizations to provide input in to the development of the VGGT. In particular, HIC-HLRN has provided the legal annex to the CSO submission to the Committee on Food Security and its secretariat, which commentary linked the principles of the VGGT to existing human rights treaty obligations of states, in general, and to local authorities, in particular. This is consistent with normative

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<sup>6</sup> “Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 And 17 of the International Covenant on Economic, Social and Cultural Rights,” E/C.12/2008/2, 24 March 2009,

<sup>7</sup> Delaware Valley Regional Planning Commission (DVRPC), The Greater Philadelphia Food System Study (2010), at: <http://www.dvrpc.org/food/FoodSystemStudy.htm>; DVRPC, *Food System Planning Municipal Implementation Tool* # 18 (April 2010), at: [http://www.ruaf.org/ruaf\\_bieb/upload/3304.pdf](http://www.ruaf.org/ruaf_bieb/upload/3304.pdf); Victoria Local Governance Association, *Municipal Food Security Dimensions & Opportunities: Municipal Food Security Scanning Report* (2010), at:

<http://www.vlga.org.au/site/DefaultSite/filesystem/documents/Food%20Security/VLGA.2011-09-06%20Food%20Security%20Report%201.pdf>; Kameshwari Pothukuchi and Jerome L. Kaufman, *Placing the food system in the urban agenda: The role of municipal institutions in food systems planning* (Kluwer Academic Publishers, 1999), abstract at: <http://newruralism.pbworks.com/f/PothukuchiKaufman.pdf>.

<sup>8</sup> “Report of the Special Rapporteur on the right to food, Olivier De Schutter: Mission to Canada,” A/HRC/22/50/Add.1, 24 December 2012, para. 16, at:

[http://www.srfood.org/images/stories/pdf/officialreports/20121224\\_canadafinal\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20121224_canadafinal_en.pdf). In his country mission to Canada, the Special Rapporteur noted that “Numerous municipalities across the country have opposed this restriction [posed in the draft Comprehensive Economic and Trade Agreement with the European Union] on the ability of local authorities to promote urban-rural linkages and local economic development through institutional purchasing, and have requested exemptions.” “UN food envoy scolds Ottawa's anti-poverty efforts,” CBC News (3 March 2013), at: <http://www.cbc.ca/news/politics/story/2013/03/03/pol-cp-un-food-envoy-slaps-ottawa-on-scrapping-census-and-eu-trade-talks.html>.

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regional and international instruments affirming this interpretation,<sup>9</sup> as well as national norms and practices.<sup>10</sup>

In fact, HIC and HLRN emphasize in their networking, training, research and advocacy activities promote the legal theory upheld in the treaty bodies that affirms the extension of human rights treaty-bound and customary obligations of states to local authorities.

### Human Rights Cities:

Cities and municipalities declaring themselves “human rights communities” or “human rights cities” is a practice whereby citizens have promoted human rights principles at the policy level within a municipality. It is also a practice that has sought definition as a program through such organizations as the People Human Movement for Human Rights Learning (PDHRE). That organization has defined a human right city broadly as:

“a society where all citizens have made a pledge to build a community based on equality and nondiscrimination; [where] all women and men are actively participating in the decisions that affect their daily lives guided by the human rights framework; where people have consciously internalized the holistic vision of human rights to overcome fear and impoverishment, a society that provides human security, access to food, clean water, housing, education, healthcare and work at liveable wages, sharing these resources with all citizens—not as a gift, but as a realization of human rights. A Human Rights city is a practical viable model that demonstrates that living in such a society is possible!”

While this description is abstract, the implementation involves some specific principles to guide policy. The literature on the “human rights cities” program explains further that the approach addresses “both a broader and a narrower dimension of urban poverty.” For example, it:

“is not directed toward securing legal title as a means of protecting the urban poor from market eviction and gentrification or to catalyze investment in low-income housing. It is rather a broader strategy of empowering inhabitants of communities to find collectively the ways and means of ensuring respect for their human rights, including the right to adequate housing, component elements of which are security of tenure, access to basic urban services, transport and mobility, financial services and credit, women’s empowerment, urban citizenship, income and livelihoods. It is thus a broader strategy than securing legal tenure.”<sup>11</sup>

HIC and HLRN have aligned with this strategy and policy-level application of the human right to adequate housing in connection with the PDHRE’s Human Rights Cities Program since 1998. In the cities engaged in the program and movement, strategies and methodologies were designed to engage governing bodies, law enforcement agencies, public sector employees, religious groups, NGOs, community groups and concerned citizens working on the issues of women, children, workers, indigenous peoples, poverty, education, food, water,

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<sup>9</sup> CERD, art. 9; ICCPR, art. 40; CAT, art. 19. See also Lars O. Molin, “The role of local and regional authorities in the implementation of human rights,” Council of Europe Institutional Committee, 18<sup>th</sup> session, CG(18)6, 1 March 2010, at: <https://wcd.coe.int/ViewDoc.jsp?id=1590059&Site=COE>; *African Charter on Values and Principles of Public Service and Administration*, Adopted by the Sixteenth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, 31 January 2011, at: <http://www.au.int/en/content/african-charter-values-and-principles-public-service-and-administration>; Commonwealth Local Government Forum, *Time for Local Democracy - The Aberdeen Agenda: Commonwealth Principles on Good Practice for Local Democracy and Good Governance* (London: Commonwealth Local Government Forum (2005), at: <http://www.clgf.org.uk/userfiles/1/file/AberdeenAgendaleaflet8pp.pdf>; also International Council on Human Rights Policy, *Local Government and Human Rights: Doing Good Service* (Geneva: ICHRP, 2005).

<sup>10</sup> See Memorandum from Harold Koh, Legal Adviser to the U.S. Department of State, to State Governors on U.S. Human Rights Treaty Reports (January 20, 2010); Letter from Harold Koh, Legal Adviser to the U.S. Dep’t of State, to State and Local Human Rights Commissions (3 May 2010). State and local representatives have also joined the U.S. delegations to these reviews, including for reviews on U.S. compliance with CERD and the Universal Periodic Review by the U.N. Human Rights Council. See also Local Government Act 2002 of New Zealand.

<sup>11</sup> Stephen P. Marks and Kathleen A. Modrowski with Walther Lichem; *Human Rights Cities* (Nanjing: UN Habitat and PDHRE, 2008), p. 17.

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housing, healthcare, environment and conflict resolution in defining priorities and local expression of their human rights city.

While PDHRE's efforts facilitated these actors learning and reflecting about human rights through the coordination of Steering Committees developing specific programs for various audiences. As agents of change they learn to identify, mentor, monitor and document their needs and engage in one of the most important action in the city: developing an alternative participatory budget, moving power to human rights...from Charity to Dignity.

The PDHRE program included the development of 30 human rights cities and the training of 500 young community leaders at four Regional Learning Institutions for Human Rights Education. By 2007, PDHRE had trained 100 community leaders, and 17 human rights cities were in development.<sup>12</sup>

HIC and HLRN's complement to this approach has been through engaging Members in advocacy and normative development of the human right to adequate housing through people's processes of social production and management of their habitat, full and meaningful participation in decision-making processes toward societal development, as well as monitoring and reporting fulfilment and violation of habitat rights in cooperation with the UN Human Rights System. HIC and HLRN have engaged in those activities wherever its Members and officers operate. Therefore, that has not been conditioned on the municipality adopting the attribution as a human rights city or adopting a charter on the right to the city.

Local authorities and local governments, by definition, bear both the distinguishing authority and obligations to respect, protect and fulfill all human rights at the local level. CESCR has observed that "violations of the rights...can occur through the direct action of, failure to act or omission by States parties, or through their institutions or agencies at the national and local levels."<sup>13</sup> Indeed, the gross violation of the right to adequate housing through forced eviction is often carried out by local authorities. HIC and HLRN have played a consistent role in developing, promoting and monitoring those norms that relate to the human right to adequate housing, including the CESCR's General Comments No. 4 "the right to housing (1991) and No. 7 "forced eviction" (1997) and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement (2007).<sup>14</sup>

### "Right to the City"

In doing so, HIC and HLRN also have formed part of the growing demand for a "right to the city," with its fundamental principles of democratic local governance. The call for a right to the city is not a demand for new norms, but for all the actors in the city to operationalize the existing human rights norms already enshrined in applicable treaties. It arose as a claim in response to the marginalization and stigmatization of low-income areas of cities—in

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<sup>12</sup> Rosario, Argentina; Graz, Austria; Santa Cruz, Bolivia; Bihac, Bosnia; Porto Alegre, Brazil; Edmonton, Winnipeg, Canada; Temuco and Valparaiso, Chile; Bongo, Newton, Wa, Nimamobi, Walewale, Ghana; Nagpur, India; Korogocho, Kenya; Kita, Kati, Kayes, Sikasso, Timbuktu, Mali; Bucuy Municipality, Philippines; Musha, Rwanda; Thies, Senegal; Mogale, South Africa; Kaohsiung, Taiwan.

<sup>13</sup> General Comment No. 16: "The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)" (2005), para. 42.

<sup>14</sup> "UN Basic principles and guidelines on development-based evictions and displacement," Annex I of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, A/HRC/4/18, 5 February 2007, at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/4/18&Lang=E>.

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particular, slums<sup>15</sup>—that have sprung up in the period of intense rural-to-urban migration in the latter half of the previous century.<sup>16</sup> In that context, the urban social movements, especially in Latin America, who enjoined and applied the concept of the French philosopher Henri Lefebvre,<sup>17</sup> enshrined the principles of the right to the city in a Global Charter on the Right to the City (latest version 2005). Through its serial iterations since 2001, the Global Charter has consistently emphasized that the elements of the right to the city involve:

- Full exercise of citizenship
- Democratic management
- The social function of urban property and the city.

The “strategic foundations” of the Right to the City, therefore, pursue:

1. Full exercise of human rights in the urban context;
2. Social function of land, property and the city;
3. Democratic management of the city; Social production of habitat and the right to a productive habitat (social economy);
4. Responsible and sustainable management and use of the commons (including natural resources and cultural heritage);
5. Democratic enjoyment of the city (especially linked with the use of public spaces and community facilities).

In setting out the claims relative to the exercise of citizenship and of participation in planning, production and management of the city, the Charter outlines numerous rights and freedoms, including those already enshrined in the Human Rights Covenants: Participation, peaceful assembly, freedom of association, freedom of expression, adequate housing, information, political participation, security of person, water and decent work.

While recognizing the imperative of coexistence based on peace, solidarity and multiculturalism, the Charter celebrates the diversity of most cities. The Charter also claims as rights and corresponding obligations certain values not yet enshrined explicitly in international treaty law. These include the social production of housing/habitat and the rights to “sustainable and equitable urban development” (whereas, right to development is subject of 1986 Declaration, but not enshrined in treaty law. The Global Charter also asserts a right to transport and public mobility, as well as a right to the environment.

The Charter establishes the popular claim at the level of rights (1) the human rights dimensions of land and the human right to equitable administration of land, public goods and natural resources, and (2) urban planning as a technical service and public good to which all citizens are equally entitled.

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<sup>15</sup> Defined as an urban area characterized by one or more of the following: (1) Poor structural quality and durability of housing, (2) Insufficient living areas (more than three people sharing a room), (3) Lack of secure tenure and (4) Poor access to water and sanitation facilities. “A slum is a contiguous settlement where the inhabitants are characterized as having inadequate housing and basic services. Also, “a slum is often not recognized and addressed by the public authorities as an integral or equal part of the city.” UN Habitat “Expert group meeting on slum indicators: Secure tenure, slums and global sample of cities” (Nairobi: UN-HABITAT, 2002), p. 21; UN Habitat Guide to Monitoring Target 11: Improving the Lives of 100 million Slum Dwellers: Progress towards the Millennium Development Goals (Nairobi: UN Habitat, 2003), p. 10.

<sup>16</sup> United Nations Department of Economic and Social Affairs, *Patterns of Urban and Rural Population Growth* Populations Studies No. 68 (New York: United Nations, 1980), at: [http://esa.un.org/unup/Archive/wup-archives/studies/United%20Nations%20\(1980\)%20-%20Patterns%20of%20Urban%20and%20Rural%20Population%20Growth.pdf](http://esa.un.org/unup/Archive/wup-archives/studies/United%20Nations%20(1980)%20-%20Patterns%20of%20Urban%20and%20Rural%20Population%20Growth.pdf).

<sup>17</sup> Henri Lefebvre, *Le Droit à la ville* (Paris : Anthropos (2nd ed.), 1968; Paris: Ed. du Seuil, 1968).

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However, in addition to this well-developed definition of the right to the city, HIC and HLRN also appreciate the other approaches and terminology applied toward the same democratizing objective, including the related “human rights in the city” concept applied in the European Charter for the Safeguarding of Human Rights in the City (2000) and Charter Agenda for Human Rights in the City, adopted by UCLG’s Committee on Social Inclusion, Democracy and Participation.

Meanwhile, we recognize also the validity of the approach to establish “human rights habitat,” with its more-embracing concept of the rural-urban continuum, and the conscious recognition of the same rights of city dwellers apply equally to human inhabitants of the periphery of urban centers, as well as those in more distant regions. One example of this appellation is the First Civic Forum of Nairobi declaring their city a “human rights habitat” (2002). This initiative emerged with support of the local Mazingira Institute, with its environmental program and scope.<sup>18</sup>

In this etymology of human rights and local government concepts, HIC and HLRN also recognize the rights *of* cities and municipalities. This concept also has emerged recently as an alternative to the withdrawal of central and state governments’ responsibilities and resources in the globalized market. Many cities are increasingly subordinated to central decision-making institutions, public budgets and investment, whereas municipalities have to fend for themselves and/or compete over resources for development and services, often without the authorities to levy revenues or participate effectively in decisions affecting allocations. In such cases, local authorities face the prospect of resorting to the privatization of public goods and services—with their typically harmful economic consequences for the poor—and/or to seek fiscal support from the private financial market. Where the rights to participate and access public goods and services without discrimination apply to the collective inhabitants of the city, the collective rights *of* cities vis-à-vis the state becomes a concern of city dwellers, in general, but also of local authorities who bear the corresponding obligations to respect, protect and fulfill human rights within their jurisdiction.

Within his essay on “The Right to the City,” David Harvey acknowledges the collective nature and identity of the city, as well as a collective personality and claimant. He writes:

“The right to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization. The freedom to make and remake our cities and ourselves is, I want to argue, one of the most precious yet most neglected of our human rights.”<sup>19</sup>

*2. Please describe initiatives/projects launched by your Organization to promote best practices related to bringing local administration and public services into conformity with human rights principles and norms.*

In the field of human rights and local government, it is important to distinguish the meanings of certain terminology. The term “local administration” in the foregoing question has connotations distinct from “local government.” The former is a term closely associated with forms of governance that involve the extension of executive-branch authority of state government to the local level. This model is inconsistent with the latter notion of “local

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<sup>18</sup> “Assembly Declares Nairobi a Human Rights habitat,” *SINA Newsletter*, No. 52 (April 2002), at: <http://www.mazinst.org/files/mazpub/53.pdf>.

<sup>19</sup> David Harvey, “The Right to the City,” *New Left Review*, No. 53 (2008), pp. 23–40.

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government,” which involves actual local decision making within a state in ways that foster and develop local participation and meaningful citizenship for far-greater majority of inhabitants.

Thus, the notion of “local administration,” as distinct from “local government,” does not lend itself to good—or best—practices. Government, in the modern sense of statecraft, involves citizen participation. “Administration” does not embody this sense.

Appointed military or political elites as regional governors or local mayors and council members may constitute local administration. However, the tendency is for such systems and figures effectively to represent no one, except for the central executive authority. Among the global good practices is the generally accepted statistic that some 70% of cities have elected mayors. Some antidemocratic trends have seen central authorities assuming mayoral selections by political appointment, rather constituent elections.<sup>20</sup> Even in some recent cases, constituents have declined their right to elect a municipal head, favoring instead local governing councils.<sup>21</sup>

Whichever the configuration of offices and division of duties, the preferred model of “local government” is to be understood as applicable in both unitary states, as well as in federal systems. The constituent principles of local government are aligned with the substantial and process human rights enshrined in both of the International Covenants.

The main components of new paradigms of social production and enjoyment of human settlements (a democratic, inclusive, sustainable, productive, educational and safe place for everyone, everywhere to live in peace and dignity) have been the subject of discussions, experiences and concrete proposals of social movements, national and international networks of civil society, including trade unions, professional and technical, academic and human rights organizations and activists in various countries of Latin America in the last 50 years. Urban reform and a “right to the city” are now present—explicitly or implicitly—in both theoretical and legal frameworks and, at once, as a platform for action in several other regions of the world.

The Earth Summit (Rio de Janeiro, 1992), Habitat II (Istanbul, 1996) and the First World Assembly of Inhabitants “Rethinking the City from the People” (Mexico City, 2000) were important moments in the development of actors and the articulation of concrete proposals. Undoubtedly, this process has gained new strength and expanded in size and content since 2001 in the World Social Forum and the Social Forum of the Americas. Thousands of people and dozens of organizations and networks have since participated in the discussions, preparation, signing and dissemination of the World Charter for the Right to the City (defined as the equitable usufruct of cities within the principles of sustainability, democracy, equity and social justice), including UNESCO and UN HABITAT. In its geneses and social meaning, this instrument primarily aims at strengthening the processes and collective claims against injustice and social and regional discrimination. In human rights terms, the Charter and its movement seek locally to contextualize and operationalize the obligations of the state to respect, protect and fulfill human rights through a set of binding principles. By applying

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<sup>20</sup> “Russia to Abolish Mayoral and City Duma Elections: Mayors will now be appointed by other officials,” *The Interpreter* (originally published by *TV Dozhd*, Catherine A. Fitzpatrick, transl.) (11 December 2013), at: <http://www.interpretermag.com/russia-to-abolish-mayoral-and-city-duma-elections/>.

<sup>21</sup> James Meikle “Cities vote against having elected mayors,” *The Guardian* (4 May 2012), at: <http://www.theguardian.com/politics/2012/may/04/cities-vote-against-elected-mayors>.

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human rights in cities also emphasizes the role of the city within the state, and calls upon state support to integrate the city into a wider human rights habitat.

Alongside this social process toward realization of human rights governance at every level, some local, national and regional governments that seek to apply human rights in the urban context have developed legal instruments in explicit recognition of the “right to the city,” “human rights in the city,” the “human rights city” and/or “human rights habitat.”

The best practices that HIC generally promotes are those in which the principles of the right to the city are institutionalized. Among the most advanced of these approaches have been the European Charter of Human Rights in the City (2000), the City Statute in Brazil (2001), the Charter of Rights and Responsibilities of Montréal (2006), the Constitution of Ecuador (2008), the Mexico City Charter for the Right to the City (2010), the Charter-Agenda for Human Rights in the City (2010) and the Charter of Human Rights Gwangju, South Korea (2012), and others, with their various means of implementation.

Among the good practices in local government is the application of the social function of the city in the development process, whereby Colombian Planning Law 388 (1998) applied the concept of *plusvalía* (or socially generated value). This legislation provided for a significant portion (30–50%) of profits derived from development-planning measures such changes in public rezoning or land allotments to revert to programs to finance public works and aid the most-needy communities.

Another outstanding good practice is the implementation of the principal “I live here, I vote here.” This innovation in local participation in the City of São Paulo has seen resident migrants participate in elections for the municipal Participatory Council (*Conselho Participativo*).<sup>22</sup> This is the recent outcomes of a campaign of *Fórum Social pelos Direitos Humanos e Integração dos Migrantes do Brasil* and the approval of PEC 347/2013, proposed by Rep. Carlos Zarattini (EN/SP). The Proposed Amendment to the Constitution changes the wording of Article 14(2), thereby allowing foreigners resident in Brazil for more than four years and legally settled to register as voters.

At the recent United Cities and Local Governments (UCLG) World Summit of Local and Regional Leaders (Rabat, 1–4 October 2013), HIC-HLRN and UCLG’s Committee on Social Inclusion, Democracy and Participation organized an event on “The right to the city: an international dialogue for the MENA region,” highlighting good practices and lessons learned from other regions. In the case of Gwangju, the struggle against the Korean military dictatorship manifested locally in the so-called May 1980 Gwangju Uprising. Those events turned Gwangju City into a symbol of democratic struggle in Korea, as well as across Asia. In June 1987, the South Korean government officially recognized the civil uprising as the Gwangju Democratization Movement.

While taking into consideration Lefebvre’s seminal notion of the “right to the city,” the local community in Gwangju have opted for the expression of “human rights in the city,” whereby the “city” is a political concept and Gwangju is referred to as a “human rights city.” The citizens of Gwangju have sought to develop their city to recognize the city’s diversity and to address the structural causes of inequality.

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<sup>22</sup> Pedro Ferraracio Charbel, “Imigrantes elegem representantes em São Paulo,” *Brasil de Fato* (1 April 2014), at: <http://www.brasildefato.com.br/node/27986>.

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In South Korea, a distortion among regional political parties prevents the representation of various interests. For example, Gwangju City is dominated by one political party. However, local government autonomy has been revived in earnest since 1995, culminating in a system of adopting local ordinances. The mayoral election presented an opportunity for citizens to challenge martial law. In the local governance system, each local community has the inherent power to enact its own ordinances suited to its own situation (as long as the ordinance does not contradict national law). In this case, the process of enacting local ordinances by local legislative bodies is combined with the citizen's voluntary initiative to propose ideas for such ordinances, guaranteeing public participation in the process. Local governments can enact human rights ordinances, even without explicit national laws delegating local legislative power for the protection of the citizen's rights and with the imposition of duties and penalties for their violation. These "autonomous" ordinances can even lead to the enactment of national laws on human rights.

In Gwanju City, the techniques devised for city governance include the development of human rights indicators, in collaboration with OHCHR. Recently also, Gwangju has sought to share the local experience internationally. The Metropolitan City of Gwangju to join as co-organizer the 1st World Human Rights Cities Forum (WHRCF), 16–18 May 2011.

From Chile, the Ciudad Sur association shared the experience of developing a right to the city in their country by analysing the situation of the municipalities within the political economy of the state. The so-called "Chilean model" involves a neoliberal culture that has broken away from the past structure of the state. Under the current model, the state has withdrawn from many social programs and relied on the market as the main determiner of livelihoods. By way of example, the current national budget allots only about 12% to local government.

Ciudad Sur worked with its sample of six municipalities to the south of the Chilean capital, Santiago. There, promoting the right to the city has enabled those communities to build a consensus and development vision through participatory planning, where the municipalities' underlying problem was their lack of planning and management, as well as any integral geographic information system. Those deficits impeded the cities from accessing resources for their social, environmental and spatial development that are otherwise available through various funds and existing state programs. The lack of sufficient planning also made it difficult to attract private capital for urban infrastructure. To capture both sources of funding requires management capacities of our municipalities for participatory and efficient planning. Accordingly, the locally designed participatory-planning methodology has permitted installation of a geo-referenced information-management system to institutionalize citizen engagement, to train and reorganize the municipal-management system with greater internal and external coordination.

These examples demonstrate how the scale of the urban entity affects the strategies and techniques chosen to pursue human rights in the city. In the case of Ciudad Sur, the cities were peripheral and, thus, a smaller scale relative to the large size of the capital. The municipalities chosen also had functioning local governments, which is distinct from the situation in Santiago, which has a centralize structure, but many local administrative units that do not function as local government with participatory processes. In the case of Gwangju, the participatory planning and legislation were community based, rather than citywide in scale, perhaps facilitating the greater participatory nature of the experience.

Where the demographic composition of communities on the urban periphery in many regions, not only in Latin America, has a predominantly working-class demographic can be a factor

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enabling a culture of political solidarity. The demographics of migration and ethnic minorities in large cities, like Gwangju, can be a factor in raising principles of diversity and nondiscrimination in the normative definition of the community and human rights in the city.

In the same exercise in exchanging practices, a set of practical prerequisites emerged for realizing the right to the city. These include (1) the means, including sufficient resources of all kinds, to ensure adequate services and competence; (2) political will on the part of all stakeholders to participate in building the city and to devolve the authorities from the center in order to do so; (3) compatible legislation and a constitutional framework that allow for participatory local government and (4) civic education in order to prepare citizens for engagement in civic affairs in ways to which they are not yet accustomed and (5) citizens' respect for each other and the commons, municipal property and local authority.

In Mexico, the government of the Federal District signed the Mexico City Charter for the Right to the City, culminating a three-year advocacy process led by the Urban Popular Movement (*Movimiento Urbano Popular*—MUP) with support from the Habitat International Coalition-Latin America (HIC-AL), the Mexico City Commission for Human Rights and the Coalition of Civil Society Organizations for Economic, Social and Cultural Rights (*Espacio DESC*), all of whom participated in drafting the Charter. An estimated 3,500 citizens also participated in the elaboration of the draft through various events and consultations. The process for creating the charter reflects a key element of the right to the city—that it must include the right of people living in cities to participate in decisions that affect city life and the production of urban space. The implementation of the principles contained in the Charter, however, require a more-sustained mobilization effort, underlining the importance of social movements in democratizing city planning and governance.

The Mexico City charter has built on the collective experience of similar initiatives, including Brazil's City Statute of 2001, the Montreal Charter of 2006 and the World Charter on the Right to the City. However, the Mexico City Charter has several particular characteristics: First, the initiative was advanced by the urban social movement; that is, “from below” and adopted by a city-level government. The charter also underlines important political and policy differences between the Federal District and the national government. Finally, the charter seeks to go beyond realizing “human rights in the city” to include also a focus explicitly on realizing the collective right to the city. The Mexico City Charter (2010) defines the right to the city as follows:

The right to the city is the equitable use (*usufructo equitativo*) of cities according to principles of sustainability, democracy, equity and social justice. It is a collective right of urban inhabitants that confers upon them the legitimate right to action and organization, based on respect of their differences, cultural expressions and practices, with the objective of exercising their right to self-determination and attaining an adequate standard of living.

The right to the city is interdependent with other internationally recognized human rights, including civil, political, economic, social, cultural and environmental rights as defined in international human rights treaties (authors' translation).

The charter identifies six fundamental principles that incorporate an amalgam of human rights and collective rights understood as interdependent, indivisible and indispensable to promoting the right to the city. The charter puts forward a territorial approach to rights and democracy (i.e., representative, distributive and participatory), and a strategic direction especially relevant now that there is a Human Rights Program for the Federal District. The Charter conceives of urban inhabitants as the “subject” of the rights outlined in the Charter and describes government agencies and elected representatives as being “subject to” the

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obligations to respect, protect and fulfill these rights through the creation of new laws and urban policies and/or the enforcement of existing ones.

Like Brazil's ground-breaking City Statute (2001), the Mexico City Charter also establishes new rights at a collective dimension of certain individual rights, such as the social function of property. This is a key component of the right to the city that entails fundamental urban reforms and the redistribution and regulation of urban land for the purpose of constructing a more just and inclusive city. The Mexico City Charter also incorporates at least two important principles addressing the right to the city as first articulated by Lefebvre: (1) the right to participate in Decisions affecting urban inhabitants and the production of urban space; and (2) the right to appropriate urban space in favor of its use value over exchange value. Notably, these components include legal rights, social and political claims and material conditions.

### Local Government and Extraterritorial Human Rights Obligations

As collective personalities, cities and municipalities bear both a right and obligation to discharge their duties to protect their inhabitants and others from harm, even when that means reasonably applying such obligations in exception to trade agreements and practices. This putative conflict of regimes has led to some notable good practices of cities that have asserted their duties under human rights and/or peremptory norms of international law.

The procurement provisions of the Canada-EU Comprehensive Economic and Trade Agreement (CETA) are significant because they open up procurements by the provinces/territories, municipalities and utilities to European competitors. Such extraterritorial bidders previously were not so favoured under international procurement agreements such as the World Trade Organization Agreement on Government Procurement (WTO) and the North American Free Trade Agreement (NAFTA), which always had applied their rules to federal procurements. Not only do CETA rules open up public goods to privatization by extraterritorial parties, but they ultimately could lead to "the risk of private entities being able to establish a proprietary claim to the water itself."<sup>23</sup>

While the Council of Canadians coalition has stressed that it is not against trade, but it has opposed imposing these private international trade agreements against local will since "these agreements are mainly about expanding the rights of multinational companies, while reducing the ability of provincial and municipal governments to pursue policies that benefit local communities and everyday citizens."<sup>24</sup> They prohibit municipalities from using procurement for sustainable development purposes such as promoting food security by adopting "buy local" food practices. Dozens of Canadian municipalities have passed or considered adoption resolutions opposing the CETA.<sup>25</sup>

Other examples show municipalities discharging their duties in compliance with human rights and general principles of international law by nonrecognition, noncooperation and nontransaction with parties supporting or benefiting from an illegal situation that violates

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<sup>23</sup> Steven Shrybman (Sack Goldblatt Mitchell LLP), "Municipal Procurement Implications of the Proposed Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union," Legal opinion prepared for the Centre for Civic Governance at Columbia Institute, 28 May 2010, at: <http://www.civicgovernance.ca/wordpress/wp-content/uploads/Shrybman%20CETA%20report.pdf>.

<sup>24</sup> "New coalition launched to challenge CETA in Prince Edward Island," 7 March 2014, at: <http://canadians.org/blog/new-coalition-launched-challenge-ceta-prince-edward-island>.

<sup>25</sup> "Canada's cities (well, some of them) against Europe trade deal," *McLean's* (25 January 2012), at: <http://www.macleans.ca/politics/ottawa/canadas-cities-well-some-of-them-against-europe-trade-deal/>.

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peremptory norms. At the World Social Forum Local Authorities Forum in Canoas, Brazil (December 2012), local authorities from Latin America and Palestine concluded with a Declaration “demanding Brazilian local governments to commit to responsible investment by avoiding contracting with parties that support or benefit from occupation or violate related prohibitions under international law.”<sup>26</sup>

Based in its historic role in promoting the local exercise and operationalization of human rights, particular in cooperation with local authorities with their corresponding obligations, HIC and HLRN have played an increasingly prominent role in the Right to the City Movement. HIC and HLRN involvement in the drafting and socialization of the Global Charter for the Right to the City stems from an even deeper engagement with constituent Members and social movements since they converged to establish HIC in 1976. HIC’s current President Lorena Zárate has been visible advocate of the right to the city through her representation in all regions, especially sharing the experience of her home town of Mexico City.

HIC-Latin America is currently co-managing with the Brazilian *Instituto de Estudos, Formação e Assessoria em Políticas Sociais* (PÓLIS) a cross-regional research project, investigating the various contemporary applications and prospects of applying the right to the city concepts. The resulting knowledge platform will provide a basis for further programming that includes (1) exchanges of experience and practice among CSOs, social movements and local authorities, as well as (2) the development of knowledge products and training modules for locally applying the normative right-to-the-city framework.

These activities coincide with global for the post-2015 Development Agenda and the first UN-wide conference to follow: the Third United Nations Conference on Housing and Sustainable Urban Development (Habitat III), in 2016. HIC and HLRN already have begun advocating progressive policy outcomes from Habitat III, including greater specificity toward operationalizing human rights at the local level, maintaining the policy focus on the rural-urban continuum, as well as the explicit recognition of the right to the city and its constituent elements. HIC expectations for Habitat III include also reform of the mandate of UN-Habitat and other bodies actually to operationalize their normative framework as UN Charter-based specialized organizations with the corresponding tripartite purpose of advancing sustainable development, peace and security, and human rights in development of the built environment. To this end, HIC and HLRN also advocate the development of norm-based UN-system-wide Guidance Notes on both land administration and urban development in the same period.

*3. Please describe the main challenges faced by local government in the promotion and protection of human rights.*

One of the fundamental challenges is in understanding clearly and unequivocally that local authorities—whether operating within local administrations or local governments—bear precisely the same level of human rights obligations as central governments, as they constitute an extension of the state (territory, people and institutions). We urge the Advisory Committee to contribute to this clarion message to local authorities, as well as to state parties as subjects of international law.

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<sup>26</sup> “Local Authorities Forum - Free Palestine—in Brazil,” *Land Times* No. 5 (January 2013), at: <http://landtimes.landpedia.org/newsdes.php?id=o2xp&catid=pQ==&edition=pw==>.

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The promotion and protection of human rights at the municipal level requires an enabling environment, social conditions, constitutional context and resource base that permit effective local participatory government. As noted above, cities face the multiple challenge to ensure all of (1) the means, including sufficient resources of all kinds, to ensure adequate services and competence; (2) political will on the part of all stakeholders to participate in building the city and to devolve the authorities from the central state in order to do so; (3) compatible legislation and a constitutional framework that allow for participatory local government—and not just local administration—and (4) civic education in order to prepare citizens for engagement in civic affairs in ways to which they are not yet accustomed and (5) citizens' respect for each other and the commons, municipal property and local authority.

Some of these requisites can be legislated and otherwise ensured administratively. Other values, such as 2, 4 and 5 above, require rather intangible qualities of vision, aptitude, knowledge, moral fortitude and leadership to uphold human rights at the local level. In such aspects, education and exchange of good practice are much needed to develop the culture and practice of human rights, which is always a local task.

### *Final observations:*

Please note that Habitat International Coalition is submitting this input as an international organization, while its category is nongovernmental human rights organization and, but definition, should be filling the questionnaire for NGO and NHRIs. This is inconsistent with the legal definition in the Vienna Convention on the Law of Treaties, for example, which establishes that “‘international organization' means an intergovernmental organization.”<sup>27</sup>

However, the survey questions provided in that questionnaire were inappropriate to us, since we are not situated in a single country and, if we were to respond to those survey questions from where we sit in our General Secretary and Housing and Land Rights Network coordination office (Cairo, Egypt), all of the responses would be negative.

We had hoped that the survey questions for NGOs would have related to specialized human rights and other organizations that work beyond the national scope. Nonetheless, we hope also for your understanding in receiving this input.

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<sup>27</sup> Vienna Convention on the Law of Treaties (1969), Article 2.1(i).

## Human Rights Council Advisory Committee

**Deadline for submission of responses to the questionnaire:**

In order to give the Drafting Group the opportunity to take into account the different contributions, all parties are encouraged to submit their responses as soon as possible and at the latest by **11 April 2014**.

Answers can be submitted via email to the following address:

[hrcadvisorycommittee@ohchr.org](mailto:hrcadvisorycommittee@ohchr.org)

OR

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Thank you for your contribution.

For more information on the Advisory's mandate:

<http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>

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