

Local government and human rights

QUESTIONNAIRE

*As part of the consultations undertaken by the Human Rights Council Advisory Committee with **governments, national human rights institutions and non-governmental organizations** with a view to preparing a report on the role of local government in the promotion and protection of human rights, pursuant to Council 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, 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 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 in charge of the preparation of this report and elaborated the hereunder questionnaire for governments, national human rights institutions and non-governmental organizations.

RESPONSE TO THE QUESTIONNAIRE

- 1. How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.**

While physically based in Nairobi Kenya, Nairobi Peace Initiative – Africa (NPI-Africa) works across the Horn and Great Lakes regions covering 11 countries. These countries have mixed systems of governments ranging from Eritrea (highly centralized) to Kenya (devolved) and Tanzania and South Sudan (decentralized) political and economic systems. Kenya and South Sudan are among the countries that have devolved and decentralized governance systems. In these two countries, their constitutions provide legal framework for the formation, organization and operations of the various levels of government including the local governments.

The Kenyan constitution promulgated in 2010 has a clear framework outlined in Chapter 11 on the devolved system that stipulates, among others, the objectives and principles of the local governments; and elections, formation and operations of the local (County) Assemblies.

In Kenya, devolution is one of the hallmarks of transition from a previously centralised system of government. The Transition to Devolved Governments Act 2012 and The Intergovernmental Relations Act 2012 paved way for this transition process. Kenya now has two distinct levels of government – the 47 county governments and the national government. The local governments from the former constitutional dispensation have been replaced by county governments. The fourth schedule of the Kenyan constitution provides for the functions of the county governments. The Public Finance Management Act (PFM) determines how county governments are financed. For smooth function, these two distinct levels of government are expected to cooperate and consult with one another.

2. Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the implementation of human rights obligations.

In Kenya, the highlight of the constitutional framework for devolution is set out in the preamble of the constitution which outlines the aspirations of all Kenyans to form a government based on the essential values of human rights, Equality, freedom, democracy, social justice and the rule of law. The constitution recognises that all sovereign power belongs to the people of Kenya and is exercisable only in accordance with the constitutional provisions. The objects of the devolution of governments provides for devolved governments to augment peoples participation in governance and self-development and be based on democratic and accountable principles and separation of powers. This constitution is anchored on the fundamental human rights principles which are reinforced in nearly all the chapters but given prominence in Chapter 4, the Bill of Rights, which is the longest chapter (which confirms the core importance of protection of human rights to Government and people of Kenya) in the constitution of Kenya. The chapter, apart from spelling out rights and fundamental freedoms and determination of applications of Bill of Rights also identifies and protects mechanisms and institutions that are obligated to upholding those rights including the established Kenya National Human Rights and Equality Commission¹. It identifies protection of all rights like the rights to life, fair trial, and freedom of expression and to be free from torture, and the rights of people in custody. The Bill of Rights applies to and binds all state organs and all persons at all levels.

In South Sudan, the transitional constitution of 2011 provides legal framework of promotion and protection of human rights. These are clearly spelt out in Part Two: Bill of Rights in which such rights are defined. The decentralized system of governance is captured in Chapter Three of Part Three of the constitution in which power is devolved to three levels National, State and local. The national and state have legislative authorities. The country has a constitutional National Human Rights Commission whose overriding powers is to set and ensure adherence to the human rights standards and its powers cover national, state and local levels.

¹ This Commission itself is protected in the Constitution under Part 5 of Chapter 4

3. Is there any cooperation between local government and the central government in your country regarding the implementation of human rights at local level? If yes, please describe the existing cooperation framework.

The governments at the national and county levels are distinct and inter-dependent. This interdependency then calls for consultations and cooperation between the National and the County governments in the conduct of mutual relations. The cooperation extends to national state organs which must ensure reasonable access to their services in all parts of the Republic. The functions and powers of the national government and the county governments respectively are set out in the Fourth Schedule to the Constitution. The schedule distributes the functions between the national government and the county governments including on the promotion and protection of human rights.

4. Do you have human rights protection mechanisms at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?

The constitution provides mechanisms for the enforcement of protected rights. The Chief Justice of Kenya Dr. Willy Mutunga has already proposed to have the High Court established in every county, to help enforce the expanded Bill of Rights decentralised to the counties.

The Kenya National Human Rights and Equality Commission is equally decentralised and has presence in all counties.

5. What initiatives have been taken to include human rights mainstreaming in local administration and public services?

The process of mainstreaming human rights in local administration and public services by the central government within the devolved government constitution is still underway. The Central government mechanisms of upholding human rights in public service are replicated through the administrative units of the Central governments within the county governments.

6. What is the role of civil society in the planning and implementation of activities for the protection and promotion of human rights at local level in your country?

Various civil society groups have and continue to undertake activities aimed at raising awareness among and building capacities of citizens towards ensuring that culture of constitutionalism is rooted. These include holding local/county governments' to account on their human rights issues as per the constitution in areas such as representation and resource allocation. Mechanisms to realize these are varied and some actors have now initiated approaches of synergy building. In some counties, consortiums have been built.

7. What is the role and programme of your organization for promotion and protection of human rights at local level or in enhancing local governance for human rights?

Upholding and promotion of human rights is one of the key pillars to peace and peaceful living in any society. It is based on these that several countries, including those in the Horn and Great Lakes regions of Africa, are currently dealing with the past/historical human rights violations against which various forms of violence occurred. These have greatly been attributed to poor governance and skewed policies including, but not limited to, economic development and resource distribution.

NPI-Africa works with both state and non-state actors in promoting a culture of peace, dialogue and reconciliation through addressing governance challenges. Currently, NPI-Africa works with local/county governments as well as civil society organizations to build awareness and build capacities of the County Assemblies on constitutional parameters including on human rights. Some of these have been enumerated above. The main objective is to ensure that the county assemblies understand their legislative roles and develop policies and laws that are conflict-sensitive and adhere to and uphold human rights and values. This is replicated in South Sudan where NPI-Africa has created working relationship with one of the *Payams*² in Central Equatorial State and, through which, the organization has, to a great extent, worked with the local leaders, youth and women on issues of governance and human rights and how these contribute to sustainable peace. As the regional secretariat for Eastern and Central Africa working with 11 countries within the Horn and the Great lakes region, NPI-Africa provides spaces for national and local stakeholder deliberations on governance, human rights, peacebuilding, healing and reconciliation as well as conduct analysis on local situations to inform policy.

8. What are the main challenges faced by local government in your country in the promotion and protection of human rights?

Key challenges facing the local governments in promoting and protecting human rights both in Kenya and South Sudan include lack of capacities to understand, interpret and implement international, regional and national instruments of human rights. It has also been observed that sectarian territorial protection leads these leaders to develop skewed structures that only ensure their leadership survival. In both countries, incessant squabbles between the two chambers of leadership at the national level, on one hand, and between them and the local assemblies, on the other hand, also derails close examination and impartial provision of solutions to the human rights challenges.

² Payams are the smallest levels of governance in South Sudan

9. Please provide any best practices with regard to the above-mentioned issues.

NPI-Africa developed partnerships and worked with two Counties (Kisumu and Nandi)³ on issues of governance, constitutionalism and alternative dispute resolution mechanisms in 2013. The trainings focused on key legal and institutional frameworks of governance to ensure that, as they conduct business, they do not contravene the supreme laws. To this extent, the Assembly leaders were taken through the required processes of legislations and policy development and how to ensure that the end results promote dignity of the people living in the area; protect the minority and marginalized (inclusive); and do not become sources of conflict (conflict-sensitive). Another achievement was to build inter-county conflict resolution mechanisms to handle myriad conflicts that have existed between the two counties due to political differences and struggle for resources.

³ These are two neighbouring local governments based in Western Kenya.