DIALOGUES ON EFFECTIVE DECENTRALIZATION AND STRENGTHENING OF LOCAL AUTHORITIES

Report of the Executive Director

Summary

In its resolution 18/11 of 14 February 2001, the Commission on Human Settlements requested the Executive Director to intensify dialogue among Governments at all levels and Habitat Partners on all issues related to effective decentralization and the strengthening of local authorities, including principles, and as appropriate, legal frameworks, in support of the implementation of the Habitat Agenda. The present report describes the progress made and the steps taken in this regard by the Executive Director since the eighteenth session of the Commission on Human Settlements, including relevant findings and observations on the current status of decentralization policies in all regions. In the light of these findings and observations, the report concludes with a number of recommendations to the Governing Council, designed to inform its review and debate under this item at its nineteenth session.
I. BACKGROUND

1. At its eighteenth session, in February 2001, in its consideration of draft proposals for a world charter of local self-government, the Commission on Human Settlements decided that further discussions were needed among Governments on possible international principles and frameworks for decentralization and requested the Executive Director of the United Nations Human Settlements Programme (UN-HABITAT) to facilitate such dialogue.

2. Specifically, the Commission requested the Executive Director to intensify dialogue among Governments at all levels and Habitat Partners, initially through the Committee of Permanent Representatives and other appropriate means, on all issues related to effective decentralization and the strengthening of local authorities including principles and, as appropriate, legal frameworks, in support of the implementation of the Habitat Agenda. The resolution further called on the Executive Director to make the dialogue as open-ended and inclusive as feasible and to report to the Governing Council at its nineteenth session on progress made.

3. The decision reflected the recognition on the part of the Commission of the importance of local authorities to the implementation of the Habitat Agenda and of decentralization policies so that cities and towns can make an effective contribution to sustainable development and economic growth. While the importance of both local authorities and decentralization was recognized, however, it was also quite clear from the divergence of views expressed at the eighteenth session of the Commission on Human Settlements on the proposed world charter of local self-government that there was still no consensus on any eventual international framework or guidelines to support local efforts to implement decentralization policies and strengthen the development role and decision-making powers of local authorities, as well as to promote local democracy. The general feeling was that Member States had not had sufficient time to discuss the issues and available evidence in depth, both among themselves and with relevant partners, particularly local governments and their associations, and that for this reason further dialogue was needed.

4. After securing modest start-up funding in early 2002, the secretariat moved ahead with preparation of the necessary background documentation to support such dialogue on decentralization, beginning with an analysis of the challenges and policy issues which decentralization strategies must address and resolve; the arguments in favour of the devolution of political and financial authority and responsibilities to local government; and an overview of the course and fortunes of decentralization policies in developing countries since the 1960s, ending finally with what may be described as a “third wave” of decentralization beginning in the 1990s, which appears to be more deeply entrenched than earlier attempts. Among these are the increased interest of civil society groups in decentralized institutions, especially at the local level; the spread and culture of democracy throughout many areas of the developing world and elsewhere; and economic influences, including globalization and the liberalization of economies in most countries, leading to the weakening of centralized economic decision-making.

II. DIALOGUE AT THE FIRST WORLD URBAN FORUM, HELD IN APRIL/MAY 2002

5. The first World Urban Forum, held in Nairobi from 29 April to 3 May 2002, provided the opportunity, in an inclusive and informal setting, to table some of the key issues which would have to be addressed by international principles or guidelines on decentralization and local autonomy, to test reactions and modify and adjust the related work accordingly. The setting for such an exchange of views among Governments and other interested parties was the Forum's dialogue session on decentralization, which also served to introduce to a wider audience the initial overview and issue paper on decentralization. Panellists at the dialogue included representatives of local government, experts on the constitutional and financial aspects of relations between central and local government and a number of national practitioners engaged in implementing decentralization measures in their respective countries. The session was chaired by the president of the board of directors of the Global Parliamentarians on Habitat, Senator Ernesto Gil Elorduy of Mexico.
6. During the course of the discussion among the panellists at the decentralization session and between the panellists and delegations, which served as an initial sounding of opinion, it emerged that there is a general consensus that countries could benefit from constructive guidelines for decentralization, despite the great differences between their respective political, cultural, legal and institutional situations. What is needed, however, is a menu of options drawing on the rich experience of both developing and developed countries in the area of decentralization. This must be reflected in any international framework or declaration on decentralization. Finally, there was general agreement that decentralization and development processes are complementary, and that decentralization and the strengthening of local authorities could be an effective tool for sustainable development. A report of the dialogue may be found in document HSP/GC/19/2/Add.1.

III. CROSS-NATIONAL SURVEY

7. In the light of these observations by the World Urban Forum, UN-HABITAT proceeded to commission a representative set of case-studies from each of the world’s regions, from developing and developed countries and those with economies in transition, in order to document the current legislative and institutional set-ups with regard to decentralization and the relationships between local, subnational and national levels of government. This diverse cross-section of cases was intended to provide the background information needed to identify commonalities and provide the basis for the development of possible draft principles and options to be contained in any future declaration or framework, as well as to give such proposals the necessary political credibility.

8. Work on the case-studies started in June 2002 and was completed in October 2002. Most of the 28 country profiles that were produced were based on original research using primary sources. The rest were compiled from secondary sources. The authors of the various case-studies were prominent constitutional lawyers, experts on municipal finance and political scientists from both developed and developing countries. Each case-study focused on three key areas of decentralization and local government autonomy: constitutional and legal frameworks; democracy and popular participation; and local government finance.

9. A review and analysis of the case-studies led to the following observations, set forth here under each of the three key topic areas.

   A Constitutional and legal framework

10. One of the most striking contrasts in the countries analysed is the degree to which they have clearly and specifically articulated a role and function for local government authorities in their constitutions and national legal texts. The constitutions of several countries make no specific mention of any role for local governments (as opposed to simply recognizing them as a level of government, a level of government to be supervised, or a level whose laws will be dictated by a more inclusive regional government). Included in this list are such countries as Argentina, Australia, Belgium, Canada and the United States of America. Despite this absence of clear textual guidance, for some of these countries – such as Argentina and the United States of America – the national constitution directs attention to an intermediate government level, which in turn has the authority to develop its own regional constitution (or legal framework) articulating roles for local authorities. For example, in Argentina, municipalities are not mentioned in national legislation yet nine of the country’s 23 provinces have developed progressive definitions of municipal autonomy. Similarly, in the United States almost all states have their own written constitutions, which frequently articulate the opportunity for cities to develop their own charters.

11. Continuing along this legal or constitutional scale, a large number of countries have either amended their constitutions or complemented them with national laws defining specific responsibilities for local authorities. For some, like Mexico, a 1999 constitutional amendment has recognized local government as an essential level of government. For other countries, such as Japan, the Philippines and Thailand, constitutional amendments emphasizing local autonomy and decentralization have been reinforced by detailed and elaborate reform strategies sometimes spanning more than two decades. The Islamic Republic
of Iran is also important in this respect, as local government autonomy has been articulated in national legal texts for over 20 years. Only recently, however, has this articulation resulted in significant change at the local level. Finally, at the distant top end of the scale, is a group of countries that have gone the furthest in expressing a role for local government.

12. India, with a long history of centralized planning and decentralized politics, passed a constitutional amendment in 1992 explicitly stating the challenges that cities face and the role of the national Government in accelerating and strengthening the decentralization process. Moreover, amendments have made it mandatory for one third of all elected municipal councillors to be women, thus giving local government reform an important gender dimension rarely seen elsewhere. The experience of Brazil is also of considerable importance in this regard, particularly given its most recent legal achievement – the so-called “Statute of the City”. This law (No. 10.527 of 10 July 2001) supplements two articles in the 1988 Constitution, and, among other things, guarantees the right to sustainable cities and the participation of citizens and representative associations of various segments of the community. In a similar vein, the 1996 South African Constitution goes to great lengths to articulate the sanctity of local government authority by stating: “National and provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its functions.” This parallels the Polish Constitution of 1990, which not only speaks to local self-government but also makes a critical link between local government and finance. Poland’s Constitution enunciates the requirement that any changes in the field of tasks and competencies of local self-government must be accompanied by adequate changes in the distribution of public revenues.

13. Together, these examples help illustrate the diverse constitutional and legal approaches that countries have pursued when considering decentralization. In this light, it is legitimate to ask whether local government success in decentralization requires, as a prerequisite, substantial constitutional or national legal articulation of local authority and autonomy. Another important issue to consider is whether there are similarities in contemporary and historical State experiences that promote a clear mandate for local governments in the highest legal texts. As many of the cases indicate, a strong local demand for rights, services, and decision-making opportunities in the political process seems indeed to influence the depth of decentralization in many countries.

B. Democratization and popular participation

14. With respect to legal and constitutional frameworks for decentralization, it appears that some of the most comprehensive efforts have been in countries of the developing world and in countries that have experienced widespread social and political change. Former socialist States provide an important window into this phenomenon. In the Czech Republic, for example, it was in the capital city of Prague as well as other cities in the former Czechoslovakia that hundreds of thousands of protesters flooded the streets in 1989 to demand change. Following round-table discussions between the Communist regime and the opposition umbrella group, Civic Forum, an agreement was reached to create local representative bodies until the first free elections in 1990. This parallels the experience in Poland and the German Democratic Republic. Following the unification of the two German States, for the first time residents of the former German Democratic Republic were able to participate in local referenda. These referenda were so popular that nearly 1,500 of them were held between 1990 and 1997.

15. South Africa also provides an important illustration in this respect, as it was in the black townships where resistance to the apartheid Government was strongest. At the other end of this scale, some countries emerged from political and social change with few opportunities for political participation. Malaysia is a case in point. Here, in 1964, while local councils were going through political difficulties, a confrontation developed between the Malaysian Federation and Indonesia. Local government elections were suspended, and have not been reinstated since, even though the local government system has been reformed. Likewise, despite making continual and gradual changes to the local government system, Egyptian policy implementation is still very centralized and local government decisions are ultimately dependent on central government approval. The strong role of the central government in the country has been attributed to
concerns over security, efforts to provide equitable development, particularly in rural areas, and to a long history of centralized decision-making.

16. Several other country experiences cited in the review are important to consider here, because of the unintended results of local government reform. In Chile, between 1973 and 1988, all local elections were suspended, but the authoritarian Pinochet Government tried to improve local service delivery and this resulted in a number of reform measures, particularly in the area of revenue-sharing. Partly as a result of a legacy of centralized government, however, today regional or local identity in Chile is not fully articulated, despite the reintroduction of local elections in 1992. The experience in Côte d’Ivoire is also worth noting here. In 1978, President Houphouët-Boigny began a decentralization process, the incentive for which initially appeared to be political. The President made a major effort to create more positions in the system, in order, according to some observers, to absorb younger activists and potential political opponents. Nonetheless, in the long-term, the continued loosening of restrictions on local authorities provided the opportunity for opposition parties to stand for elections at the local level. Municipalities have subsequently acquired a great deal of political and financial autonomy, but as recent events demonstrate, the long-term viability of such measures is dependent on the maintenance of an overall national political consensus and a stable State.

17. A recent experience in Canada’s most populous province is worth noting here as well. In 1996-1968, the government of Ontario moved to amalgamate the six municipalities of the provincial capital, Toronto, in the lower tier, together with the upper-tier government of Metro Toronto, into a single local government unit. In spite of local resistance to the amalgamation legislation, the provincial government was upheld in the courts since under the Canadian Constitution it has virtually unlimited power to legislate for cities and towns within its boundaries. While arguments of efficiency were cited by the provincial government as the main rationale behind amalgamation, the review of the Canadian case notes that it is more than coincidental that the political power base of the provincial Conservative Party derived, at the time, from small towns and areas outside metropolitan Toronto. This also serves as a reminder that partisan political considerations may also motivate measures which effect local government negatively or positively.

18. It is worth returning to Brazil in this consideration of the topic of democratization and citizen participation, because it is closely linked to the last topic of the study, finance. Brazil’s experience with participatory budgeting is now one of the most celebrated local government initiatives. The participatory budget process is a result of the right of Brazilian cities to develop their own institutions of popular participation. Porto Alegre, a city of about 1.3 million, is the best known in this respect, although many others have taken a similar route. The popularity of the participatory budget process contributed to a tripling of tax revenue during the 1990s. Porto Alegre’s significant financial achievement is an important consideration, given that the level of resources to support the increased roles and responsibilities of local governments seem to be a universal problem.

19. Similarly, in China, in those places where locally collected, so-called “off-budget revenues” make up a large share of local public revenues, some kind of democratic mechanism has emerged spontaneously. For example, people have started to use the local people’s assembly as the mechanism for decision-making and monitoring of local public finance. Three years ago the city of Qingde in Zhejiang province established an assembly subcommittee on finance, as the decision-making body for local public finance. Almost 30 per cent of the assembly delegates have joined the committee, whose main task is to discuss and decide whether public projects should be initiated, how they should be financed, how the resources should be mobilized and how the revenues should be distributed and used.

C. Finance

20. There is no doubt that, throughout the world, local roles and responsibilities, together with the authority to make autonomous decisions about spending and the allocation of resources, are gaining in strength. For the most part, however, the finances to support these responsibilities seem to be lacking. Even with constitutional or national laws that establish the financial rights of local governments to meet their responsibilities, such as in Poland, the shortage of resources is an ever-present constraint. Centre-local
relations are extremely important when considering local government finance. The United Republic of Tanzania has undergone impressive local government reform in recent years, and one of the results of this reform has been to create legislation guaranteeing the transfer of certain revenues to local authorities in a systematic and predictable manner. At a time when it remains difficult to collect local taxes, it was, however, surprising in 2001 that the central Government transferred a number of license fees back to itself, as well as requiring local governments to pay value-added tax on their purchases. Hence, when considering local government finance, particularly in very poor countries, it is also important to consider the relationship of local finance to central financial revenues.

21. A country like Belgium also provides an interesting illustration of the nature of centre-local relations, particularly with respect to local financial autonomy and management. In Belgium, municipalities continue to argue for stronger autonomy in local government finance. Not surprisingly, however, the degree of local financial autonomy permitted is directly related to success in local financial management. In this case, better finance equals more autonomy. The Islamic Republic of Iran offers another instructive example. Although it has had a mixed experience with elected local government since February 1999, following the Decentralization Act of 1997, there is no doubt that the status and political weight of some Iranian cities, like Tehran, has risen with their greater financial self-sufficiency. In the case of Tehran, this self-sufficiency has come about through the sale of building permits, including the charging of high fees for exemptions from existing zoning restrictions under the master-plan for the city.

22. Throughout the world, local and central governments are experimenting with an almost bewildering variety of new financial arrangements. For some countries with advanced local tax systems, like China and France, a significant proportion of local government resources is raised locally. The case of China, in particular, bears further scrutiny here, as it clearly illuminates the impact of market reform in previously more rigid economic systems. The emergence of a flexible market environment has led to local governments now enjoying considerable off-budget revenues, generated from such sources as donations by individual and enterprises to specific public projects, profits from township-based enterprises, fees for services, fines, and revenue from the leasing of public land to enterprises and developers. Indeed, the sale of land-use rights constitutes the largest source of income for many cities in the coastal region of the country. In 1992, the last year in which off-budget revenues were officially counted as fiscal revenue, they had reached 93 per cent of total formal budgetary revenue and are presumably still rising at least in the aggregate. By 1996, extra-budgetary revenue accounted for close to 40 per cent of all funding, including local public utility and construction charges, transfers from the central Government and regular municipal budgetary allocation, for urban infrastructure. In addition to the expansion of the revenue base accounted for by these financial reforms, observers have pointed to a close connection between local participation and the effective mobilization of local tax resources.

23. In Indonesia, where powers to set local tax rates are relatively new, local governments are attempting a number of fiscal models. Thus, some Indonesian municipalities have chosen to set local tax rates high in an effort to support local services. In contrast, other municipalities are keeping tax rates low in order to attract business and investment – a strategy consistent with a regional and global vision of competitive cities, a vision that cities in the United States have widely adopted. In an era of continued local government reform, local financial management is probably one of the most demanding and difficult issues to get right.

D. Preliminary conclusions

24. Based on the country experiences illustrated in the 28-country review, a number of conclusions are warranted. First, whatever the political interest in, and popular support for, decentralization, strong and lasting reforms must have a firm legal and even constitutional basis. This requires detailed consideration of existing central-local relations, the role of municipalities in development, and the potential for subnational planning. Second, decentralization initiatives have tended to be more successful in countries in which these initiatives – often planned from the centre – were supported by civil society groups active at the local level. These civil society groups may be part of a wider mobilization of political activity that includes political parties and new cadres of sophisticated and well-trained local officials. Finally, decentralization initiatives and policies must take financial capacity into account. Relations between central and local revenue centres
must be carefully evaluated, but, as a general rule, decentralization should be seen as a tool for local governments to widen and improve its revenue sources and, in the process, to contribute more effectively to the development of the country as a whole.

25. Further, it would appear that numerous countries in Africa, Asia, Latin America, and Eastern Europe have extremely innovative approaches to local government reform, from which countries in North America and Western Europe could certainly learn a great deal – an information pathway that often tends to be overlooked. It is also becoming evident from this review and the earlier issue paper presented at the first World Urban Forum that, during the later years of the 1990s and into the current decade, a movement towards decentralization has quietly become a fashion of our time. Even in the mid-1990s, most countries with a population of 5 million or more claimed to be engaged in some kind of decentralization programme. What is remarkable is that many of these programmes have involved either constitutional change or significant national legislation. As a result, what appears to some to be a mere development fad may, in fact, be more deeply rooted. For the arguments in favour of decentralization are well established: stronger local government encourages public engagement, a sense of ownership over services, accountability and transparency, efficiency, and in many cases, equity. It is no easy task, however, to determine the most appropriate institutional, legal and financial frameworks necessary to bring these benefits to fruition.

IV. NEXT STEPS

A. Dialogue on decentralization at the nineteenth session of the Governing Council

26. As indicated in the Executive Director’s notification to Governments regarding the nineteenth session of the Governing Council, a dialogue session between and among levels of government and other Habitat partners on decentralization and the strengthening of local authorities will be held at that session in May 2003. It is envisaged that the dialogue will take place prior to the Council’s deliberations on the present progress report by the Executive Director on the implementation of resolution 18/11 and that it will be used to set the stage for the debate on the report by enabling Member States to gauge the opinions of local authorities and other partners on the evidence contained in the 28-country review. A selected number of experts on the subject, participating in their own capacity or on behalf of Habitat Partner organizations, will address the conclusions of the review, express their opinion on the need for further research and on the issue areas selected for the elaboration of principles and make suggestions on the outcome and final product of the dialogue on decentralization.

B. Action by the Governing Council

27. As it can be assumed that it was not the intention of the drafters of resolution 18/11 to conduct an interminable dialogue on decentralization, the Governing Council might wish, at its next session, to make recommendations on the process and time-frame for coming up with a definitive document of whatever form and content. To facilitate this process and to ensure that it has the necessary authority, the Governing Council may wish to endorse the proposal of the Executive Director to establish an ad hoc advisory panel of experts on decentralization. The dialogue would greatly benefit from the work of such a panel, task to elaborate proposals for draft principles, based on the analyses of decentralization policies and legislation in sample countries, as well as on the panel members’ own experiences, which would then be circulated to Governments for their comments and review. This panel would consist of recognized international experts on decentralization, preferably with a legal background and experience in the formulation and implementation of decentralization policies. The secretariat has already informally contacted a number of prominent experts on decentralization in order to ascertain their interest in participating and their availability, and a number of positive responses have already been received. The issue of an ad hoc advisory panel on decentralization was raised by the secretariat at a briefing to the Working Group of the Committee of Permanent Representatives to UN-HABITAT in December 2002 and divergent opinions were expressed by the Permanent Representatives on the issue, ranging from those who wished the panel to begin its work even before the nineteenth session to those who felt that this would be premature. There was a general consensus, however, that the dialogue on decentralization should continue, which is also the view of the General Assembly as expressed in its resolution 57/275 of 20 December 2002, by which the Assembly
reiterated the agreement by Governments to intensify dialogue on all issues related to decentralization and strengthening local authorities.

28. Beyond following this call by the General Assembly, the Governing Council might also wish, at its nineteenth session, to start discussing how it envisages the outcome of the dialogue on decentralization and the strengthening of local authorities, whether this should take the form of principles or guidelines, and in what type of political envelope such principles or guidelines should be placed – whether they should be contained in a declaration or a more substantial international legal framework, bearing in mind that political consensus will be easier to reach on the former than on the latter, as shown by the previous discussions on the draft world charter of local self-government.

C. Position of local authority partners

29. At the sixth meeting of the United Nations Advisory Committee of Local Authorities, held in Johannesburg during the World Summit on Sustainable Development, the secretariat briefed the Committee on progress in the decentralization dialogue. As can be gathered from the decisions at the meeting of the Advisory Committee, the local authority partners continue to give the highest priority to the dialogue and expect that an international political document will emerge from the process that is sufficiently authoritative to give support to the strengthening of local authorities worldwide. The local authorities also expect to be actively involved in the discussions and elaboration of any resulting international instrument. The meeting emphasized that the dialogue was to be among “all levels of government” and that local authorities see themselves as equal partners of national Governments in this process. A representative of the World Associations of Cities and Local Authorities Coordination participated in the dialogue on decentralization at the first World Urban Forum and local government experts with close links to international and regional associations of local governments contributed to the 28-country study referred to above. Representatives of local authority partners will also participate in the dialogue on decentralization at the nineteenth session of the Governing Council. It should be noted here that the dialogue on decentralization and its outcome will strongly influence the evolution of the partnership between the Governing Council and the international local government associations in the implementation of the Habitat Agenda.

D. Additional financial support for the dialogue

30. Finally, it is clear that the dialogue process will require specific extrabudgetary financial resources, especially if an ad hoc advisory panel on decentralization is established. This need should be addressed, as a matter of priority, by the Governing Council at its nineteenth session when it takes up the present agenda item.

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