



# PROMOTING HUMAN RIGHTS AT LOCAL AND REGIONAL LEVEL

The human rights dimension of the activities of  
the Congress of Local and Regional Authorities



Compendium of texts

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Authorities**

COMPENDIUM OF TEXTS

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## Foreword

This compendium of texts comprises the relevant recommendations and resolutions on human rights at local and regional level, which have been adopted by the Congress of Local and Regional Authorities of the Council of Europe since 2010.

The Congress of Local and Regional Authorities has always been convinced that local and regional good governance entails, as a precondition, a full compliance with fundamental freedoms and human rights.

However, the growing threats in Europe to democracy, human rights and fundamental freedoms, which have sometimes led to radicalisation and even to acts of terrorism, made it all the more relevant and urgent to organise awareness-raising action at local level to promote and protect human rights.

Local governments constitute territorial entities with a political leadership accountable to citizens and responsible for public services such as education, health and housing, and it is a reality that they are increasingly acknowledged as key players in guaranteeing human rights. Real-life examples demonstrate this in a factual way, for example when mayors have to take decisions on whether to ban or allow demonstrations they must weigh the fundamental right to freedom of assembly/expression against the preservation of public security. Or when a municipality receives a Roma group, mayors must base their decisions on non-discrimination principles, the right to housing, health, etc.

With inequality, discrimination, unaffordable housing, lack of access to proper health-care or education prevailing in our societies human rights have a local impact. As local authorities are inextricably linked to the communities they serve it is clear that they have a vital role in making human rights a reality. This in turn explains why local communities as well as their representatives should be at the forefront of the protection and promotion of human rights.

The Congress has been collecting data and good practice examples of human rights applications at local and regional levels of government. Its aim is to promote awareness among elected representatives of their responsibilities in dealing with human rights issues that affect people's everyday lives at the local level and to encourage the national, as well as local, authorities to be trained in the field of human rights.

In addition, the application of good local and regional governance goes hand in hand with a practical knowledge of the main reference standards of the Council of Europe in the field of human rights and fundamental freedoms. These are contained in the European Convention on Human Rights and the European Social Charter, both ratified by all 47 member States.

The case-law of the European Court of Human Rights, the conclusions issued by the European Committee of Social Rights and reports of the Committee for the Prevention of Torture and the European Commission against Racism and Intolerance as well as those of NGOs all show that violations touch upon all areas of life, in particular areas that often fall within the sphere of competence of local and regional authorities.

The European Court of Human Rights' case-law shows that non-compliance with these basic values can lead to a sentencing of a member State (following a decision or an act committed by a local or regional authority). This case-law includes, for example, decisions on freedom of assembly

(Alekseyev v. Russian Federation on gay pride marches and picketing in Moscow); freedom of expression and minority rights (Demirbaş and Others v. Turkey on use of minority languages in local service leaflets); a fatal accident related to a rubbish dump created by a municipality (Öneryıldız v. Turkey); pollution related to a steel plant (Fadeyeva v. Russian Federation); environmental problems (Lopez Ostra v Spain on pollution from a tannery), Roma families installed on municipal land without a permit (Chapman v. United Kingdom) or on private life such as ill-treatment in child care (Gaskin v. United Kingdom) etc.).<sup>1</sup>

In this regard, it is interesting to refer to the list of some key principles that the Jurisconsult at the registry of the European Court of Human Rights, addressing the 26th Session of the Congress in March 2014, listed, in the light of the Court's case-law, which should be taken into account in law enforcement by local and regional authorities:

- Respect for human dignity during arrest and in prisons during detention but also in psychiatric hospitals or in health-care facilities;
- Detailed regulation of the use of service weapons by local or regional police forces;
- The principle of proportionality in cases of deprivation of liberty;
- Clear and precise legal basis for guardianship and trusteeship regimes;
- Respect for the principle of proportionality in the approval or refusal of applications for authorisation to hold demonstrations or meetings;
- Expropriations on the basis of public utility based on clear and precise legal grounds, clear and understandable verification procedures and compensation payments corresponding to the nature of the expropriated surfaces;
- Appeals against the decisions of municipalities, towns and regions concerning individual rights arising from the Convention on Human Rights.

There can obviously be many different reasons behind the perpetration of human rights violations at local level. But in many instances violations originate from the local authorities' lack of understanding of human rights and their implementation, even where domestic law complies with the European Convention on Human Rights.

This highlights the urgency to raise awareness and train legal practitioners and public officials in a human rights dimension.

In this respect Congress Recommendation 280, in its paragraph 6 (see p. 55 of the compendium), recommends fostering respect for human rights through the training of local and regional elected representatives and their staff. This recommendation follows the approach of the United Nations Declaration on Human Rights Education and Training Article 7(4) which also recommends that States, and where applicable relevant governmental authorities, should ensure adequate training of State officials, civil servants, judges, law enforcement officials and military personnel in human rights as well as, where appropriate, international humanitarian law and international criminal law. In addition, adequate training in human rights should be encouraged for teachers, trainers and other educators and private personnel acting on behalf of the State.

The Congress is absolutely convinced that the best way to enable local and regional authorities to take responsibility for human rights is through the systematic training of political leaders and the dissemination of reliable information among citizens about their rights, particularly among vulnerable groups. It is also important to put in place on-going training modules and an induction programme on human rights policy for newly-elected representatives and staff who work with a

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<sup>1</sup> For all judgements/decisions see the European Court of Human Rights, HUDOC database, <http://www.echr.coe.int/echr/en/header/case-law/hudoc/hudoc+database/>.

local or regional authority. Furthermore, the exchange of good practices provides a unique opportunity to raise human rights awareness among local and regional authorities so as to receive information and inspiration on new ways and means to pursue efforts to uphold their country's international commitment at local level.

Training legal practitioners and public officials will certainly lead to a better implementation of human rights and will allow them to be more proactive, to feel more responsible when they implement local policies, and to prevent violations of human rights before they occur. This training process can be implemented by national governments, special law experts from courts or the bar, universities and institutes on human rights or national associations of local and regional authorities.

A monitoring and evaluation system at all levels of governance should be put in place in order to identify and analyse the impact of the policies drawn up at local level as well as the measures implemented on fundamental rights. The indicators developed by the Congress for the local level can also serve as a basis for this.

An effective instrument (providing easy access to information) for disseminating successful examples should also be established.

About 10 years ago, taking the above mentioned elements into consideration, the Congress decided to intensify its action and it therefore adopted three reports, from 2010 to 2014, which include recommendations and resolutions on this specific issue. They all aim at raising the awareness of local and regional authorities in order to respect, protect, fulfil and promote human rights at local and regional level.

The three reports concern respectively:

- "The role of local and regional authorities in the implementation of human rights
- "Developing indicators to raise awareness of human rights at local and regional level"
- "Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries."

In 2010, the Congress recommendation<sup>2</sup> and resolution<sup>3</sup> on the role of local and regional authorities in implementing human rights stressed the importance of local and regional action in the area of human rights. This report takes stock of the the importance given to human rights by local and regional authorities when drawing up policies, and also of the cost that the implementation of human rights may entail for a city or a region. The report highlights some good practices found in member States' local and regional authorities and makes some recommendations to member States and their authorities as well as to the Congress with a view to the effective practical implementation of human rights, which is a precondition for any democracy. It also shows that human rights evolve over time, and local and regional authorities need the means to keep pace. This requires raising awareness of the issues among politicians, citizens and civil servants in addition to mediation and the judicial process.

In 2011, Congress Resolution 334 on "Developing indicators to raise awareness of human rights at local and regional level"<sup>4</sup>, provided methodologies for data collection and analysis to permit the identification of the challenges regarding human rights that local and regional authorities face in

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<sup>2</sup> The Congress/Recommendation 280 (2010) (Revised) role of local and regional authorities in the implementation of human rights, 17 March 2010, 18th Session CG (18)6, Rapporteur: Lars O MOLIN, Sweden

<sup>3</sup> The Congress/Resolution 296 (2010) (Revised) The role of local and regional authorities in the implementation of human rights, 19 March 2010, 18th Session, CG (18)6, Rapporteur: Lars O MOLIN, Sweden

<sup>4</sup> The Congress/Resolution 334 (2011) Developing indicators to raise awareness of human rights at local and regional level, 20 October 2011, 21st Session CG (21)10, Rapporteur: Lars O MOLIN, Sweden

their daily work. To this end, the Congress developed indicators to collect and analyse data required for the stock-taking exercise, a prerequisite for further action, and these fall into three categories:

Firstly, structural indicators are elaborated to be used to monitor the legal framework of human rights conventions, national legislation and policy, local and regional policies and decisions.

Secondly, process indicators are drawn up, geared to measuring the efforts made to implement human rights in carrying out a specific policy. The focus is on measuring what is actually done by the local and regional authorities and, consequently, the degree to which the policies are implemented.

Thirdly, outcome indicators describe the situation in specific fields, such as housing, education, political participation, etc. Ideally process and outcome indicators should be closely connected in order to distinguish between the outcome of the efforts expended by authorities on the one hand, and the impact of other factors on the situation regarding human rights on the other.

The Congress' latest report<sup>5</sup>, adopted in 2014, deals with best practices with regard to the implementation of human rights. It underlines the complementary role the Congress plays in the promotion of human rights by raising awareness among local authorities of their shared responsibility in this area. The resolution again provides good practice examples from local and regional authorities in member States that could be of interest to all elected representatives in order to ensure the respect, protection, implementation and promotion of human rights.

These adopted texts emphasise the fact that human rights awareness raising is not only essential to prevent and combat human rights violations perpetrated at local and regional level, but is also a prerequisite for effective implementation of human rights.

This compendium has a dual purpose, the first is to remind local and regional elected representatives of their role and responsibilities in the implementation of human rights when they draw up policies, and the second to be a practical manual that they can make use of in the implementation of their policies at local level.

If the philosophy that 'prevention is better than cure' prevails, a rise in the satisfaction of citizens with their local and regional political system and its policies in implementing a human rights-based model of society, should thus provide tangible effects and clearly improve the quality of local and regional governance.

**Andreas Kiefer,**  
**Secretary General of the Congress**



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<sup>5</sup> The Congress/Resolution 365(2014), Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries, 25 March 2014, 26th Session CG(26)5, Rapporteur: Lars O MOLIN, Sweden

## **Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries**

### **Summary**

This is the third report on human rights at local level since the adoption in 2010 of Resolution 296 on the role of local and regional authorities in the implementation of human rights. It underlines the complementary role the Congress plays in the promotion of human rights by aiming to raise awareness among local authorities of their shared responsibility in this area.

The report gives good practice examples from local and regional authorities in member States that can be of interest to all elected representatives in order to ensure respect, protection, implementation and promotion of human rights. It emphasises the diversity of possible responses in the delivery of services to citizens and the importance of taking a proactive stance as well as giving visibility to local authorities' commitment. Recognising the immensity of the task related to working on all relevant human rights and with all groups of citizens, the present report suggests that human rights be taken into consideration in daily decisions and activities undertaken by elected representatives, in order to improve their implementation at all levels of governance.

## Resolution 365 (2014)<sup>6</sup>

The Congress,

1. Considering:

a. Resolution 296 (2010) REV and Recommendation 280 (2010) REV on the Role of local and regional authorities in the implementation of human rights;

b. the reply adopted by the Committee of Ministers on 6 July 2011 at the 1118th meeting of the Ministers' Deputies on the role of local and regional authorities in the implementation of human rights (CM/Cong(2011)Rec280 final) whereby the Committee of Ministers welcomes the Congress initiatives in the field of human rights at local level;

c. the explanatory memorandum attached to this resolution;

2. Taking note of the previous reports adopted by the Congress, respectively on "The role of local and regional authorities in the implementation of human rights" (2010), "Developing indicators to raise awareness of human rights at local and regional level" (2011) and on "Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries" (2014);

3. Conscious of the pre-eminent and leading role that governments play in the promotion and protection of fundamental human rights;

4. Encourages local and regional authorities in member States and non-member States with whom the Council of Europe is carrying out co-operation activities, to exchange good practices in the area of human rights at local and regional level;

5. Invites the Monitoring Committee to make use of the opportunity provided by monitoring visits to meet local elected representatives and continue its activities of awareness raising on the role the local authorities can play in promoting human rights at local and regional level, in co-operation with other bodies of the Council of Europe and the European Union Agency for Fundamental Rights;

6. Undertakes to organise a human rights forum with the participation of elected local and regional representatives, experts and other stakeholders at regular intervals to exchange information and good practices.

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<sup>6</sup> Debated and adopted by the Congress on 25 March 2014, 1st Sitting (see Document CG(26)5FINAL explanatory memorandum), rapporteur: Lars O. MOLIN, Sweden (L, EPP/CCE).

## Explanatory memorandum

### 1. INTRODUCTION

1. Human rights are a fundamental part of the activities of Council of Europe. The Congress of Local and Regional Authorities is adding an important dimension to this work: that of the local and regional level of governance and its part of the overall human rights responsibilities of public authorities. This is done by looking at human rights responsibilities through a new lens – through the eyes of mayors, city councillors and municipal administrators – and interpreting their responsibilities for human rights to their local realities.

2. Good governance has been a key concept for the Congress in improving local democracy in member States, and it is impossible to conceive of good governance without respect for human rights. With this in mind, the Congress adopted Resolution 296 in 2010 and established a policy on the role of local and regional authorities in the implementation of human rights. This resolution highlights the importance of awareness-raising campaigns, local action plans, the existence of independent complaint mechanisms easily accessible to all (e.g. local and regional ombudspersons), and training for local politicians and their staff regarding their human rights responsibilities. It also admits that local and regional authorities may not be as knowledgeable and proactive in this domain as they could and should be.

3. The main challenge in the endeavour of awareness-raising is how to develop the link between the legal responsibilities of local and regional authorities and everyday implementation of human rights.

4. Being aware that good and instructive examples are required for this purpose, the Monitoring Committee appointed Lars O. MOLIN as rapporteur to develop a report on best practices of the implementation of human rights at local and regional level. The present report follows on from the report *The role of local and regional authorities in the implementation of human rights* presented in March 2010<sup>7</sup> and the report *Developing indicators to raise awareness of human rights at local and regional level* presented in October 2011<sup>8</sup> and deals, in particular, with the operationalization of human rights responsibilities into local and regional practices.

5. One of the committee's long-term objectives is to raise the awareness of human rights at local and regional level. The long-term ambition is to do this through the publishing of five-yearly reports on the implementation of human rights by local and regional authorities, providing insights into the quality of local and regional governance on this specific aspect of local democracy. As result of the 2010 report an appendix focusing on the human rights situation is now added to the reports on the situation of local and regional democracy in member states emanating from the regular general country-by-country monitoring missions.

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7. The role of local and regional authorities in the implementation of human rights, Explanatory memorandum, The Congress of Local and Regional Authorities, the Council of Europe, CG(18)6.

8. Developing indicators to raise awareness of human rights at local and regional level, Explanatory memorandum, The Congress of Local and Regional Authorities, the Council of Europe, CG(21)10.

## 2. HUMAN RIGHTS RESPONSIBILITIES OF LOCAL AND REGIONAL AUTHORITIES

6. Human rights treaties are intended to be implemented at the local level, with a great deal of democratic input. For example, these treaties provide mechanisms and opportunities for reporting on conditions within communities (both positive and negative); training government officials and agencies as well as the community to promote equality and non-discrimination; conducting hearings to explore and examine the relevance of findings by international treaty bodies; and issuing recommendations for future action. They also provide a set of standards that local governments should adhere to in administering their own laws and policies

7. The contribution of the Congress to the promotion of human rights should be seen as a complementary one: the Congress aims to raise awareness among local authorities on their shared responsibilities for the overall implementation of human rights within the Council of Europe. It intends to do this by collecting data, devising specific indicators that allow local and regional authorities to develop innovative ideas and to evaluate their own performance, and providing them with good practice guidelines – in short, by bringing human rights home to the local level. This is an added value for both governments and for the Council of Europe. The Congress can play a unique role in this process thanks to the specific nature of its members as an assembly of elected local and regional government representatives.

8. The powers and responsibilities that lie on local and regional authorities vary from one member country to another. Local and regional politicians all take one-off or more general decisions relating in particular to education, housing, health, the environment and law and order, which are directly connected with the implementation of human rights and which may enforce or weaken the possibilities of its inhabitants to enjoy their human rights. Correspondingly, civil servants at local and regional level are responsible for a number of human rights issues in their day-to-day work.

9. The responsibilities of all politicians and civil servants at all levels can be said to be fourfold in relation to human rights:

- a. To respect (abstain from violating the human rights of the individual),
- b. To protect (protect the human rights of the individual from violations from others),
- c. To fulfil (develop and/or sustain systems that can fulfil human rights),
- d. To promote (further the understanding of and respect for human rights).

10. These responsibilities are common for all authorities within their spheres of influence and concern all human rights. Generally, every human right comes with this fourfold responsibility. For example in relation to every child's right to education, the authorities should respect the rights of the individual child in the school system by making sure that its own public officials do not violate its right to education. At the same time, they must ensure that the child's rights are not threatened or violated by others. Furthermore, the authorities have a duty to fulfil every child's right to education by sustaining a good educational system. Finally, they should promote the understanding of and respect for everybody's human rights through teaching and training the children within the schools.

11. Another example can be found in relation to every individual's right to physical security, the authorities should guarantee that its own police forces do not violate this right, simultaneously as they ensure that the same right is not threatened or violated by other actors. Furthermore, the authorities have a duty to fulfil every individual's right to a safe society by sustaining a good system

for keeping public peace. Finally, they should promote the understanding of and respect for everybody's right to physical security through their communication, teaching, training and actions.

12. While national legislation should clearly delineate the responsibilities and powers of central and local government authorities in relation to one another, it is of outmost importance that the different levels of governance cooperate with the human rights of the individual person in focus. It is the responsibility of the national government to create an enabling environment in which local governments understand and implement their human rights obligations. Furthermore, the national government should ensure that local governments respect human rights. At the same time, local and regional authorities may invigorate national human rights work through their human rights-based practice and should be included in the development of national action plans and reporting on human rights to different international bodies. It is important to underline this in the current context of economic crisis. As austerity measures often affect the capacity of local and regional authorities to assume their responsibilities for providing public services, obligations in the field of social and economic rights help identify the minimum core obligations which should always be fulfilled (example: homelessness).

### **3. THE OPERATIONALISATION OF HUMAN RIGHTS RESPONSIBILITIES**

13. Conventionally, the understanding of implementation of human rights has been limited to the legal ratification of human rights conventions. While this is a prerequisite for implementation in policy and practice in everyday life, human rights must be operationalized i.e. understood and applied in all levels and all sectors of public life to have the necessary impact. If not, human rights run the risk to become empty words instead of strong and practical guardians of peace and democracy.

14. It is important to note that regional and local institutions already engage in implementing human rights by promoting equality, dignity and fairness in their work. Human rights treaties cover much of what state, regional and local authorities deal with every day – including addressing police brutality and discrimination in housing and employment, and promoting freedom of religion. However, their work is rarely perceived as human rights implementation, neither by the authorities, nor by the public. This may in itself lead to a continuing unfamiliarity with the concept. Consequently, human rights remain distant as a frame of reference or analysis in most policy and practice on regional and local level, while they may actually be human rights in practice.

15. How can e.g. everybody's right to physical security, freedom of religion, best attainable health or education be converted into action on the local and regional level? And vice versa, how does the practices already in place that relates to physical security, health care and education correspond with the responsibilities of the local and regional authorities? How do the responsibilities to respect, protect, fulfil and promote human rights translate into local and regional realities?

16. The step from general legal obligations at state level to local implementation may appear hard to take. However, the practical implementation of human rights does not need to be more complicated than other policy areas. It is rather a matter of acknowledging their importance, clarifying the responsibilities and interpreting these into everyday political decisions, policies and practices.

17. Human rights do not provide ready-made answers to difficult policy choices. However, the human rights responsibilities of states, regions and local authorities require that the choices are

made in a non-discriminatory, transparent and including manner, using explicit human rights criteria, such as the well-being of marginalised groups as well as more influential groups in society.

18. Internationally, it is generally accepted that using a human rights framework can strengthen policy-formation and assessment in four ways:<sup>9</sup>

- it empowers the individual person who is at the core of the human rights;
- it confirms that states are legally obliged to meet their human rights responsibilities;
- it requires constancy and non-discrimination; and
- it recognises that rights are linked – that the enjoyment of one right is tied to the enjoyment of others.

19. It is important to point out that local and regional authorities can choose different ways and different methods to fulfil their common responsibilities as long as the means used are not at cross-purpose with human rights principles and standards. The differences may serve as inspiration for others and be used to further develop their own policies and practices within the field of human rights.

#### **4. HUMAN RIGHTS IMPLEMENTATION IN PRACTICE: GOOD PRACTICES?**

20. The aim of this report is to discuss the implementation of human rights at local and regional level through the presentation and discussion of a number of practices. The practices presented are selected from a variety of examples compiled from different local and regional authorities in the world, with a focus on the Member states of the Council of Europe. The cases used should be understood a starting point for a discussion of human rights implementation, rather than an exhaustive list of good examples. They are used to highlight some generic aspects of how regional and local authorities can work with their responsibilities to respect, protect, fulfil and promote human rights.

21. The practices in focus are selected so that they cover different parts of human rights responsibilities at local and regional level, meaning that they are cases primarily focusing on respecting, protecting, fulfilling or promoting human rights. Furthermore the cases are also chosen in relation which generic aspects they display in order to further the discussion on implementation.

22. Consequently, the focus of this report is not on “best” practices, but rather examples of practices that can be helpful in clarifying how a responsibility for human rights may be shouldered on local and regional level. In fact, since methods and processes are frequently changed as they are put in action it is even uncertain if “best” practices exist, but rather a range of good practices. A good practice is commonly defined as something that has been tried and shown to work in some way with some indications of its efficiency – and that may therefore be used to influence practice elsewhere.<sup>10</sup> The important thing for such good practices in relation to human rights implementation is that they may give ideas and frameworks for developing processes and methodologies that can be of relevance to similar situations elsewhere.

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<sup>9</sup> See for instance United Nations Development Group, Human rights-based approach to development programming, <http://www.undg.org/?P=221> (2013-09-15).

<sup>10</sup> Serrat, O. (2010). Identifying and sharing good practices. Washington, DC: Asian Development Bank.

## **5. EVERYBODY AND ALL – INTERSECTIONALITY AND VULNERABLE GROUPS**

23. Human rights do always refer to the rights of a person or a group. It is important to keep in mind that “a person” or “an individual” may be of any age, gender, sexual orientation, ethnicity, religion, functionality, socio-economic status etc. and that “a group”, consequently, always consists of a variety of differences.

24. This variety of traits that all human beings are composed of is of particular interest when they interact with different discriminatory systems, e.g. when gender discrimination overlap with ethnic discrimination or discrimination of persons with disabilities strengthening or easing the discrimination for the individual depending his/her gender, ethnicity and functionality. This interaction is often referred to as intersectionality

25. Work to improve an overall human rights situation are generally focused on one or more so-called vulnerable groups, such as national minorities, children, persons with disabilities etc. While this kind of targeted approach may be just right for the situation, a special challenge is to keep in mind the intersectional character of all individuals belonging to all such groups. For example, persons with disabilities may be children, youth, middle-aged or elderly people; they may be women, men or transgender; they may be of different ethnicities, believers of different faiths, have different sexual orientations and so on.

26. The important point is to develop structures and processes that are able to acknowledge the intersectional character of all individuals and groups and include intersectionality as a natural part of the on-going work to respect, protect, fulfil and promote human rights.

## **6. GOOD PRACTICES TO RESPECT, PROTECT, FULFILL AND PROMOTE HUMAN RIGHTS**

### **6.1 Respecting human rights**

27. The first responsibility of all authorities at all levels is to respect human rights in their own work. That means that local and regional authorities have to make sure that nobody within their organisation directly or indirectly violates the human rights of any individual within its jurisdiction. Many times the violations may not be understood as such, or the ramification of certain decisions may not be clear from the view point of the organisation or the individual decision-maker. This makes it even more important to discuss in what ways political decisions, policies and practices impact different individuals and groups. The responsibility to respect human rights means that politicians and public officials do not violate human rights through their own actions.

*a.* Establishing an independent human rights ombudsman institution

28. One important part of the responsibility to respect human rights on the local and regional level is the continuous independent observation and evaluation of the situation of human rights in general, and specifically the performance of politicians and public officials. This is necessary so the authorities can be certain that they are indeed respecting human rights, and to know where potential problem areas may lie.

29. An example of such practices is the development of local Human Rights Ombudsman offices with the task to monitor the decisions and the work carried out in a city or a region in relation to its human rights responsibilities. One city has established its ombudsman office by an

amendment of its ordinance and the head of the office (the ombudsman him/herself) is appointed by the Mayor by recommendation by a local Citizen Council for Human Rights<sup>11</sup>. The office has the duty to investigate acts of discrimination and human right violations within the public sector. The results of the investigation and the necessary changes in the routines in the institution in focus are presented to the Mayor. The faulting institution is then obliged to report to the Mayor when it has applied the recommended changes. The ombudsman's mandate includes the City and all administrative institutions under its control, workplaces and jobs delegated to other actors by the City, institutions established by the investment or contribution of the City and work in private institutions commissioned by the City as well as the welfare facilities subsidized by the City.

30. This case has a number of points of generic interest for all local and regional authorities. First of all the establishment of an office and/or an institution with the task to monitor human rights responsibilities gives visibility to the local and regional authorities' important role in human rights protection. Secondly, the office can function as a focal point for human rights-oriented work in a variety of sectors. Thirdly, the existence of the human rights ombudsman is established in local law or ordinance making it more resistant to political pressure and therefore also more able to act independently. Fourthly, the case points out that the authorities are responsible for guaranteeing human rights respect also for jobs and tasks that are commissioned, delegated and/or financed by them but carried out by other actors. Even if the everyday responsibility to carry out the tasks at hands is the responsibility of others, the authorities are still responsible for ensuring that they do not violate human rights. And finally, there are clear steps on how complaints and criticism shall be mitigated by the party at fault.

*b. Human rights training of the police force*

31. An important part of the responsibility to respect human rights lies with the police force. A human rights respecting police force sets an example for respect for the law by others in society. Human rights awareness is crucial for the police's ability to intervene in when human rights are violated or is at risk.

32. One way to strengthen the right to physical security can be to train the police force in human rights-based approaches to their work. Here it is often important to create co-operation at a satisfactory level between civil society organisations and different authorities that influence the police forces. One country dealt with this challenge by engaging both groups of actors to jointly develop a manual for the training of the police force.<sup>12</sup> This training manual had two main aims: a) to create an increasing sense of professionalism and ethics among police officers, and b) to foster a higher level of citizen confidence in the system. Through the training the police officers became more aware of their duties and rights while at the same time becoming more conscious of citizen rights.

33. Points of general interest in this case are firstly the understanding that the training of civil servants – and especially the police force – in human rights is an important part of the authorities' responsibilities and essential when upholding a rights-respecting society. Secondly, the cooperation between the civil society organisations and the authorities was based on a win-win concept where both groups of actors had something to gain from the cooperation. The co-development of new material, such guidelines, training and/or checklists for civil servants may also, if taken seriously, increase trust in society at large.

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<sup>11</sup> The city of Gwangju, South Korea. See *The Democracy and Human Rights Portal* <http://www.gjhr.go.kr/main/main.php> (2013-09-15)

<sup>12</sup> This training developed in Macedonia See *Police and Human Rights: Manual for Police Training* <http://www.humanrights.dk/files/pdf/Engelsk/International/macedonia.pdf> (2013-09-15)

c. *Securing access to public services and spaces*

34. In order to respect the human rights of all citizens, the societal services must be accessible in the widest interpretation of the word. If individuals cannot access the services provided, be it courts, schools, health care stations, due to barriers such as physical inaccessibility, lack of information, language, economic status, etc. their rights are in fact not respected.

35. A way for local and regional politicians and authorities to strengthen the respect for human rights within its realm is to analyse their services from an accessibility perspective and act in order to eliminate barriers of any kind. One city has developed a master plan that coordinates physical access to all areas of the city.<sup>13</sup> The aim is to make public spaces, services and municipal buildings as accessible as possible, and to ensure that persons with all types of disabilities to enjoy the city in other areas such as culture, leisure and sport. For example, in 2012 over forty per cent of all playgrounds in the city were accessible for children with disabilities.

36. The case displays a number of points of generic interest. Firstly, accessibility is given a priority that equals the effects inaccessibility has on the possibilities for an individual to enjoy his/her human rights. Secondly, it shows the importance of linking various services and places to each other to ensure real life accessibility. If not, the risk is that a service designed to be as accessible as possible is situated in an inaccessible building or without ways for all find accessible routes to the building. Thirdly, it also included human rights that are often played down as less important, such as the right to participate in culture and society at large. Since all human rights are interdependent, non-respect for one set of rights tend to influence overall respect for human rights negatively. Fourthly, there is an awareness of the necessity to take an intersectional approach to human rights. Physical accessibility includes areas and services for children as well as adults. There is often a danger that planning focusing on one aspect such as physical accessibility forgets that the persons in focus are not only persons with disabilities, but also of different ages, gender, sexual orientation, ethnicity, religion etc.

## 6.2 **Protecting human rights**

37. The second responsibility of all authorities at all levels is to protect the human rights of its inhabitants from direct or indirect violations from other persons or groups. Depending on the powers and responsibilities of the individual authority this may mean different things. However, it does mean that local and regional authorities have a duty to find ways to use their mandate to protect human rights within their jurisdiction.

a. *Working against child labour and exploitation*

38. Children and youth are often especially vulnerable to human rights violations. They tend to be less informed of their rights, have less power to fight violators that prey on vulnerability fewer channels to approach the authorities and so on. This being the case, children and youth are therefore in extra need of protection and real participation in order to be able to enjoy their human rights.

39. In order to combat child labour and protect children at risk, one municipality has founded a Child Rights Desk with the task to prevent child labour, child trafficking and abuse, and create permanent solutions for children whose rights are not protected.<sup>14</sup> The office engages in outreach

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<sup>13</sup> Bilbao a Escala Humana: La vision de la política municipal desde un enfoque de Derechos Humanos, Bilbao, Spain

<sup>14</sup> Child Rights Desk and School, information folder from Izmit municipality in Turkey. <http://www.izmit.bel.tr/tr/Default.aspx> (2013-09-15)

programs and education, but children that feel that their rights are violated can contact the Child Rights Desk directly to get necessary assistance. The civil servants can then contact other actors that are required in order to protect the rights of the child in question, such as the police, school, health care station or social services depending on the situation.

40. This case showcases how local and regional authorities can strive to lower the threshold for different groups of rights-holders. The importance of the authorities' responsibility to protect human rights increases the more vulnerable an individual or a group are. Another vital generic point is the possibility for the child or youth to contacting the authorities directly. A third point of generic interest for the protection of human rights is the office's role as a focal point and cooperation unit for different actors that are responsible for certain aspects of human rights. When many sectors or levels are involved it may be hard for the individual at risk to approach all necessary actors him/herself and the support of one part of the public sector in coordinating the actions.

#### b. Combatting domestic violence

41. The responsibility to protect of human rights includes protecting individuals from domestic violence. Human rights should be enjoyed everywhere, also in the home. The seclusion of the home may, however, make it harder to ensure protection there, which calls for innovative measures.

42. In one region a centre has been created, The Centre Against Violence, as the result of an organised co-operation between the municipality, the county council, the regional university, the police, the national prosecution authority and the national board of forensic medicine.<sup>15</sup> The centre is staffed by health care experts from the regional authorities, social workers from the local authorities and volunteers from women's shelters at local level. The different professions all work together in the centre. Consequently, women who have experienced violence need only to go to one place instead of many, and they also have to give their testimony only once, as it is all recorded and secured for future evidence and information for social and health care interventions. This avoids a situation where a woman and her children have to relive a trauma every time they meet new staff or approach a new service. The centre has three areas: one for children, and one for women. The third section is a completely separate location, and work with male offenders. It is of utmost importance that the women and children feel safe when they have taken the step to seek support and do not risk to running into their offenders.

43. The case displays a number of points of generic interest for the protection of human rights. Firstly, the centre is developed to function as a one-stop help station enabling information to be shared and actions to be taken jointly in order to ensure a more comprehensive protection of human rights. It is also a good example of joined-up governance for human rights in that the actors involved come from national, regional and local level.<sup>16</sup> The focus on the rights-holders brings together responsibilities that are placed on different levels of governance but come together in the experience of the individual. Finally, the centre's work encompasses all rights-holders in a complex situation, such as domestic violence. The children are viewed as individuals with their own needs and rights, rather than exclusively seen as accompanying the woman. Furthermore, men with a history of domestic violence are offered treatment and ways to change behaviour in order to break the vicious circle.

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<sup>15</sup> The centre is situated in Umeå, Sweden and is created as a co-operation between the municipality of Umeå, Västerbotten County Council, Umeå University, the Swedish Police, the Swedish Board of Prosecution Authority and the National Board of Forensic Medicine. <http://www.vll.se/default.aspx?id=55458&refid=34331> (2013-09-15)

<sup>16</sup> For a project focusing on the necessity to join-up different sectors and levels of government see the European Bureau for Fundamental Rights' research project *Joined-up governance: connecting fundamental rights* <http://fra.europa.eu/en/project/2011/joined-governance-connecting-fundamental-rights> (2013-09-15). See also FRA Toolkit for joined-up governance.

c. Training elderly people in physical security measures

44. Part of the authorities' responsibility to protect human rights can be shouldered by informing and training individuals and groups on different ways to claim and protect their own rights.

45. One city's police force has developed an academy for the education of retired people in the field of crime prevention as a mean to protect the right to security of individual elderly citizens.<sup>17</sup> Topics are chosen in consultations with specialists and are designed to become guidelines for a safety-conscious behaviour in society. Lectures focus on detecting possible dangers and possibilities to eliminate or avoid such dangers.

46. The main point of generic interest in this case can be found in the usage of an empowerment strategy as a part of an overall protection policy. It is also interesting that the actor directly responsible for the protection of physical security takes a wider approach on its responsibility to include empowerment of the rights-holders. This can be compared to a health care unit educating on prophylactic health care in order to increase the rights-holders' ability to achieve the best attainable health.

d. Certifying equal treatment of all

47. Another way the authorities can protect the human rights of its inhabitants is to test the human rights adherence of private actors. The reasons for such tests may be to inform the citizens of which private services or companies that are more likely to respect their rights. Serious violations must of course always be prosecuted, but proactive work is important in order to avoid violations in the first place.

48. One city has developed this kind of certification policy in relation to housing.<sup>18</sup> The certification criteria were elaborated in cooperation with a civil society organisation and with support of renters' association. When private landlords officially commit to equal treatment principles in housing for all regardless of country of origin they are given a certificate that also help the city's inhabitants to navigate between different actors.

49. The case displays a number of interesting points of generic interest. Firstly, it shows that the local and regional authorities can play an important role in protecting human rights of their citizens by actively developing policies aimed at controlling and influence behaviour of private actors that may affect the possibility to enjoy human rights. Secondly, it gives an example of a specific policy that may be used i.e. certification strategy, and it points towards the importance of cooperation with civil society organisations. Finally, it shows how the certification from the local authorities may assist an overall empowerment of its citizens, in so far that they can make more informed decisions on which actors to deal with.

### 6.3 Fulfilling human rights

50. The responsibility to fulfil human rights includes establishing and sustaining systems necessary for human rights for all. These include electoral and legal systems as well as systems that provide societal services such as education, policing, health care and social security. The

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<sup>17</sup> The police in Brno, the Czech Republic <http://www.mpb.cz/en/public/senior-academy/> (2013-09-15)

<sup>18</sup> The Dortmund integration council in Germany, in association with the civil society association Planerladen and with the support of the Dortmund renters' association developed the certificate Siegel für herkunftsunabhängige Gleichbehandlung bei Vermietung, [http://www.integrationsprojekt.net/siegel\\_gleichbehandlung.html](http://www.integrationsprojekt.net/siegel_gleichbehandlung.html) (2013-09-15)

maintenance and development of the latter are often main tasks of local and regional authorities, although not so commonly framed in human rights language.

*a. Ensuring education for all*

51. Everybody has a right to education and it is the responsibility of the authorities to make sure that this right is fulfilled. An educational system must therefore be able to reach all and cater to their different needs and learning styles. This often means on-going anti-discrimination efforts in order to work against structural discrimination of specific groups such as children in foster care, children from national minorities or economically disadvantaged homes as well as children with disabilities. One approach to ensure the right of education of all can be to cooperate with a discriminated group in order to improve the situation.

52. One example of how to work for equal rights in education can be found in a case where investments were made in professional training of teaching assistants of Roma background and their facilitation of their consequent inclusion into the regular school and pre-school system.<sup>19</sup> The main task of these teaching assistants was to assist the schools to fulfil their responsibilities by integrating children of Roma background into mainstream educational institutions (inclusive education). The teaching assistants helped to create dialogue between the school, family and society at large to strengthen the links between them. This was done through the practice of different teaching methods, through the planning of activities, management and evaluation and through assisting Roma children during everyday training. The teaching assistants also participated in developing training materials that should reflect the cultural elements of Roma community.

53. Such cases as the one above emphasises the need to look beyond the provision of a general service to the actual fulfilment of a right on an individual and/or group basis. Roma as a group is regrettably experiencing multi-layered discrimination all over Europe. It is therefore especially important for the authorities to ensure that individuals from such groups have the same real life possibilities to reap the benefits of general public services as the majority. To integrate trained personal with background in and experience from marginalised groups into the regular public service staff can be used as a method for improving the connections between the authorities and its citizens in general, and by so doing it may also increase the possibilities to guarantee equal fulfilment of a particular right.

*b. Improving mental health care*

54. Human rights approaches may be especially important in services aimed at mentally ill or persons with learning disabilities, since such individuals may have less possibility to claim respect for their own rights at the same time as they are often in need of support in their day-to-day life.

55. One provider of specialist mental health and learning disability services acknowledged this need by developing a single equality and human rights scheme for the whole organisation.<sup>20</sup> This scheme describes in detail how the organisation – both as an employer and service provider – will be able to ensure that it meets its legal obligations and build equality, diversity and human rights into what it does and how it does it. In order to ensure that human rights really get included in all aspects of the organisation's activities, human rights-based approach training was designed to be provided within the clinical setting. Each clinic within the organisation then developed a systematic method to the introduction of new approach which involved the adaptation of all work

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<sup>19</sup> Latvia, [goodpracticeroma.ppa.coe.int/en/pdf/22](http://goodpracticeroma.ppa.coe.int/en/pdf/22) (2013-09-15)

<sup>20</sup> Mersey Care NHS Trust, United Kingdom.

[http://www.merseycare.nhs.uk/Library/Who\\_we\\_are/Equality\\_and\\_Diversity/Equality\\_Data\\_and\\_Action\\_Plans/Single%20Equality%20and%20human%20rights.pdf](http://www.merseycare.nhs.uk/Library/Who_we_are/Equality_and_Diversity/Equality_Data_and_Action_Plans/Single%20Equality%20and%20human%20rights.pdf) (2013-09-15)

processes to its human rights responsibilities. This influenced the process of discussing, recording and informing of decisions made etc.

56. This case lifts some points of generic interest. It gives an example of how an organisation can take a comprehensive approach that involves all aspects of its work. The underlying idea is that the likelihood of succeeding is better when the different activities of an organisation are in tune with each other. The case also points out how to engage staff at all levels in order to mainstream the human rights dimensions in to their work. Finally, it focuses on a group, whose human rights are often down-prioritised or even in general human rights work and where the staff's awareness of human rights is therefore especially important.

#### c. Supporting homeless persons

57. Fulfilling human rights are a major task for the social services. Individuals that for some reason is unable to sustain themselves or acquire adequate housing have the right to support from the authorities. However, many persons with the need of such support do not know about their rights or are unable to claim them through regular channels.

58. A regional authority developed an area-based service coordination framework with the aim of providing timely and effective access to homelessness and social housing services to people seeking assistance.<sup>21</sup> Different homelessness service providers were linked by the regional authorities through the establishment of local networks that in turn developed a shared approach to assessment and referral processes, resource allocation and service system development. The networks were then responsible for implementing and maintaining the common approach within their own areas with assistance of the regional authorities.

59. Points of generic interest in this case include the reach-out focus, which is of special importance for a group that may have difficulties to access general public services. The joined-up aspect, where the regional authorities initiate the cooperation and support the subsequent local networks in their day-to-day work, is also of interest, as well as the development of shared approaches to the work within the local networks. The joined-up approach does also include civil society actors focusing on strengthening the possibilities for the homeless persons to access and enjoy their rights.

#### d. Working with the right to health

60. Another aspect of the responsibility to fulfil human rights can be found in the relation to the right of the individual to the highest attainable standard of health. This responsibility includes maintaining a health care system, but also ensuring that the living environment of individuals and groups are not in themselves making them ill. This includes the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.<sup>22</sup>

61. In one city a joined-up initiative was taken to reduce preventable death and ill health due to poor quality housing conditions in its private rented sector.<sup>23</sup> This initiative combines action on the

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<sup>21</sup> Opening Door model, Victorian Government, Australia <http://www.nwhn.net.au/Opening-Doors-the-NW-Local-Area-Service-Network.aspx> (2013-09-15)

<sup>22</sup> Committee for Economic, Social and Cultural Rights, General Comment 14, *The Right to the Highest Attainable Standard of Health*, E/C.12/2000/4.

<sup>23</sup> The Healthy Homes Initiative, Liverpool, United Kingdom. The initiative was taken by the local primary care trust (PCT) of the National Health Service (NHS), City Council departments and Merseyside Fire and Rescue Service, together with voluntary and charitable agencies. <http://liverpool.gov.uk/council/strategies-plans-and-policies/housing/healthy-homes-programme/> (2013-09-15)

physical condition of property with attention to the specific health needs of every person living in the worst rented properties in the city. First, a survey of these properties was carried out to gather information on both the occupants and the state of the properties. This was followed by a health and safety inspection of the worst fourth of the properties by the city's environmental health officers. Then, serious health hazards identified by the inspection were removed from the homes, the landlords were involved to ensure that the other necessary improvements were dealt with on a priority basis and that legal requirements were met and coordination, and a health needs assessment of all prioritized occupants was carried out, with advice on health promotion and home accident prevention and referrals to relevant agencies where necessary.

62. Such cases as the one above emphasises the need to use wide definitions of human rights responsibilities and to connect different parts of a right to others. The right to best attainable health is not dependent on access to health care services or safe and healthy living conditions but on both. In realising this interconnectedness the actors involved put together duties already on their tables, like health and safety inspections, law enforcement and health care promotion to a programme focusing on the situation for disadvantaged groups in the city. Secondly, the case shows how the possibility to target the ones most in need is increased through active collection of information about the city inhabitants – the rights-holders.

#### **6.4 Promoting human rights**

63. The fourth aspect of the authorities' responsibility for human rights is the promotion of human rights. This includes increasing the visibility of human rights, informing, training and teaching about human rights in all parts of the public sector as well as developing methods and material that can strengthen this work. General acceptance and respect for the human rights of all are more likely to occur in a rights-informed and educated society, where politicians, public officials and the public all understand how human rights are interwoven in their daily work and lives.

##### *a.* Establishing an inter-religious council

64. An important aspect of the authorities' promotion of human rights is the nurturing respect between different groups in society. One city has established an inter-cultural and inter-religious council with the specific aim to promote freedom of religion and free religious practice.<sup>24</sup> The council's tasks are to contribute to an enhanced dialogue between persons and groups with different cultural and religious backgrounds and to support civil society initiatives in the field. The inter-religious council consists of local leaders from different religious communities and members from the City Council Board. The president of the City Council does also head the inter-religious council meetings. The Council has no decision-making power, but may put issues on the City Council board meeting agenda. The Council has developed into an important interface where sensitive issues can be handled.

65. The case shows a number of points of generic interest. Firstly, it demonstrates how a local authority may take an active stance on issues such as the right to freedom of religion by establishing a centre or a council focusing on increasing the possibilities for its citizens' to exercise this right. Secondly, it shows how the work of this council is linked to the general political processes in order to keep the issues on the agenda. Thirdly, it displays another example where the authorities work by actively with civil society actors, here via local community leaders.

##### *b.* Declaring local adherence to human rights

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<sup>24</sup> Örebro, Sweden. For more information contact [kommun@orebro.se](mailto:kommun@orebro.se) <http://www.orebro.se/1340.html> (2013-09-15)

66. One way to visualize local and regional authorities' human rights responsibilities can be through local adoption of different charters or through the development of a local declaration on human rights. One well-known example is the cooperation between different cities that in 2000 led to the development of the European Charter for the Safeguarding of Human Rights in the City.<sup>25</sup> The Charter aims at implementing human rights for all citizens, regardless of their origin, and to enable participation of all people in civic life. Through adopting this Charter each city confirms its intention to make human rights a guideline of its municipal policies. The cities also agree to promote their common task by sharing experiences and co-operating, and to make use of the influence of the city network.

67. Other cities have developed individual local declarations. One city charter establishes the principles of both rights and responsibilities and shows the city's commitment to the ongoing improvement of public services.<sup>26</sup>

68. The points of generic interest of this example are firstly that politicians and the local and regional authorities can use official documents such as charters and declaration with clear human rights language to manifest their political commitment to human rights, and their commitment to live up to their human rights responsibilities. Secondly, such public documents – once in place – can develop to become a nexus for communication between politicians, public sector staff and the citizens. Another point of general interest is the co-operation between different cities within and across borders on a common commitment that may function both as peer supervision and inspiration.

c. Using equality indexes as a point of departure

69. Other way local and regional authorities can promote a wider understanding of and commitment for human rights is to work with public indexes that collect data related to different human rights criteria. This is often done together with other local authorities to allow for comparison.

70. One example is a municipal equality index developed to evaluate municipal laws which affected the LGBT community.<sup>27</sup> The index examines the laws, policies, and services of municipalities from every region and rates them on the basis of their inclusivity of LGBT people who live and work in there. The criteria used fall under six broad human rights categories: non-discrimination laws; relationship recognition; the municipality's employment practices; the inclusiveness of city services; law enforcement; and municipal leadership for equality.

71. Each year the index creates a picture of overall equality in municipalities of varying sizes drawn from every region in the country. The result highlights the human rights policies of some cities and provides a possible plan for municipal equality for cities whose laws and policies need improvement. The index also shows that some of the most progressive equality policies in the country have been innovated and implemented at the municipal level, also in regions without non-discrimination laws.

72. This case displays a number of points of generic interest. Even though the index itself was initially developed by a civil society organisation, municipalities and regions have chosen to engage in the work with the index to different degrees. The use of a common index allows the authorities to

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<sup>25</sup> In 2006 354 cities from 21 European countries have signed the document, the overwhelming majority of them Italian and Spanish (83 %). <http://www.uclg-cisdg.org/en/right-to-the-city/european-charter> (2013-09-15)

<sup>26</sup> E.g. Montreal, Canada [http://ville.montreal.qc.ca/pls/portal/docs/page/charte\\_mtl\\_en/media/documents/charte\\_droits\\_en.pdf](http://ville.montreal.qc.ca/pls/portal/docs/page/charte_mtl_en/media/documents/charte_droits_en.pdf) (2013-09-15)

<sup>27</sup> The Municipal Equality Index (MEI), USA. <http://www.hrc.org/municipal-equality-index#.UjWQwsboHqk> (2013-09-15)

share methods and ideas for the improvement of citizen equality. Furthermore, the index shows that authorities on one level can use its room of manoeuvre to improve the human rights situation for their inhabitants. The laws, policies and services in focus relate to all four dimensions of human rights responsibilities making it a useful tool for promoting awareness of these responsibilities among rights-holders as well as duty bearers.

## 7. CONCLUSIONS

73. As is shown by the cases above many of the responsibilities for human rights are already shouldered. Local governments often draw implicitly on human rights principles like equity, social justice, participation and transparency, and engage in the promotion of local democracy. But their work is commonly not described in terms of respecting, protecting, fulfilling and/or promoting human rights, and it is sometimes even unclear if the involved are aware of how their work are part of the authorities' responsibilities for human rights.

74. Another challenge, to real life enjoyment of human rights for all, shown by the cases above, is the accessibility to the services provided by the public sector. Besides, discriminating practices within the public sector itself, barriers such as the inability to afford the financial costs for health care, lack of mobility, lack of language competence, lack of access to information etc., affect the possibilities of individuals and groups to both claim and enjoy their human rights.

75. However, the few cases of good practices at local and regional level presented above raise several points of generic interest – all with relevance for the respect, protection, fulfilment and promotion of human rights and important for working "systematically with human rights".<sup>28</sup> It should be said that there is certain degree of overlap in these categorisations and the chosen examples may in fact serve multiple objectives at the same time.

76. To summarise, the cases showed how politicians and civil servants at local and regional level may shoulder their human rights responsibilities in many different ways:

- Take a proactive stance on human rights issues of local importance and concern declaring the responsibility of local and regional authorities to respect, protect, fulfil and promote a certain right or the rights of a certain group. When taking decisions to strengthen human rights, e.g. by increasing the protection of the inhabitants of unsafe neighbourhoods or hire special pedagogical support for children with special needs show the human rights dimensions of the decisions and communicate them clearly;
- Give visibility to the local and regional authorities' commitment to human rights through establishing human rights offices or ombudsman, adapting local charters and using a human rights language that clarifies the connection between everyday work and the international commitments to international human rights law. Regardless of if this visibility is physical in the form of offices or come in the form of strategic documents, it is crucial that they are given the dignity and importance needed, In the case of human rights offices it is also important that the mandate is strong and respected;
- Ensure that all public services are accessible and lower the threshold for different groups of rights-holders e.g. through physical accessibility plans, out-reach policies, and by actively including personal from marginalised communities into the work force. When planning

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<sup>28</sup> Thomas Hammarberg (2009) "Recommendation on systematic work for implementing human rights at the national level" Commissioner for Human Rights, CommDH(2009)3; Thomas Hammarberg (2009) "Serious implementations of human rights standards requires that benchmarking indicators are defined". Viewpoint by the Commissioner for Human Rights.

and/or evaluating the services and environments compare the individuals and groups that have a right to enjoy these systems and places to the group that are actually using them. Are the services and environments really accessible to all that should use them?

- Initiate and maintain cooperation within the public sector both between departments on one level and between levels taking the rights of the individual rights-holder as a point of departure. When an individual or a group approach the public sector seeking protection of or fulfilment of their human rights they are rarely well-informed of the division of labour between different sectors and levels. Organisational hurdles should never stand in the way for effective human rights implementation;
- Use empowerment strategies focusing on knowledge and information to strengthen the possibilities of the rights-holders to protect and claim their rights. Whenever human rights should be respected, protected, fulfilled or promoted, it is crucial that the persons whose rights are in focus are made aware of the fact that they have right to the services etc. Equal human rights requires equal knowledge about human rights;
- Develop a better understanding of the situation of different societal groups or minorities as well as of the heterogeneity that exists within these groups, be it religious communities, LGBT persons, national minorities, children, persons with disabilities, elderly women, or men and then act in accordance to this understanding. When working to improve the overall human rights situation interventions are generally focused on one or more so-called vulnerable groups, such as national minorities, children, persons with disabilities etc. While this kind of targeted approach may be just right for the situation, a special challenge is to keep in mind the intersectional character of all individuals belonging to all such groups;
- Train civil servants and politicians at local and regional level on human rights in direct relation to their own work and the tasks they are facing, and engage them on how to mainstream human rights within their specific realm. When planning introductory training for new staff or newly-elected politicians, ensure that human rights responsibilities are a core theme of the training, regardless of their speciality;
- Cooperate with local communities and civil society organisations for common human rights goals. When planning, carrying out and evaluating policies and actions affecting human rights participation of the individuals and groups concerned is not only mandatory, it is also an effective way to avoid problem in later stages;
- Develop policies aimed at controlling and influence behaviour of private actors that may affect the possibility of some groups to enjoy their human rights. When engaging in procurement be sure to require unconditional respect for human rights from the tenderers and engage informed companies and firms in ways to ensure human rights are respected also in private businesses;
- Use comparison, cooperation, common frameworks and indexes when further strengthening their human rights commitment. When planning and evaluating human rights-related services make sure to develop and/or use existing indicators, indexes etc. to stay on track and improve existing services from a human rights perspective.

## **8. RECOMMENDATIONS**

## 8.1 Use human rights to frame decisions, policies and activities at all levels

77. In order to strengthen human rights in Europe there is a need to raise the awareness of politicians and civil servants at all levels of their responsibility to respect, protect, fulfil and promote human rights to the utmost of their powers and resources. Regional and local authorities should therefore attempt to incorporate human rights standards to frame their powers and responsibilities and orient their initiatives. For example, issues of economic and social rights can be raised through the lens of discrimination and the accessibility of the services provided. By stating their responsibilities and making the link between human rights and services clear, both local authorities and citizens will become more aware.

78. Through the framework of human rights, state, regional and local agencies may better understand and articulate the interrelated nature of rights. The usage of the same language on all levels of the public sector including the Council of Europe gives a common framework for their shared responsibilities and allows for easier distribution of methods and ideas.

## 8.2 Do something, do more, do better

79. When relating their work to international instruments there is risk that the responsible actors feel weighed down by the inexhaustibility of their task, rather than inspired and engaged by its importance. This is the reason why human rights must be broken down into everyday decisions and activities and the advancement of human rights taken one step at a time.

80.

81. Since authorities in practice already work with human rights in some shape or form it is easier to take this work as the point of departure for its implementation of human rights. Work focusing on one aspect of the human rights responsibilities, or the right of a certain group, or the strengthening of a specific right can be used to develop other aspects of the responsibilities, the rights of another group or the strengthening of another right. The key is to work with all relevant human rights within one's jurisdiction, ensure that the work include all groups and all aspects of the responsibilities. The important thing is to do something, then to do more, and to do better.

## **Developing indicators to raise awareness of human rights at local and regional level**

### **Summary**

The report, based on Congress Resolution 296 (2010) on the role of local authorities in implementing human rights, develops an appropriate methodology for collecting data and providing analysis in order to identify the problems facing local authorities in their daily work.

The report sets out the Congress strategy on how to approach human rights issues from the local and regional point of view. It underlines the importance of adopting a rights-based approach at the local level (including civil, political, economic and social rights) and of building upon the work of existing Council of Europe monitoring bodies. To ensure an exchange of good practices, the resolution proposes a series of activities such as training programmes for elected representatives and action plans. It also proposes the holding of an international conference on raising local authorities' awareness of human rights and drafting five-yearly reports on the implementation of policies for human rights by local and regional authorities in the member States of the Council of Europe.

## Resolution 334 (2011)<sup>29</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe, takes note of:
  - a. its unique position as a pan-European body of elected representatives closest to the citizens providing services to the community, and guided by the principle of subsidiarity, which stipulates that issues should be dealt with by the smallest, lowest or least centralised competent authority;
  - b. its long-standing activity in the field of human rights from the 1997 Messina Conference on the creation of ombudspersons to the 2008 Stockholm Conference which gave rise to the Joint Declaration on "Systematic Work for Human Rights" co-signed by the Congress, SALAR<sup>30</sup> and the Commissioner for Human Rights of the Council of Europe;
  - c. Article 1 of the Statute of the Council of Europe, which states that the core objectives of the Organisation should be pursued by its organs "in the maintenance and further realisation of human rights and fundamental freedoms",<sup>31</sup> and Article 2 of the two statutory resolutions of the Committee of Ministers which take inspiration from the article of the Statute to set out the objectives of the Congress to promote local and regional democracy,<sup>32</sup>
  - d. the Final Declaration of the Warsaw Summit which states that "effective democracy and good governance at all levels are essential",<sup>33</sup>
  - e. its Recommendation 280 (2010) on the role of local and regional authorities in the implementation of human rights, which stated that "democracy and human rights are interdependent",<sup>34</sup> and the Committee of Ministers' reply thereto which stresses that "local and regional authorities, in their fields of competence, must comply with the human rights obligations which stem from the international commitments of the member States",<sup>35</sup>
  - f. the stance taken in Resolution 296 (2010) on the role of local and regional authorities in the implementation of human rights, according to which the Congress is "an ideal forum in which to raise awareness about human rights issues among local and regional political leaders and government officials" and that the "most important way to enable local and regional authorities to take responsibility for human rights is through the systematic training of political leaders and the dissemination of reliable information among citizens about their rights (particularly among vulnerable groups)";

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<sup>29</sup> Debated and adopted by the Congress on 20 October 2011, 3rd Sitting (see Document CG(21)10, explanatory memorandum), rapporteur: L. O. Molin, Sweden (L, EPP/DC).

<sup>30</sup> Swedish Association of Local Authorities and Regions.

<sup>31</sup> Statute of the Council of Europe, Article 1.b.

<sup>32</sup> Statutory Resolutions CM/Res(2011)2 and CM/Res(2007)6 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto adopted by the Committee of Ministers on 19 January 2011 and on 2 May 2007, respectively.

<sup>33</sup> Summit, Council of Europe, Declaration and Action Plan, paragraph 3.

<sup>34</sup> Congress Recommendation 280 (2010) on the role of local and regional authorities in the implementation of human rights, adopted on 17 March 2010, Point 1.b. See also Document CG (18) 6, explanatory memorandum.

<sup>35</sup> Reply adopted by the Committee of Ministers on 6 July 2011 at the 1118th meeting of the Ministers' Deputies (CM/Cong(2011)Rec280 final).

g. the statement made by the Council of Europe Commissioner for Human Rights at the Congress session in March 2011 that “there is now increasing momentum for adopting the rights-based approach at the local level”;<sup>36</sup>

h. the fact that human rights include civil, political, economic and social rights and that the competences of local and regional authorities refer to all these rights;

i. the fact that there is a need for stronger cooperation within the Council of Europe for an optimum use of resources and creation of added value when undertaking activities;

j. the explanatory memorandum prepared by Rapporteur Lars O. Molin<sup>37</sup> on human rights indicators developed for the use of Congress rapporteurs when gathering and analysing data on human rights issues at local and regional level, and particularly the appendix thereto regarding the relevant rights.

2. Accordingly, the Congress undertakes to:

a. look at the human rights situation at local and regional level in member states by developing an appropriate methodology for collecting data and providing analyses in order to identify the problems facing local authorities in their daily work;

b. develop action plans to raise awareness among local authorities of human rights, through training programmes and exchange of best practices between elected representatives, and integrate these into national planning processes by means of effective consultation, as stipulated by Article 4, paragraph 6, of the European Charter of Local Self-Government (ETS No.122);

c. continue to encourage the establishment at local and regional level of independent complaint mechanisms such as local ombudspersons;

d. ensure that its activities are based on the case law of the European Court of Human Rights and the European Social Charter (ETS No. 35), as well as on the work of the existing Council of Europe monitoring bodies, and provide a complementary effort which does not duplicate but highlights the unique contribution that the Congress can make through contacts with elected representatives in member states;

e. continue its cooperation with the Committee of the Regions and the Fundamental Rights Agency of the European Union on issues related to the development of strong self-government at sub-national level and the multi-level protection and promotion of fundamental rights;

f. encourage local and regional authorities to conduct training of local government representatives and administrative staff in order to improve their knowledge of the rights of citizens at their level of government;

g. organise support activities aimed at raising local representatives’ awareness of their responsibilities in the implementation of human rights at local and regional level;

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<sup>36</sup> See T. Hammarberg’s speech “Bringing human rights home: human rights action at the local level”, at the link <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1763257&Site=Congress&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

<sup>37</sup> Lars O. Molin (Sweden, L, EPP/DC), Congress Rapporteur on Human Rights and Chair of the Monitoring Committee.

h. convene an international conference on raising local authorities' awareness of human rights, open to Congress members and other elected representatives at local and regional level who wish to contribute to the discussion, in order to debate questions relating to the implementation of human rights at local level and to propose a Congress action plan for 2013-2015 on this issue;

i. instruct its Monitoring Committee to take the necessary steps for the preparation of five-yearly reports on the implementation of policies for human rights by local and regional authorities in the member states of the Council of Europe.

## Explanatory Memorandum

CG(21)10 - 6 October 2011

### Developing indicators to raise awareness of human rights at local and regional level

Monitoring Committee

Rapporteur: Lars O. MOLIN, Sweden (L, EPP/CD)<sup>38</sup>

#### I. INTRODUCTION

1. Human rights in all their manifestations constitute a staple feature of the activities of Council of Europe. The Congress of Local and Regional Authorities, by taking up the idea of looking at human rights through a new lens – through the eyes of mayors, city councillors and municipal administrators – is adding an important dimension to this work: that of the local and regional level of governance.

2. Good governance has been a key concept for the Congress in improving local democracy in member States, and it is impossible to conceive of good governance without respect for human rights. With this in mind, the Congress adopted Resolution 296 in 2010 and established a policy on the role of local and regional authorities in the implementation of human rights. This resolution highlights the importance of awareness-raising campaigns, local action plans, the existence of independent complaint mechanisms easily accessible to all (eg local and regional ombudspersons), and training for local politicians and their staff vis-à-vis their human rights responsibilities. It also admits that local and regional authorities may not as knowledgeable and proactive in this domain as they could and should be.

3. The main challenge in this endeavour is how to identify the rights and freedoms that are within the scope of action of local and regional authorities and how to collect and analyse the data required for the stock-taking exercise that is necessary for further action.

4. Being aware that suitable analytical tools are required for this purpose, the (former Institutional) Monitoring Committee appointed Lars O. Molin as rapporteur to develop "indicators" for considering human rights at local and regional level. The present report follows on from the

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<sup>38</sup> L: Chamber of Local Authorities / R: Chamber of Regions  
ILDG: Independent and Liberal Democrat Group of the Congress  
EPP/CD: European People's Party – Christian Democrats of the Congress  
SOC: Socialist Group of the Congress  
NR: Members not belonging to a political group of the Congress

report presented in March 2010 and deals, in particular, with the challenges of taking human rights into consideration in monitoring the European Charter for Local Self-Government.

5. The long-term objective of the Committee is to publish five-yearly reports on the implementation of human rights by local and regional authorities, providing insights into the quality of local and regional governance on this specific aspect of local democracy.

6. Two points should be emphasised in this connection: the Congress has taken note of the Committee of Minister's reply to the Congress Recommendation 280 (2010) on the "Role of local and regional authorities in the implementation of human rights" and recognises the need to clarify the nature of its activity. Monitoring refers to the assessment of an activity in the light of a legal instrument. This is not the case here. The Congress is undertaking an awareness-raising activity and intends to develop the ways and means to remind local and regional authorities of their responsibilities in this area. This will involve developing specific indicators and good practice guidelines to allow local and regional authorities to evaluate their own performance.

## II. WHAT ARE HUMAN RIGHTS INDICATORS?

7. The definition widely used by both researchers and institutions is the one established by the United Nations High Commissioner for Human Rights (OHCHR), namely Specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that addresses and reflects human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights.<sup>39</sup>

8. The above definition is reflected in three types of indicators:

- Structural indicators: these are used for monitoring the legal framework of human rights (conventions, national legislation and policy, local and regional policies and decisions.
- Process indicators: these are geared to measuring the efforts made to implement human rights in carrying out a specific policy (allocation of resources, action). The focus is on measuring what is actually done by the local and regional authorities and, consequently, the degree to which the policies are implemented.
- Outcome indicators: these describe the situation in specific fields, such as housing, education, political participation etc. Ideally, process and outcome indicators should be closely connected in order to distinguish between the outcome of the efforts expended by authorities on the one hand, and the impact of other factors on the situation regarding human rights on the other.

9. These indicators are a tool for working systematically with human rights and reinforcing the accountability of decision-makers.<sup>40</sup> They help identify the holders of rights and the bearers of duties. They facilitate participation by holders of rights in policy processes, in implementing cross-cutting rules (eg non-discrimination in all policy areas), and in assessing the efficiency of the measures taken for implementation of the human rights.

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<sup>39</sup> OHCHR (2006) "Report on Indicators for Monitoring Compliance with International Human Rights Instruments", HRI/MC/2006/7. See also OHCHR (2008) "Report on Indicators for Promoting and Monitoring the Implementation of Human Rights", HRI/MC/2008/3.

<sup>40</sup> There is now fairly extensive literature on human rights indicators; cf Maria Green (2001) "What We Talk about When We Talk about Indicators: Current Approaches to Human Rights Measurement," *Human Rights Quarterly*, vol. 23, no 4, pp. 1062-1097; Todd Landman (2004) "Measuring Human Rights: Principle, Practice, and Policy," *Human Rights Quarterly*, 26: 906-931; Todd Landman (2005) *Protecting Human Rights: A Comparative Study*. Washington, DC: Georgetown University Press.

10. A concrete example of this might be provided by the right to gender equality in education and the rights of persons belonging to minorities. These are both relevant to the services provided by local authorities. An indicator for the former right would be the ratio of girls to boys enrolled in primary education. Indicators for the latter rights would be the number of minority languages spoken in that area and the number of children speaking a minority language enrolled in primary schools. An analysis of these figures over a certain period of time or across a geographical zone could reveal the existence of discriminatory practices, if any, and their evolution. They could then be used to determine whether there are laws and policies in place and the measures taken to implement them (for instance by mainstreaming policy and budget in terms of human rights or establishing ombudspersons and other appeal bodies). This example is an interesting one as it is a subtle reminder of the distinction between non-discrimination and the cultural rights of people belonging to minorities, in that if one cannot secure education in one's own language, one's cultural rights might not be fully respected.

### III. HOW TO USE HUMAN RIGHTS INDICATORS IN DATA COLLECTION

11. A key question concerns the interrelations between national, regional and local levels of government. Even though laws and policies are adopted at the national level (and in federated States sometimes at the regional level), local and regional authorities often have both the right and the opportunity, but also the obligation, to establish policies and take decisions that contribute to implementing human rights. However, the decision-making competences of local and regional authorities differ, a fact which has to be taken into account when using the indicators. Examples might include police and healthcare, for instance. In some countries, local governments play a major role in organising the police force. And in many countries, responsibilities for healthcare are distributed between the regional and local government levels.

12. Another basic difficulty in determining "causality" is whether it is possible to determine the outcome of legislation or policies and decisions and the outcome of other factors. This has to be taken into account when formulating process and outcome indicators. One way to pinpoint the effect of policies is to examine the human rights situation over longer periods of time: has the situation changed after the introduction of new legislation and policies? If it has, this is an indication of a policy impact. Another way to assess the causal effect of policy is to consider the relevant circumstances. When appraising access to housing and the effectiveness of housing policy, for instance, it is necessary to look at the pressure on the housing market and the number of low-income families, unemployed persons and so forth.

#### Taking account of resources and specific factors

13. In contrast to civil and political rights, which are directly and immediately applicable, many economic and social rights are implemented progressively depending on the available resources (although some social rights such as the freedom to form trade-unions are directly and immediately applicable). They must, however, be implemented in a non-discriminatory manner.<sup>41</sup> The State must also take steps to mobilise "maximum available resources" to fulfil social and economic rights. This means that authorities cannot simply adduce the lack of resources as a reason for failing to act. When a problem is identified, all resources must be used there and then to avoid the future costs of providing a solution.<sup>42</sup>

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<sup>41</sup> See ESC case-law, *Autisme Europe v. France*, 13/202, admissibility decision of 4 November 2003, para.53.

<sup>42</sup> See ESC case-law, *Mouvement International ATD Quart Monde v France*, 33/2006, admissibility decision of 5 December 2007, para 61

14. Consideration must also be given to geographical, demographic, social, and economic differences between regions and municipalities. Examples include differences between urban and rural areas, differences due to demographic make-up, socio-economic structures such as levels of employment, economic structure (agriculture, industry and service) and so on.<sup>43</sup> The differences imply that the human rights in practice are variable, and priorities consequently differ.

Taking account of vulnerable groups

15. When using the indicators, it is particularly important to take account of the situation of vulnerable groups, such as children and the elderly, persons with disabilities, ethnic, religious, linguistic and other minorities, especially when assessing measures and results. Vulnerable groups are often harder hit, for instance, by unemployment and lack of adequate housing, and experience discrimination that affects their living conditions. A participatory approach which would include these groups in the development of indicators would be useful and enhance data quality. One solution would be to base the data collection on interviews with focus groups.

Taking account of the evolution of human rights over time

16. The assessment of the current level of human rights implementation can only benefit from an analysis of its evolution over time. Are things getting better or worse? In order to measure this, it is necessary to apply the same indicators over a period of time, and process indicators which facilitate assessment of the authorities' efforts are particularly useful for this purpose. The allocation of resources, assignment of responsibility, development of action plans and their integration within the policy field, the inclusion of holders of rights in policy-making processes and, of course, the evaluation of policies have to be assessed. Results from earlier human rights monitoring reports prepared by other Council of Europe bodies would be very valuable in this regard.

#### **IV. SUGGESTIONS FOR THE PREPARATION OF INDICATORS BEFORE A VISIT**

17. The indicators, which are appended hereto, provide a point of focus while visiting states. Prior to any visit, some questions about the use of the indicators need to be settled, including the following:<sup>44</sup>

18. The first question is to determine the extent to which outcome indicators can be taken into account during the visit. Given the potentially extensive work required for data collection, it may be advisable to start by focusing on structural and process indicators only and to use outcome indicators on some selected rights as examples. When examining the efforts/measures adopted by the authorities, it is important to collect information that can show the focus of efforts, taking account of such factors as how long they have been implemented, the allocation of resources and trained personnel, as well as whether the efforts include mainstreaming, etc.

19. The second step in preparing the visit is to look at the case-law of the European Court of Human Rights (ECHR) and the European Social Charter (ESC), as well as the reports of the Council

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<sup>43</sup> For example the European Urban Charter II – Manifesto for a new urbanity (Congress of Local and Regional Authorities, resolution 251 (2008)) includes several considerations of importance in this respect. Likewise the Global Charter Agenda for Human Rights in the City, developed by United Cities and Local Government (UCLG) in co-operation with the Forum for Human Rights at local level in Nantes, and the European Charter for the Safeguarding of Human Rights in the City, developed by several cities in Europe and adopted as a charter in 2000, describes several dimensions important to both urban and rural municipalities, but also some dimensions that are specific to cities.

<sup>44</sup> See also Resolution 307 (2010) by the Congress of Local and Regional Authorities on procedures for monitoring the obligations and commitments regarding ECLSG.

of Europe human rights monitoring bodies. In order to avoid inconsistencies and duplication, it is essential to take the conclusions of Council of Europe monitoring bodies as the starting point in assessing human rights in the Congress's work.

20. The third step involves adapting the indicators to the specific circumstances of each State. The focus should be on the apportionment of decision-making competence between different levels of government in the country visited. The more responsibility local and regional levels of government have in deciding and implementing policy in a specific field, such as education, healthcare, etc, the greater their responsibility in terms of implementing human rights.

## V. HOW TO USE HUMAN RIGHTS INDICATORS IN DATA ASSESSMENT

Information: qualitative and quantitative aspects

21. Indicators are formulated in ways that require the use of both quantitative and qualitative information. Quantitative information is used for outcome indicators; in most cases, it is available through national statistics. Sometimes it may prove difficult to access information on discrimination or to access it at local/regional level. This needs to be taken into account when using the indicators.

22. For structural indicators, qualitative information will be needed since these indicators describe the legal-political framework for human rights.

23. For the purposes of this report, process indicators have been limited to verifying efforts to implement rights. This means that the most relevant information will be qualitative in nature. By looking at local authority action, we can identify and share examples of good practice and help people learn to "work systematically with human rights".<sup>45</sup>

Assessment of available data: methodology

24. The three types of indicators we have outlined – structural, process and outcome – should preferably all be used together. However, depending on the individual case, one may have to start with just one of the types of indicator.

25. We may start the analysis by using outcome indicators and then investigate whether the necessary legal and political framework exists for the implementation of a specific right using structural indicators: for example, we can ask to what degree legislation is in place and what policies have been adopted. In the third step, we can use the process indicators to assess the action taken by the authorities. This procedure is especially useful when the level of human rights implementation is unclear and when the social, economic and political situation must be understood in order to develop better policies.

26. The alternative would be to start the analysis with process indicators by considering the measures taken by the authorities. In step two, we look at the outcome in order to evaluate the effectiveness of those measures. Finally, in step three, the existing legal and political framework is assessed. This strategy is useful when there is some existing knowledge of the efforts undertaken by authorities but where their effectiveness is uncertain.

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<sup>45</sup> Thomas Hammarberg (2009) "Recommendation on systematic work for implementing human rights at the national level" Commissioner for Human Rights, CommDH(2009)3; Thomas Hammarberg (2009) "Serious implementations of human rights standards requires that benchmarking indicators are defined". Viewpoint by the Commissioner for Human Rights.

27. A third approach is to start with the legal and political framework and develop process and outcome indicators afterwards. This is a fairly common approach when a new law or policy has been adopted and its implementation must be consistently monitored.

28. One other option that might prove useful is budget analysis. In the area of children's rights, as well as that of gender equality, some useful progress has been made by using systematic analysis of the budget (and the budget process) as an assessment tool.

29. However, it may ultimately prove difficult to make use of all the above indicators for practical purposes, and it might be advisable to focus on structural and process indicators only. This focus would allow the analysts to see whether an adequate framework for working with human rights exists. By "adequate framework" we mean one that allows individuals and groups to claim their rights and authorities to work systematically with human rights. Assessment of efforts undertaken by authorities, using process indicators, will contribute to communicate good practices and examples between states.<sup>46</sup>

## VI. CRITERIA FOR FORMULATING HUMAN RIGHTS INDICATORS

The formulation of human rights indicators should meet certain criteria:<sup>47</sup>

30. - Firstly, indicators should be based on the normative content of the right in question, often called the "attribute of a specific right". This means that one needs to distinguish the core content of a specific right or set of rights.

- Secondly, indicators should measure several dimensions of human rights practice: the legal and political framework, efforts expended to implement rights, and the outcome of such efforts. Indicators should be based on cause-effect reasoning.

- Thirdly, it is essential to apply cross-cutting perspectives and rules, in particular that of non-discrimination and equal treatment. However, it is difficult to apply cross-cutting rules since statistics for all grounds of discrimination may not be available. Once again, a participatory approach which involves the specific sub-groups of stakeholders (based for example on gender, ethnicity, disability), in data collection would ensure the availability of disaggregated data sets while following data protection and privacy standards.

- Fourthly, indicators must be adapted to the context in which they are to be used. Adaptation of the latter to local and regional levels of government, for instance by taking into account their decision making competence and available resources, is of particular importance to this report.

Determining the content: basic documents, conventions and other legal instruments

31. In formulating human rights indicators, we need to integrate the essential characteristics of the human right in question (the so-called attribute of a specific right). The following conventions

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<sup>46</sup> Cf The Congress of Local and Regional Authorities (2010) The role of local and regional authorities in the implementation of human rights. Explanatory Memorandum, CG (18)6, pp16ff; the discussion in the memorandum include several examples of methods for the implementation of human rights on local and regional levels, such as local charters, service charters and agreements and councils on specific affairs.

<sup>47</sup> OHCHR (2006) "Report on Indicators for Monitoring Compliance with International Human Rights Instruments", HRI/MC/2006/7. See also OHCHR (2008) "Report on Indicators for Promoting and Monitoring the Implementation of Human Rights", HRI/MC/2008/3.

and other binding legal instruments of the Council of Europe provide, in particular, the basis for selecting the rights to be taken into account:

32. The European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority, the Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Additional Protocols, the European Social Charter, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

33. The ECHR includes, alongside the right to life and the prohibition of discrimination, such civil rights as the right of liberty and security of persons and protection of their physical integrity, and the right to a fair trial. It also includes rights concerning respect for a person's private and family life. Central to the ECHR are also several freedoms, such as the freedom of expression, of thought, conscience and religion, and freedom of assembly and association. Additional Protocol 1 to the ECHR also covers the right to property, education and free elections.<sup>48</sup>

34. The European Social Charter was originally adopted in 1961 and revised in 1996. The Charter covers primarily social and economic rights, such as right to work, health, education, housing, and social welfare. It also embraces provisions regarding the rights of children, person with disabilities, migrant workers, and elderly.<sup>49</sup> Although the Charter is supposed to be implemented at the national level, it must be kept in mind that certain competences can be delegated to the local or regional levels. There is a strong relation between the ECHR and the European Social Charter based on the interdependence of the rights covered by each instrument. The Secretary General of the CoE emphasised this complementarity "at a time when Europe is facing difficult economic and social challenges".<sup>50</sup>

#### Other relevant Council of Europe texts

35. The case-law of the ECHR and the ESC, various conclusions adopted by the monitoring committees of different bodies of the Council of Europe, and the Viewpoints published by the Commissioner for Human Rights (where they concern local and regional authorities) constitute relevant sources. Others include commentaries, policy development at various levels of government and academic literature in the field.

36. In addition, the reports/resolutions and recommendations adopted by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, especially those prepared by the Committee on Legal Affairs and Human Rights, should be taken into consideration when they concern local and regional issues. The same should apply to the reports and opinions delivered by the Venice Commission. The Strategy for Innovation and Good Governance on the Local Level, which comprises the 12 principles of good governance (such as rule of law, democratic participation, and transparency and responsiveness), is an essential document. Last but not least, the reports adopted by the European Commission against Racism and Intolerance (ECRI) can be used where they raise issues at local and regional level. Finally, policy instruments such as the Revised European Charter on the Participation of Young People in Local and Regional Life or the European Urban Charter are also relevant in this respect.

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<sup>48</sup> White, Robin & Clare Ovey (2010) *The European Convention on Human Rights*. Oxford: Oxford University Press.

<sup>49</sup> Council of Europe (2008) *Digest of Case-law of the European Committee of Social Rights*. Strasbourg: Council of Europe.

<sup>50</sup> See link [http://www.coe.int/t/dghl/monitoring/socialcharter/newsletter/NewsletterNo4Dec2010\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/newsletter/NewsletterNo4Dec2010_en.pdf)

## The use of cross-cutting rules

37. The cross-cutting perspectives of non-discrimination should cover all grounds of discrimination mentioned in the ECHR (Article 14 as well as Protocol 12, Article 1)), ie "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". When considering non-discrimination, it is important to recall that the list set out in the ECHR is not exhaustive but open-ended.

38. The revised ESC also contains a similar provision on non-discrimination (Part V, Article E), which must be guaranteed without distinction of race, colour, sex, language, etc. The development of human rights has led to a better understanding of the extent of the grounds of discrimination, for instance regarding gender equality, minority rights or disability and sexuality.<sup>51</sup> Non-discrimination also concerns positive measures aimed at promoting equality.

39. Beside the above-mentioned grounds of discrimination, human rights also pay special attention to children and the elderly, for instance. In particular, it is important to consider children's rights with respect to the specified rights. This also includes assessing how the best interests of the child are taken into account. Another important point of focus is the situation of vulnerable groups such as travellers, Roma, immigrants and asylum seekers.

## VII. CRITERIA FOR THE SELECTION OF RIGHTS

40. In this report, it has not been possible to focus on every single right listed in the stipulated conventions. At the same time, it is not self-evident why some rights should be included and others not. Local and regional authorities play a major role in implementing some rights but not others.<sup>52</sup> Various considerations affect the choice of rights and freedoms to be addressed, as well as the indicators to be used.

41. To start with, given that local and regional authorities play a central role in implementing several human rights (civil and political, as well as economic and social rights), the suggested indicators should reflect a broad spectrum of human rights. The focus should be on the rights in whose protection local and regional authorities play a crucial role.

42. Even though the specific responsibilities of local and regional authorities with regard to fulfilling a particular human right may be limited, these authorities have obligations in this regard. This includes such civil rights as freedom of speech and assembly and the prohibition of discrimination.

43. Finally, some rights contain several attributes that are central also for local and regional authorities, even if they play a minor role in implementing these rights. The rights relative to a fair trial are a good example of this. Rule of law requirements akin to those of a fair trial, such as providing information to individuals, possibilities of appeal and prompt, fair treatment by administration, are also central when assessing the human rights situation vis-à-vis local and regional government levels.

44. The following list can serve as an open-ended, non-hierarchical, starter listing:  
- Right to political participation, including freedom of expression, assembly, association, etc;

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<sup>51</sup> White, Robin & Clare Ovey (2010) The European Convention on Human Rights. Oxford: Oxford University Press, chapter 24.

<sup>52</sup> The Congress of Local and Regional Authorities (2010) The role of local and regional authorities in the implementation of human rights. Explanatory Memorandum

- Right of access to justice and the rule of law;
- Right to education;
- Right to work;
- Right to health;
- Right to social welfare;
- Right to housing.

45. This list does not imply any hierarchical order. The rights are mutually supporting. For instance, the right to housing is a precondition for the right to work and social welfare, and access to justice is a key dimension for the enjoyment of any of the rights.

46. The Appendix in Chapter IX provides guidelines for the use of local and regional authorities on how to interpret these rights and how to apply the indicators.

## VIII. CONCLUSIONS

47. The Congress has taken on a human rights agenda for local and regional authorities but it does not monitor human rights; it builds on the monitoring performed by various bodies within the Council of Europe. It will also take on board reports and information from the Fundamental Rights Agency of the European Union.

48. The comparative reports it intends to produce on human rights will not be sent to governments or carry recommendations. They are intended to highlight problems that have come to the attention of the public and that need to be addressed by local and regional authorities.

49. The contribution of the Congress to the promotion of human rights should be seen as a complementary one: the Congress aims to raise awareness among local authorities on human rights. It intends to do this by collecting data, devising specific indicators that allow local and regional authorities to develop innovative ideas and to evaluate their own performance, and providing them with good practice guidelines – in short, by bringing human rights home to the local level. This is an added value for both governments and for the Council of Europe. The Congress can play a unique role in this process thanks to the specific nature of its members as an assembly of elected local and regional government representatives.

50. Addressing local authorities' responsibilities in all member States is an ambitious project which, in other circumstances, would require the allocation of additional resources. However, the Congress is in the felicitous position of already having at its disposal procedures that allow for regular contact with local and regional authorities and their associations as well as with national level authorities that can also be used for data collection and an exchange of views on human rights issues: we are referring both to the visits to member States for monitoring the ELSCG and to support activities, conferences and meetings such as European Local Democracy Week, the Network of Cities for Local Integration Policy, the Summit of Mayors on Roma, etc. The visits are an opportunity for meeting with mayors, municipal councillors, ombudspersons and local or regional petition officers, whose input is crucial. The support activities are occasions for raising awareness, dissemination of information and good practices, and exchange of views.

51. Human rights indicators are useful tools for both analysing the situation of human rights in a given state and communicating best practices and institutional solutions that can be of interest to local and regional authorities within the state and between member States. A healthy local

democracy requires the availability of complaint mechanisms that allow the public to express their grievances.

52. The suggested indicators are based on the Council of Europe's human rights treaties and case-law. They need to be tailored to the country being visited.

53. Finally, reinforcing the exchange of information between the different bodies of the Council of Europe and improving the co-ordination of human rights-based activities in one forum might be worth considering as part of the ongoing reform process.

## IX. APPENDIX

### **Attributes of rights and suggested indicators**

This appendix discusses the attributes of the selected rights and specifies the suggested indicators. Regarding the suggested outcome indicators, statistics should, wherever possible, be presented in relation to grounds of discrimination. For example, gender-segregated statistics are often available. Process indicators should focus in particular on what local and regional authorities are doing to promote rights for vulnerable groups.

### **Right to political participation and freedom of expression, assembly and association**

Regarding the right to political participation, Article 3 of Protocol 1 to the ECHR includes a right to election, defined as “free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”.<sup>53</sup>

Such freedoms as freedom of thought, expression, and assembly and association (Articles 9-11 of the ECHR) are important, as they all play a key role in giving opportunity for participation. Without guarantees on freedom of expression, association and assembly, the right to election, and more broadly the right to participation, lack substance.<sup>54</sup>

The provisions of the ECLSG concerning local self-government, ie the right to regulate and manage public affairs which are of interest to the local population (Article 3), are also important. The citizens’ right to participation at the local levels of government is emphasised in the Additional Protocol on the right to participate in the affairs of local authorities. Participation at regional and local levels of government includes both direct and representative forms.<sup>55</sup>

International regulations regarding political participation and political rights contain similar provisions to those found in the ECHR but they define it in broader terms, for instance in the International Covenant on Civil and Political Rights (ICCPR), where participation refers to the “conduct of public affairs” (Article 25).

Self-government is constituted by equal opportunities to engage in politics, either directly or through indirect mechanisms (representative bodies). The safe guarding of such freedoms as freedom of expression, assembly and association constitute (together with the right to vote) the core obligations. On this basis, the following indicators are suggested:

#### **Structural indicators**

- Laws and policies safeguarding free and fair elections with universal and equal suffrage;
- Laws and policies establishing and regulating consultative bodies;
- Laws and policies promoting direct involvement of citizens, for instance referendums, citizen panels etc;

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<sup>53</sup> The European Court of Justice has not recognised that regional and local bodies make up legislatures in the sense of the ECHR, since they hold no legislative competence in the strict sense; cf Keith Whitmore (2007) “The links between local and regional democracy and human rights”. The Congress of Local and Regional Authorities, 14<sup>th</sup> Plenary Session, CG(14)6.

<sup>54</sup> White, Robin & Clare Ovey (2010) The European Convention on Human Rights. Oxford: Oxford University Press, Chapters 17-19 and 22.

<sup>55</sup> Cf the Congress of Local and Regional Authorities, the report by the Group of Independent Experts on the ECLSG on equal access to elections, CG/INT/GIE (16)2.

- Policies aiming at increasing political participation;
- Policies safeguarding equal opportunities for participation for vulnerable groups;
- Policies safeguarding civil society organisations' involvement in politics.

#### **Process indicators**

- Efforts to remove barriers to voting;
- Efforts to secure other forms of citizen involvement and participation besides voting;
- Efforts to support civil society organisations' involvement in politics.

Process indicators should, in particular, take into consideration efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

#### **Outcome indicators**

- Voter turnout ratio in elections on local and regional levels of government;
- Number of persons participating through direct channels, such as initiatives, citizen panels, referendums, etc;
- Participation in civil society organisations per capita;
- Number of complaints regarding the election process;
- Number of complaints regarding the inclusion of vulnerable groups in policy-making processes.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

#### **Right of access to justice and the rule of law**

Access to courts and similar institutions, such as Ombudspersons, is an important human right. It is also central to the protection of other rights.<sup>56</sup>

Access to justice is one of the dimensions of the rule of law as set out in human rights instruments, eg in Articles 6 and 13 of the ECHR. The latter article concerns access to an effective remedy in cases of violation of human rights. Furthermore, authorities should treat individuals in a respectful and non-discriminatory way and handle cases in a timely and fair manner.<sup>57</sup>

The regulation on a fair trial is a model which is also used for regulating other forms of administrative management and treatment of individuals. Although less demanding than those concerning judicial trials, various dimensions of the "rule of law" are essential for regulating individual cases in administrative law. Examples are equal, impartial, and non-discriminatory treatment, right to information, right to enquire reasons for decisions, and appeal facilities. Recently, these have been discussed in terms of good governance and good administration, in so far as they apply to the administration.<sup>58</sup>

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<sup>56</sup> Cf White, Robin & Clare Ovey (2010) *The European Convention on Human Rights*. Oxford: Oxford University Press, chapter 7 and *The Congress of Local and Regional Authorities, The role of local and regional Ombudspersons*, CG/INT/GIE (18)5.

<sup>57</sup> White, Robin & Clare Ovey (2010) *The European Convention on Human Rights*. Oxford: Oxford University Press, chapter 7.

<sup>58</sup> The right to good administration is included in EU legislation, for instance in the EU Charter of Fundamental rights, article 41, now included in the treaty of EU. The role of local and regional authorities regarding good administration and governance is stressed by the

On this basis, the following indicators are suggested:

### **Structural indicators**

- Laws and policies safeguarding non-discrimination, timely and fair treatment by authorities;
- Laws and policies safeguarding the possibility of appeals to courts ;
- Laws and policies safeguarding additional complaint mechanisms, for instance through Ombudspersons at local and regional levels.

### **Process indicators**

- Efforts to ensure timely and fair treatment of individual cases;
- Efforts to inform individuals about their rights regarding appeal and the rule of law;
- Efforts to ensure non-discrimination in administration.

Process indicators should in particular take into consideration efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

### **Outcome indicators**

- Number of cases of appeal regarding decisions taken by regional and local authorities;
- Number of complaints addressed to other institutions, such as Ombudspersons;
- Number of complaints regarding discrimination.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

### **The right to education**

The right to education requires the State to establish primary and secondary education systems that are free of charge, accessible and effective. The State should also secure equal access to higher education. Education must be compulsory until at least the minimum age of admission to employment.<sup>59</sup>

The European Committee on Social Rights (ESCR) examines the effectiveness of the education system with regard to such parameters as the number of children enrolled in schools, class size, teacher to pupil ratio, teacher training, dropout rates, and the number of children who successfully complete education. Regarding accessibility, fair geographical and regional distribution of schools is important, as is ensuring that education is free of charge and that hidden costs (for instance books) are reasonable. States need also to make sure that education is accessible to all, taking into account special measures necessary to secure education for children from vulnerable groups.<sup>60</sup>

The right to education for children with disabilities is emphasised in relation to Article 15 of the ESC. It is crucial that children with disabilities have equal access to education, primarily through

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Congress of Local and Regional Authorities, cf the Congress of Local and Regional Authorities (2010) The role of local and regional authorities in the implementation of human rights. Explanatory Memorandum.

<sup>59</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe; White, Robin & Clare Ovey (2010) The European Convention on Human Rights. Oxford: Oxford University Press, chapter 21.

<sup>60</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe.

integration in the ordinary education system. Where this is not possible, special facilities are needed.<sup>61</sup> The focus here should be not on individuals but rather on the fact that something can become a disability in relation to the functioning of society, such as sitting in a wheel chair: this becomes a disability when society fails to cater for people in wheelchairs.

The right to education also includes vocational guidance and training (Articles 9 and 10 of the ESC).

The right to education in international instruments covers universal primary education, access to secondary and higher education, and stipulations regarding curricula and equal educational opportunities.<sup>62</sup>

On this basis, the following indicators are suggested:

#### **Structural indicators**

- Laws and policies safeguarding access to primary and secondary education;
- Laws and policies safeguarding access to primary and secondary education for vulnerable groups, in particular children with disabilities and children from religious, ethnic and/or linguistic backgrounds different from those of the majority;
- Laws and policies safeguarding vocational guidance and training.

#### **Process indicators**

- Efforts to contribute to more accessible system of education;
- Efforts to ensure non-discrimination in education;
- Efforts to increase access to vocational training.

Process indicators should in particular take account of efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

#### **Outcome indicators**

- Teacher-pupil ratio in primary and secondary education;
- School drop-out rates;
- Number of children successfully completing their education;
- Geographical accessibility of education;
- Hidden costs in education;
- Number of complaints regarding discrimination.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

#### **The right to work**

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<sup>61</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 111ff.

<sup>62</sup> CESCR, General Comment no 13, "The Right to Education," 1999. See also CRC, General Comment no 1, "The Aims of Education," 2001.

The right to work as formulated in the ESC includes several provisions.<sup>63</sup> One of the primary goals of a State is to establish and maintain “as high and stable a level of employment as possible, with a view to the attainment of full employment” (Article 1). States are required to adopt policies that are conducive to creating and maintaining jobs and to assist unemployed persons in securing employment. These obligations concern the measures taken, not the result. The ESCR considers the suitability of the measures taken by the authorities in terms of fulfilling the goals.<sup>64</sup>

Furthermore, States should protect workers’ right to earn their living in “an occupation freely entered upon”, to prevent any kind of discrimination, and to provide appropriate vocational guidance and training as well as rehabilitation (Article 1).

The right to work also includes rights regarding working conditions (for instance the regulation of working hours, vacations, the right to a safe and healthy work environment and fair remuneration) and the right to organise and to collectively bargain, as well as regulations regarding children and women (Articles 2-8 of the ESC).<sup>65</sup>

The right to work, as defined in relation to international treaties, includes access to decent and productive work, fair and safe working conditions, opportunities for training and professional development, and protection from forced labour and unemployment.<sup>66</sup>

The core attributes of the right to work include non-discrimination and free choice of occupation, certain aspects of working conditions, fair remuneration, and the commitment to establish and maintain high levels of employment. Even though regional and local authorities are major employers and are therefore required to comply with regulations on the right to work, the focus here lies on what the regional and local authorities are doing with respect to the right to work for citizens.

On this basis, the following indicators are suggested:

### ***Structural indicators***

- Laws and policies aiming at achieving as high and stable a level of employment as possible;
- Laws and policies safeguarding vocational guidance, training and rehabilitation;
- Laws and policies safeguarding non-discrimination with respect to employment and working conditions;
- Laws and policies safeguarding the right to organise, collective bargaining and fair remuneration;
- Laws and policies facilitating access to the ordinary labour market for vulnerable groups.

### **Process indicators**

Efforts to reduce unemployment;

Efforts to facilitate vocational guidance, training and rehabilitation;

Efforts to ensure non-discrimination in relation to work.

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<sup>63</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 19-66, 125-142 and 151-166.

<sup>64</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 19ff.

<sup>65</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 27-66.

<sup>66</sup> CESCR, General Comment no 18, The Right to Work, 2005.

Process indicators shall in particular take into consideration efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

### **Outcome indicators**

- Number of individuals employed on the ordinary labour market;
- Number of individuals employed in programmes set up or primarily financed by public authorities;
- Number of individuals in vocational training and rehabilitation;
- Number of complaints regarding discrimination with respect to employment and working conditions.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

### **The right to health**

The right to health is defined by the ESC as removing, as far as possible, the “causes of ill-health” (Article 11). This broad obligation is divided into two main types of provisions: (1) measures to promote health and (2) healthcare provision in cases of sickness.<sup>67</sup>

Measures promoting health include, for instance, controlling and reducing pollution, ensuring food safety, and controlling and reducing the use of tobacco, alcohol and drugs. Education on health hazards and problems is essential. Special attention should be paid to children, women, and the elderly. Also included in the right to health are adequate rehabilitation measures.

Regarding healthcare provisions in case of sickness, it is fundamental that the State provide adequate and generally accessible healthcare for the whole population. Accessibility relates to several factors, such as geographical proximity to healthcare facilities and the management of waiting lists and costs. The costs of healthcare should not place an excessive financial burden on individuals.<sup>68</sup>

In many ways, this ESC interpretation of the right to health is similar to the United Nations interpretation, pointing out several aspects of the right to health: sexual and reproductive health, child mortality and healthcare, the natural and occupational environments, prevention and control of diseases, and accessibility to health facilities and essential medicines.<sup>69</sup>

The aforementioned core obligations concerning the right to health also include healthcare provisions in cases of sickness, ensuring that these are accessible to everyone and do not place an excessive financial burden on individuals, and also guaranteeing high-quality healthcare.

On this basis, the following indicators are suggested:

### ***Structural indicators***

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<sup>67</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 81ff. See also Donna Gomien, David Harris and Leo Zwaak (1996) *Law and Practice of the European Convention on Human Rights and the Social Charter*. Strasbourg: Council of Europe, pp. 397f.

<sup>68</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 82f.

<sup>69</sup> CESCR, General Comment no 14, The Right to Highest Attainable Health, 2000. See also health indicators outlined by WHO, Core Health Indicators, [www.who.int](http://www.who.int)

- Laws and policies safeguarding adequate and generally accessible healthcare arrangements for the whole population;
- Laws and policies maintaining prevention of ill-health by reducing pollution, ensuring food safety and controlling tobacco, alcohol and drugs;
- Laws and policies safeguarding rehabilitation;
- Laws and policies supporting education in health hazards;
- Laws and policies safeguarding non-discrimination in healthcare;
- Laws and policies regarding the processing of complaints in case of malpractice, etc.

### **Process indicators**

- Efforts to ensure accessible healthcare for all;
- Efforts to highlight health concerns in other policy fields beside those directly regarding health;
- Efforts to prevent ill-health;
- Efforts to ensure adequate rehabilitation;
- Efforts to ensure non-discrimination in healthcare.

Process indicators shall in particular take into consideration efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

### **Outcome indicators**

- Life expectancy at birth;
- Number of persons using drugs;
- Number of persons with illnesses related to tobacco and alcohol;
- Per capita expenditure on public healthcare;
- Per capita expenditure on education in health hazards;
- Average distance to nearest healthcare centre.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

### **The right to social welfare**

The right to social welfare and social security requires the State to ensure an adequate standard of living for individuals. Article 12 of the ESC on the right to social security and Article 14 concerning the right to benefit from social welfare services are important. Article 12 concerns social security systems in terms of illness, unemployment, and old age etc. Article 14 requires the provision of services that "contribute to the welfare and development of both individuals and groups in the

community". Welfare services include childcare and provision for the elderly, training and rehabilitation of the disabled and specific measures aimed at vulnerable groups.<sup>70</sup>

In addition to these articles, Article 13 on social assistance is also crucial as it establishes the obligation of a general income guarantee system. The obligation on the part of the State to provide adequate assistance and resources to persons arises as soon as a person is in need, ie unable to obtain adequate resources in some other way. Article 23 on social protection for the elderly and Article 17 on the rights of children are also important.<sup>71</sup>

The right to an adequate standard of living and the right to social security, as regulated in international treaties, refer generally to efforts to ensure continuous improvement of living conditions and social security systems.

The core attribute of the right to social welfare includes services contributing to welfare of individuals, especially for children, the elderly, and vulnerable groups. The right to social security covers protection in case of illness, old age, unemployment, etc, which guarantee a decent standard of living. In the latter regard, social assistance where individuals are unable to obtain adequate resources are also central.

On this basis, the following indicators are suggested:

#### **Structural indicators**

- Laws and policies safeguarding an adequate standard of living;
- Laws and policies safeguarding services contributing to the welfare for individuals;
- Laws and policies safeguarding protection of family life, for instance family benefits, and child allowances;
- Laws and policies safeguarding the protection of women's rights;
- Laws and policies safeguarding access to social welfare for everyone, irrespective of citizenship.

#### **Process indicators**

- Efforts to provide an adequate standard of living;
- Efforts to provide social assistance;
- Efforts to provide adequate social services;
- Efforts to protect family life.

Process indicators should in particular take into consideration efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

#### **Outcome indicators**

- Per capita income;

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<sup>70</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 90ff.

<sup>71</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 97ff.

- Family income;
- Number of children living in poverty;
- Number of elderly persons living in poverty;
- Number of complaints regarding discrimination in social services.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

### **The right to housing**

The right to housing in the ESC (Article 31) requires the State to “promote access to housing of an adequate standard”. It includes making the price of housing accessible to persons without adequate resources and measures to be taken to prevent homelessness. The right to housing is also emphasised in specific provisions regarding disabled persons.<sup>72</sup>

The ESCR considers the right to housing with respect to homelessness, accessibility to housing, and housing affordability. The effectiveness of safeguarding the right to housing is reviewed with regard to such parameters as the control of adequacy, construction policies, social housing, housing benefits and emergency housing, as well as judicial remedies.<sup>73</sup>

The right to housing, as stipulated in international treaties and according to the UN Committee monitoring economic and social rights, should not be understood in narrow terms as merely “having a roof over one’s head”, but rather as the right to live somewhere in “security, peace and dignity”.<sup>74</sup>

The central obligations regarding the right to housing concern access to housing by making it available to all, also those lacking adequate resources, and to ensure an adequate standard of housing. The right to housing requires special measures to prevent and eliminate homelessness. On this basis, the following indicators are suggested:

#### **Structural indicators**

- Laws and policies safeguarding adequate housing;
- Laws and policies safeguarding accessibility to housing, especially for vulnerable groups;
- Laws and policies preventing and eliminating homelessness;
- Laws and policies concerning subsidies for building new housing.

#### **Process indicators**

- Efforts to safeguard adequate housing;
- Efforts to facilitate the developing of new housing, affordable to low-income persons and families;
- Efforts to prevent and eliminate homelessness.

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<sup>72</sup> Council of Europe (2008) Digest of Case-law of the European Committee of Social Rights. Strasbourg: Council of Europe, pp 169ff.

<sup>73</sup> Cf Thomas Hammarberg (2008) “Housing Rights: The Duty to Ensure Housing for All”, CommDH/Issue Paper 2008.1.

<sup>74</sup> CESCR, General Comment no 4, “The right to adequate housing,” 1991.

Process indicators should in particular take account of efforts aimed at vulnerable and under-represented groups, as identified by the grounds of discrimination.

### **Outcome indicators**

- Number of homeless persons;
- Number of people using homeless shelters;
- Number of persons enjoying housing benefits;
- Number of persons in social housing;
- Number of persons in cramped housing accommodation;
- House price to income ratio;
- Number of low-income housing with severe construction problems.

Outcome indicators should, where possible, include information regarding the situation of various groups, as identified by the grounds of discrimination.

## **Role of local and regional authorities in the implementation of human rights**

### **Summary**

This report is part of the Congress' ongoing activity in the human rights field. Inter alia, it takes stock of the place of human rights in local and regional authorities, of those authorities' responsibilities in this respect, and also of the cost that the implementation of human rights may entail for a city or a region.

The report notes some good practices found in member states' local and regional authorities and makes some recommendations to member states and their authorities as well as to the Congress with a view to the effective practical implementation of human rights, which is a precondition for any democracy.

## Recommendation 280 (2010) Revised<sup>75</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe recalls that:
  - a. the primary aim of the Council of Europe is to create, throughout the European continent, a common area based on respect for human rights, democracy and the rule of law;
  - b. democracy and human rights are interdependent. Democracy, including at the local and regional level, cannot exist without an unconditional respect for human rights;
  - c. local and regional authorities must comply with the human rights duties which stem from the international commitments of the member states, albeit only within their local/regional competences;
  - d. local and regional authorities are not only agents of central government: they secure human rights at the same time as they fulfil local self-government;
  - e. good governance is rights-based governance. Complying with human rights duties is a challenge with the potential of strengthening democracy at the local level.
  
2. The Congress has a distinctive role to play within the Council of Europe, as it provides a forum where elected representatives can discuss common problems, share their experience and develop policies. It works to strengthen democracy through its monitoring activities.
  
3. In order to better secure the concrete implementation of human rights by local and regional authorities, the Congress recommends that the Committee of Ministers call on all member states to:
  - a. ensure that the allocation of financial resources to local and regional authorities is set at an appropriate level so that these authorities have the means to properly implement human rights and review and develop their own activities for compliance with these rights;
  - b. involve representatives of local and regional authorities in the drafting of national human rights strategies, policies and indicators, in order to have their input and make them aware of their responsibilities in the implementation of human rights;
  - c. encourage local and regional authorities to promote respect for human rights through awareness-raising initiatives and through local and regional action plans;
  - d. encourage the setting-up of independent complaints mechanisms at local and regional level and, in particular, to create independent bodies, such as local or regional ombudspersons, able to find remedies in cases where human rights are not fully respected, in particular in the delivery of local public services;
  - e. involve civil society organisations in the planning and implementation of activities for the protection of human rights at all levels.
  
4. The Congress notes that the best way to secure the effective protection of human rights is to take action on the basis of a regular, comprehensive and accurate review of the situation. Therefore, the Congress asks the Committee of Ministers to invite member states to consider ways of encouraging local and regional authorities to create appropriate structures and procedures in order to carry out both the implementation and the review of human rights in their communities. There is no standard solution for implementing human rights at local and regional level, but a criterion of good governance should be to provide citizens with sufficient support and advice to exercise their rights.

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<sup>75</sup> Adopted according to the tacit adoption procedure (Rule 25 of the Rules of Procedure) by the Congress on 19 October 2011 (see document)

5. The Congress also asks the Committee of Ministers to urge member states to ensure that local and regional authorities comply with the principle of non-discrimination in the implementation of human rights.

6. The Congress stresses that education and benchmarking are crucial to the improvement of the situation of human rights in Europe at all levels. It recommends that the Committee of Ministers:

- a. encourage a systematic multi-level dialogue between the political levels of all member states in order to promote the human rights dimension in local self-governance;
- b. foster respect for human rights through the training of local and regional elected representatives and their staff.

## **Resolution 296 (2010) Revised**

### **Role of local and regional authorities in the implementation of human rights**

1. The Council of Europe is the authoritative pan-European organisation when it comes to protecting and promoting democracy, human rights and the rule of law.

2. Whereas it is the intergovernmental sector which is chiefly concerned with the implementation of the commitments made by member states in these areas, the principle of subsidiarity means that Europe's local and regional authorities also have a key role to play in the day-to-day application of the fundamental values of democracy and human rights.

3. Protecting and promoting human rights is a responsibility shared by all the different tiers of authority within each Council of Europe member state. Because of the close relationship between citizens and their elected representatives at this level, local and regional bodies are best placed to analyse the human rights situation, identify the relevant problems which arise and take action to solve them.

4. The Congress of Local and Regional Authorities of the Council of Europe points out that it is on the ground, in regions, cities and neighbourhoods, as close as possible to people's everyday lives, that human rights need to be nurtured. The way in which the Council of Europe is organised, with its three distinct but complementary pillars – the Committee of Ministers, the Parliamentary Assembly and the Congress – represents an unparalleled step forward for local and regional democracy, providing scope for a multitiered approach to human rights.

5. The powers and responsibilities of local and regional authorities are increasingly varied and complex. Local and regional authorities take one-off or more general decisions, relating in particular to education, housing, health, the environment and law and order, which are directly or indirectly connected with human rights and can affect their enjoyment of human rights by citizens.

6. In this connection, as the political assembly bringing together Europe's local and regional elected representatives, the Congress can make an invaluable contribution to the pooling of information and experience and the recording of good practices in the human rights sphere. Since there is no standard blueprint for implementing human rights at local and regional level, the Congress could, as a first step, record the methods available which could be adapted to local circumstances.

7. The Congress is also an ideal forum in which to raise awareness about human rights issues among local and regional political leaders and government officials. The most important way to enable

local and regional authorities to take responsibility for human rights is through the systematic training of political leaders and the dissemination of reliable information among citizens about their rights (particularly among vulnerable groups).

8. The Congress invites local and regional authorities to set up appropriate bodies or procedures to effectively implement and review the human rights situation in their communities and for rectifying instances where fundamental rights are not fully respected, particularly in the provision of local public services.

9. In the light of the above and also with reference to its joint declaration with the Council of Europe Commissioner for Human Rights and the Swedish Association of Local Authorities and Regions (SALAR) adopted on 6 October 2008, the Congress therefore calls on local and regional authorities to:

- a. act with full regard for fundamental rights, particularly with regard to data protection;
- b. contribute to the development of national indicators to facilitate the assessment of advances made in the field of human rights at local and regional level and take part in the drafting of national plans to secure and promote human rights; on the basis of the problems and remedies identified in the course of these planning measures, local and regional authorities will be able to analyse the local human rights situation regularly and to refer, where appropriate, to central government;
- c. promote the establishment at local level of independent complaints mechanisms, such as, for example, an accessible and independent decentralised ombudsperson's office, designed to deal with allegations of infringement of individual rights;
- d. foster human rights training for local elected representatives and government officers so that they can identify and deal with human rights issues within the framework of their activities;
- e. promote consultation processes, enabling all participants in local public life to exchange information on the human rights situation and to arrive at agreed responses to problems that arise;
- f. guarantee equal access to public services for all citizens and non-citizens, without any discrimination, while ensuring that social rights are upheld;
- g. introduce procedures, where education, health or social services are being privatised, to make the organisations concerned accountable for their actions and establish a quality control system for the services offered;

10. The Congress instructs its Monitoring Committee to collect data on the local and regional human rights situation systematically on its visits. It also asks the other Congress committees to take account of human rights during their respective activities.

11. The Congress also instructs its Monitoring Committee to produce a five-yearly report on the human rights situation at local and regional level in Council of Europe member states, producing comparative data.

## Explanatory Memorandum

### Executive summary

1. Implementation of and compliance with human rights constitute one of the fundamental tasks of the Council of Europe. There is no real democracy, no good governance – whatever the political level – without observance of human rights. Local and regional authorities deal with human right issues on an everyday basis, and politicians and civil servants at the local or regional level are close to citizens' everyday needs. Local and regional responsibility already has a welfare aspect which in many cases and to a large extent is strongly connected to human rights. In line with the principle of subsidiarity, local and regional authorities may be considered to be the primary players in fulfilling the goals of the fundamental international conventions.

2. The importance of systematic work for human rights cannot be underestimated. It is important to involve all stakeholders at all stages of the process, including national human rights institutions, civil society and representatives of disadvantaged groups, and to integrate human rights planning into the ordinary work of the public administration so as to ensure effective co-ordination and co-operation between authorities at all levels. To this end, human rights work needs to be co-ordinated with the budgetary process in order to secure proper funding. The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.

3. There is no standard solution for implementing human rights at the local and regional levels, but a first step is to create a toolkit of the methods available and to adapt these to local circumstances. It is also important to foster a human rights culture through education and training. There is accordingly a need for awareness-raising and education among local and regional authorities themselves and among citizens.

4. The protection of human rights requires independent complaints mechanisms. Complaints mechanisms may take different forms in different communities, and there are several examples that could serve as a model – local and regional ombudspersons, national or thematic ombudspersons, consumer complaints boards, patient injury boards, anti-discrimination agencies, etc. The complaints mechanism or bodies can have different functions depending on the kinds of human rights they deal with, but must be seen as important means of safeguarding human rights and handling citizens' complaints at first instance. Systematic work to implement and monitor human rights at the local and regional levels in the member states not only aids the implementation of human rights, but will also reduce the burden for the national level and enable the European Court of Human Rights to function more effectively.

5. The Congress has an important benchmarking, awareness-raising and enabling role to play regarding the role of local and regional authorities in the implementation of human rights. It also has a significant role as a mediator of successful experiences which can be consolidated and systematised. The Congress should collect and communicate good practices. The Congress could be responsible for monitoring activities concerning human rights, by making human rights an indicator in the ongoing monitoring process. The Congress can also prepare special reports on a regular basis in which the human rights situation in member states is highlighted. Finally, the Congress could examine audit reports on specific themes, each year with a different focus. The chief concern is to incorporate human rights as a new dimension of the ongoing monitoring of local and

regional democracy in the member states and seek constantly to reinforce the principle of financing human rights implementation.

## 1. Introduction

### 1.1. General introduction

6. Implementation of and compliance with human rights constitute a key element of the Council of Europe's activities, as one of the three pillars which guide the whole action of the organisation. There is no real democracy, no good governance – whatever the political level – without observance of human rights. It is a transversal issue and a constant matter of concern. To a large extent, democracy and human rights are interdependent.

7. The Universal Declaration of Human Rights, the European Convention on Human Rights and all the other relevant international norms are more than declarations of value – they are a strong call for action plans to translate idealistic and philosophical visions into an environment where these rights can be realised and enjoyed, i.e standard-setting. Compliance with human rights entails multi-level governance. It is a matter not only for national governments but for all other political levels too. Local and regional authorities, the level closest to citizens, are logically the most suitable actors to achieve the concrete aspirations which have evolved since these fundamental norms were signed. The case-law of the European Court of Human Rights clearly demonstrates this principle.

8. There are several fundamental standard-setting documents to take into account when analysing human rights and local government:

- The Universal Declaration of Human Rights,
- The European Convention on Human Rights (ECHR),
- The Charter of Fundamental Rights of the European Union,
- The Revised European Social Charter,
- The Covenant on Civil and Political Rights,
- The Covenant on Economic, Social and Cultural Rights,
- The Urban Charter,<sup>76</sup>
- The European Charter of Local Self-Government (if the right to local self-government can be considered a fundamental right), and
- The Reference Framework on Regional democracy (which is not a standard-setting text but a reference tool with regard to regional democracy)

9. The Congress of Local and Regional Authorities, as the political body which represents more than 200 000 local and regional authorities in Council of Europe member states, is very much aware of the importance of the contribution it can make in this respect. The Congress has already taken some important steps in analysing the role of local and regional authorities in the

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<sup>76</sup> Resolution 269 (2008)1 European Urban Charter II – Manifesto for a new urbanity.

implementation of human rights.<sup>77</sup> This report can claim to be a follow-up to the 2007 Forum for the Future of Democracy and the Seminar on systematic work for human rights implementation at local and regional level in October 2008.<sup>78</sup> The Forum affirmed the interdependence of democracy and human rights and the need to regard development of local democracy both as a tool and as a core objective of all countries in their efforts to improve the implementation of human rights. Therefore, there must be a framework (legal and/or political) for the apportionment of responsibilities among national, regional and local authorities. It is important to remember that the competence of local elected representatives depends on such boundaries, but another very important factor is the professional qualifications of elected representatives and their staff.

## 1.2 The issue at stake

10. For a number of years the Council of Europe has played a leading role in the efforts to associate all the main stakeholders of a genuine democratic society (parliaments, governments, local and regional authorities, civil society, media and academia) in the promotion of democracy at all levels across the continent. The Parliamentary Assembly of the Council of Europe, the Committee of Ministers, the Congress, the INGO Conference and the European Commission for Democracy through Law (the Venice Commission) have a key role in this ongoing process.

11. However, one must keep in mind that there are 47 member states – of which 27 are also members of the EU – with different traditions to take into account. There cannot be only one standard solution on how to implement human rights. Whatever method is chosen, it is always a local and regional responsibility to make sure that human rights are respected. Therefore, this report will give some general recommendations as to how the implementation should be carried out.

12. The starting point is that the local level is where democracy can be fostered and strengthened, and that local and regional authorities are crucial actors in securing human rights for citizens. But to be able to fulfil these tasks, the local and regional authorities must be given the powers, tools and financial possibilities to fulfil them. Even if respect, and responsibility, for human rights as such must be mainstreamed to be fully implemented at local and regional level, the methods for fulfilling and protecting those rights may differ because of the traditions and circumstances in the member states. This is also logical according to the principles of proximity, subsidiarity<sup>79</sup> and proportionality.

13. The Congress, which has already initiated several European instruments, especially the European Charter of Local Self-Government and others, should no doubt take the lead in alerting the various Council of Europe bodies to the discrepancy which has gradually emerged between ever more intensive human rights protection and the fact that statements of principle on the requirements of a democratic society have not been applied to “political rights” at any level of public life. Stressing “social cohesion” necessitates reinforcing human rights at the local level.

## 1.3 The process of the report

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<sup>77</sup> Such as the Barcelona Colloquium, the first round table of European regional ombudsmen, Barcelona 2–3 July 2004, co-organised by the office of the Commissioner for Human Rights.

<sup>78</sup> Council of Europe Forum for the Future of Democracy, Stockholm/Sigtuna, Sweden 13–15 June 2007 and Sveriges Kommuner och Landsting, Systematiskt arbete för mänskliga rättigheter – en utmaning för kommuner, landsting och regioner, Dokumentation från seminarium 6 oktober 2008.

<sup>79</sup> Article 4.3 of the European Charter of Local Self-Government provides “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.”

14. Following the tradition of the 2007 forum and the 2008 seminar, the aim was to draft this report in an inclusive manner. The Rapporteur has been in close contact not only with the Institutional Committee (which focused on some of the core questions during a round table held on 15 May 2009) but also with other parts of the Council of Europe, such as the Office of the Commissioner for Human Rights and the Court. Key study visits were arranged for the Rapporteur and the expert in Strasbourg on 3 December 2009. In January 2010 a number of “wise persons” were invited to read and comment on a first draft of the report. Throughout the process the Rapporteur was also supported by a reference group in Sweden and last but not least the Secretariat of the Congress. The Rapporteur wishes to thank all those having contributed to the report.<sup>80</sup>

#### 1.4 The role of local and regional authorities in the implementation of human rights

15. The tension between the principle of state sovereignty and human rights has existed for a long time. This has been most evident in the work of the UN. In the UN Charter the individual state is seen as sovereign and autonomous. At the same time, the United Nations Universal Declaration of Human Rights stipulates each country's obligation to protect the citizen. Tensions of this kind can arise where a state's compliance with rules laid down in a ratified convention is in doubt. Tensions can also be found between national authorities and local and regional authorities – state sovereignty vs. local and regional self-government - not least when analysing the role of local and regional authorities and the implementation of human rights in the light of the local authority's responsibilities for education, social housing, social security, health care, refugees, etc.<sup>81</sup> One must remember that these types of services are not only a question of local and regional government responsibilities in the delivery of public services to citizens, but often go back to the responsibility of fulfilling the human rights of the individual.

16. “Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual: the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”<sup>82</sup>

17. The following analysis focuses on three aspects of implementing the rights: 1) securing human rights and honouring local self-government (II), 2) the variety of human rights (III) and 3) the right methods of implementation – including the role of the elected representative (IV).

#### 2. Securing human rights and honouring local self-government

18. The Commissioner for Human Rights, Mr Thomas Hammarberg, has stated that the balance between delivery of human rights on the one hand and local or regional self-government on the other hand is crucial to democracy. In fact, there is a strong interrelation between them – no human rights can be achieved without democracy and no “real” democracy can be achieved without respect for human rights. In other words, democracy will be stronger the more human rights are respected.<sup>83</sup> Furthermore, there is no real democracy without local democracy, and if human rights

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<sup>80</sup> Report prepared with Professor Tom Madell, Umeå University, Sweden, as expert.

<sup>81</sup> Staaf & Zanderin (Eds.), *Mänskliga rättigheter i svensk belysning*, 2007, p. 74.

<sup>82</sup> Eleanor Roosevelt, Remarks at the United Nations, March 27, 1958. Quotation from Chavkin & Chesler, *Where human rights begin: health, sexuality, and women in the new millennium*, 2006, p. 1.

<sup>83</sup> Hammarberg, *Real Democracy requires respect for Human Rights*, CommDH/Speech(2007)7, Strasbourg, 13 June 2007.

are not respected in everyday life, they never will be respected. There is no conflict between the delivery of human rights and local self-government.

19. Over recent years there has been growing pressure to fulfil the implementation of human rights at local level, and national legislation has often placed the responsibility for managing those rights at a local or regional level. Some responsibilities follow from the powers delegated by the national government, and some powers follow from the principles of local and regional self-government. While the state as a whole enters into and is bound by international treaties, the local and regional authorities have the right to organise their responsibilities in the most functional way. This also applies to the interrelation between human rights and local democracy. Thus, local or regional authorities are not only “agents” of central government – they have their own responsibilities to manage human rights on the same basis as central government will have the main responsibility for implementing the treaties.

20. As competences are enlarged and more responsibilities for taking care of individual needs devolve on local and regional authorities, responsibilities for human rights protection and advancement are also enlarged. In a civilised society, social welfare plays a significant role in recognising the support owed to disadvantaged groups such as persons with disabilities, ethnic minorities, victims of sexual discrimination, young children and older people. Local and regional authorities have direct responsibilities in these areas and particularly in enabling members of these groups to become fully participating and respected members of society. Local authorities have become the first line of defence of human rights and also the launching pad for their realisation. All human beings are bearers of human rights regardless of their legal status as non-citizens, refugees, migrants or foreign residents, regardless of whether they are women, children, elderly or people with disabilities, regardless of their religion, ethnic background, political views or sexual orientation. In the eyes of local authorities, they are – or at least they should be – equal members of the community.

21. In honouring local self-government, it is important for the member states to recognise that the local and regional authorities within the legal framework must have the independence and autonomy, guaranteed by the European Charter of Local Self-Government, to make decisions in response to the needs of their communities. The big responsibility that rests on the shoulders of local or regional government can also be discerned from cases brought before the European Court of Human Rights that deal with a variety of local authority actions in the light of the ECHR.<sup>84</sup>

22. The political right to manage local affairs on a local or regional level is found in the Charter of Local Self-Government and it is binding on the member states of the Council of Europe that have ratified it. The Congress report to the 2007 Forum for the Future of Democracy outlines the links between human rights and local and regional democracy. It points out that the protection and promotion of human rights is a joint responsibility of all authorities, but in particular local and regional authorities have a major role to play – given their various powers and the immediate impact of their decisions on citizens. Therefore, the Charter of Local Self-Government plays an important role and must be seen as a cornerstone treaty to the human rights protection system. The report shows by various examples that joint reflection on the protection of human rights at local and regional level has recently begun. It concludes by recommending a list of matrix principles as a common denominator for all players involved in human rights protection at local and regional level. The intention is that the principles can constitute a coherent basis for effective action geared to ensuring the progress of human rights.<sup>85</sup>

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<sup>84</sup> See Monserrat Enrich Mas, Selected judgements of the European Court of Human Rights concerning local or regional authorities, updated on 15 September 2009.

<sup>85</sup> Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the

23. Since local and regional authorities are the protagonists to address human right issues and the needs of the individuals residing in the community, there is also a need for proactiveness on their part. It is important that initiatives can come from a grassroots level and not only via new directives from central government. Therefore, there is a need for an ongoing dialogue between the different levels of society, but there might also be a need for monitoring and mainstreaming from the Council of Europe. One issue that might need deeper co-operation is the different priorities that must be set concerning which economic and social human rights are the most important to protect when there is a downturn in the local, national or global economy.

### 3. The variety of human rights

#### 3.1 The different kinds of human rights

24. The rights set out in the European Convention on Human Rights can be split into at least two categories; qualified rights and unqualified rights, some of which are absolute since no derogations under Article 15 are permitted.<sup>86</sup> Some human rights can be upheld by a court and apply to all individuals regardless of nationality, while other rights are thought of as in need of more “sophisticated” methods of implementation – e.g. some cultural rights and some socio-economic rights. The latter must be seen in their economic and cultural environment and in terms of the national and local resources – even if this might be a difficult balance, which also leads us to several important questions. What does this variety mean when it comes to the “space” for local political decision-making, and what limits can be identified? How much variety can be accepted and who is the one to decide? The variety may not only exist between member countries, it could also most certainly exist within some member states.

25. It is important to stress the positive role played by local authorities in protecting and promoting economic, social and cultural rights. Local and regional authorities have varying degrees of responsibility depending on which rights and which areas they are dealing with: e.g. refugees, racial discrimination or sexual intolerance, the right to the opportunity to work and to obtain employment free from prejudice and discrimination, the right to a decent home without undue restrictions, the right for children to be educated, the right to good health care or the right of different nationalities and religions within the communities to be given the same opportunities as indigenous citizens, as well as the tools to enable them to avail themselves of those rights. They are protected by law and upheld by the Court. Where economic and social rights are concerned, the picture becomes more complicated. Those rights can be said to be built up gradually and they may also differ between different communities. Local decision-making and political priorities make it necessary to balance individual rights and political responsibility for sustainable and holistic governance, which might lead to a situation where fulfilling one person’s rights might disadvantage another.

26. All human rights have one thing in common; municipalities must comply with their human rights duties as public authorities in accordance with the international obligations of states, albeit only within their competences/powers. The standard is to be set at a national level. Thus, local police must not commit torture. If a town does not have local police, this is irrelevant; if it does, it is

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Future of Democracy (Sigtuna, Sweden, 13–15 June 2007). The expert who prepared the report was professor Emmanuel Décaux, President of the International Permanent Secretariat Human Rights and Local Government, SPIDH, Nantes, <http://www.spidh.org/en/home/index.html>. The report claims the right to manage local affairs to be a “collective” political right. The right to joint control over their affairs at the local level according to the European Charter of Local Self-government is still not recognised as an individual political right, or at least has not yet been brought before the European Court of Human Rights.

<sup>86</sup> Jacobs & White, *The European Convention on Human Rights*, 2006, p. 6–8.

not. Likewise, municipalities have the duty to “promote” decent housing for everyone, which does not mean that everyone is entitled to own a 200 m<sup>2</sup> apartment in the best part of town tomorrow.

### 3.2 The classification of human rights

27. There are several ways of classifying human rights. One way is to talk about a) civil and political rights,<sup>87</sup> b) economic, social and cultural rights<sup>88</sup> and finally c) collective rights. A more historical way of describing human rights is to classify them into first, second and third generation rights, where the first generation refers to civil and political rights; the second generation comprises economic, social and cultural rights; and finally, the third generation refers to collective rights.

28. Political rights, along with civil rights, are primarily designed to protect the individual against state interference, and are immediately applicable. Political rights can be seen as covering the right to political participation, that is, the citizens’ right to seek to influence and participate in the public affairs of the society to which they belong. Political participation can take many forms, the most notable of which is embodied in the right to vote.<sup>89</sup> However, it also covers the right to join a political party; the right to stand as a candidate in an election; the right to participate in a demonstration; and freedom of association. Though political and civil rights are distinct, the difference between the two is not always obvious or clear; indeed, they sometimes overlap. The freedom to express one’s opinion, and freedom of association, for example, are clearly linked to the right to political participation, and so are political rights, but they are often also seen as civil rights.<sup>90</sup>

29. The right to political participation merits special attention, as it is largely though not absolutely restricted to citizens. Whereas the other rights recognised by the UN Charter, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are inherent in human beings on the basis of their status as such, the right to political participation is, in part, limited to people endowed with the status of citizen. Such a status is linked to the context of a political community and, most significantly, a government. The right to political participation therefore presupposes the existence of a government. This right is also guaranteed by the European Charter of Local Self-Government in its preamble.

30. Though distinct, civil rights and political rights are closely linked; the protection and fulfilment of the one to a large extent depends on that of the other. All human rights are indivisible, interdependent and interrelated, which means that the fulfilment and protection of civil and political rights depends on, and influences, other categories of human rights. It is also necessary to point out the importance of access to a court and non-discrimination which is also mainstreamed into all rights, especially for EU citizens according to the EU Charter of Fundamental Rights.

31. Economic, social and cultural rights, or the second generation of human rights, are based on the principles of social justice and public obligation – they are based on continental European concepts of liberty as equality. This kind of human rights developed through those who had a strong desire for the state to provide protection for its most vulnerable inhabitants by giving relief to the less fortunate. The rights have since evolved into what are now known as cultural and religious rights – the right to free elementary education, the right to higher education equally accessible to all by merit, the right to education which promotes tolerance and understanding, the right to

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<sup>87</sup> Sometimes referred to as classical or negative (liberal) rights.

<sup>88</sup> Sometimes referred to as positive rights.

<sup>89</sup> Article 3 of the first additional protocol to the European Convention on Human Rights establishes the right to vote in elections to the legislative assembly.

<sup>90</sup> Cf. the Convention on the Participation of Foreigners in Public Life at Local Level, ETS no. 144.

religion, the rights of minorities and indigenous people<sup>91</sup>; social rights – the right to health, the rights of migrants, the rights to social housing, shelter and safety for families; and economic rights – the right to just and favourable conditions of work, the right of protection against unemployment, the right to equal work for equal pay, the right to rest and leisure as an employee, the right to reasonable limitation of working hours and periodic paid holidays, the right to be member of a union, the right to a basic standard of living, the right to food, clothing, housing, medical care, and necessary social services, the right to security in the event of unemployment, sickness, disability, widowhood, old age, the right to special care and assistance for mothers and children, the right to enjoy remuneration and standards of living adequate for the health, well-being, and dignity of citizens and their families, etc.<sup>92</sup>

32. A special kind of human rights is the so-called third generation of rights, or collective rights.<sup>93</sup> It is important to note that the common conception of human rights has changed over time, and apart from absolute fundamental civil, political and social rights, it is common to talk about a new category of rights – the so-called emergent rights: e.g. the right to a safe environment, access to drinking water and to sanitation. These are rights that we aspire to obtain, which are not – at least, not yet – explicitly included in legally binding texts. They are the expression of developments in case law that led to a broad interpretation of a fundamental right already guaranteed. The new dimension of these rights, which are internationally recognised, entails – because of the principle of indivisibility – obligations for national authorities but also for local and regional authorities. Non-compliance with these rights can be condemned by a court. When it comes to the collective rights or third generation rights, a member of a vulnerable minority group can take legal action either individually or together with others as a group – in the same way as for social and economic rights.

33. Accordingly, the role of political authorities evolved in this respect too, and therefore, local and regional authorities are faced with new responsibilities in terms of compliance with these emerging rights. The Congress of Local and Regional Authorities has been very active in this field for years. The European Charter of Local Self-Government is based on good governance and on democratic principles, which imply that human rights must be respected. The Congress has directed the overall thrust of its human rights action at creating an equal and sustainable environment in communities, an environment which integrates political, economic, social, ecological and cultural aspects of their citizens' everyday life, an environment in which they can exercise and realise their rights freely and to the full. This "equal environment" would include an equal legal and administrative framework for all members of a community – equal protection of rights, equal access to public services, equal non-discriminatory treatment, equal job opportunities and equal enjoyment of the urban and rural environment. However, these rights falls outside the scope of this report.<sup>94</sup>

34. To sum up, the civil and political rights and freedoms relate mainly to the state as a whole. However, under recent international agreements the individual also has economic and social rights, which stem from the solidarity between citizens. Breach of the civil and political rights can be brought before the European Court of Human Rights, while most economic and social rights must be interpreted by the member state, which is committed to do its utmost to comply with ECHR. The right to adequate housing, for example, might be fully established even if the standard is a "variable

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<sup>91</sup> E.g. the Sami communities, which are the largest group of indigenous people in Europe and encompass the northern parts of Sweden, Norway, Finland and the Kola Peninsula of Russia.

<sup>92</sup> See, for example, the European Charter for Regional or Minority Languages (ETS 148) and the Revised European Social Charter.

<sup>93</sup> These rights have existed for a long time, but their classification as human rights is quite recent.

<sup>94</sup> Mention can be made of the fact that the Revised European Social Charter has an additional protocol of 1995 providing for a system of collective complaints, CETS No. 158.

geometry" between different countries, i.e. the standard setting is allowed to differ. This is also the main difference between civil and political rights and social and economic rights. Therefore, it is also dangerous to claim that the latter rights are equal to the civil and political rights since one might end up with a situation where the civil and political rights might also be deemed to depend on financial issues.<sup>95</sup>

### 3.3 Local and regional authorities' responsibilities in fulfilling human rights

35. Local and regional authorities are no doubt key players in implementing different kinds of human rights. It is the local and regional authorities that bear the primary responsibility for implementing these policies and strategies in their communities, tailoring them to the specific situations on the ground and to the needs of their citizens and taking concrete steps for improving citizens' daily lives. One has to keep in mind that beyond the legal texts, human rights are a reality in every single case where they occur, even if we often speak of them in abstract terms.

36. In political life there is always a conflict between the economic situation and the priorities that have to be laid down between what is the best for the individual and what is best for the citizens as a whole. Politicians, whether at the local, regional or national level, always have to answer for the allocation policy and to set priorities— one person's social or economic rights mean disadvantage to another individual or group. It is also in this field that economic issues can be crucial to the decisions that are made. Can one really balance individual rights and political responsibility for sustainable and holistic governance towards the public good if the economy is bad – does the local authority have a choice when it comes to choose between education, the treatment of elderly people or health care? It is not an unusual scenario that two different principles might collide in this situation – there is a conflict between an individual's right and the political allocation policy.

37. These issues become increasingly important in the type of more individual-oriented society that we see today. While human rights and citizens' rights shall be implemented fully and immediately, social and economic rights shall be implemented as fully as is consistent with the resources of the individual member state. However, there must always be someone who takes full responsibility, and the elected representatives are the ones taking the responsibility for the common good and for setting the necessary priorities. These priorities become more difficult the more individual the rights are and the more personal the consequences that follow from the political decisions. It is easier to set priorities when more common values are at stake. Also in this case it is of great importance that the local authorities are prepared and that local action plans are developed in a transparent way – all decisions made should have sound motivation with an easily understandable argumentation. However, these questions are so important that they require activity of the Council of Europe and the national parliaments – it may even be that these priorities cannot be set at a local level if some kind of common standard is to be preserved all over Europe. Here you find a classical question – how do you deal with large inequalities between different member states and regions within the states and how do you foster empowerment.

38. The first step in preventing human rights issues from being overshadowed by economic arguments might be to actually identify the different human (social or economic) rights. The second step might be to use different kinds of minimum levels of these rights. Here it might be important to find a common European view on the minimum levels of different types of rights. Then the member states and the local and regional authorities – over that minimum level – could set the

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<sup>95</sup> The compliance of the member states' legislation with these rights is monitored by the Committee of Independent Experts of the European Social Charter. Recommendations are sent to the Committee of Ministers which addresses them to the relevant authorities of the member state concerned. See [http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp).

different priorities depending on the financial situation. However, it is probably even more functional in terms of subsidiarity, legitimacy and financial situations if the identification is made and the minimum levels are set at a national level based on the conditions in each country. No matter how the levels are set, if you provide the citizens with a “list of rights”, the municipalities first and foremost must satisfy those rights, and only when these rights are fulfilled may the municipalities make use of the political space for their own decisions and priorities. To make sure that the human rights are fulfilled and fully protected, the third step is to create a proper monitoring process and sufficient ways of making complaints.

39. At the same time, it is very important to remember that the more detailed the requirements and minimum levels set by a national authority that one accepts; the smaller is the space for local or regional political autonomy. It is here that we must find an acceptable solution. One way of establishing those priorities might be co-operation between the municipalities or the regions and the central government. Negotiations are often a good way of achieving a reliable result, since there might be a risk that the minimum level also becomes the actual level. Thus, negotiations can be an important complement to minimum-level standards – even if the negotiations themselves can be time-consuming. This delineation is also the nexus between the human rights and the right to local self-government. Human rights are binding for the states as a whole, and the responsibility to fulfil rights lies both at a national level and at a local or regional level. Therefore neither a state nor a municipality can refuse to fulfil the obligation with reference to state sovereignty or local self-government. In that sense the minimum levels that are set can never be said to be in conflict with local self-government. One also has to accept the fact that there is a variable geometry. But at least to some extent, this can be solved within the state by using solidarity and compensation mechanisms between the regions, between municipalities, between cities and between different suburbs etc.

40. Whether we are talking about the local, regional and national level – or local, state and federal levels – it is a central task for each community to ensure that the rights of the individual do not fall between the different levels. Here it is important to point out that local and regional authorities perform an essential role when it comes to solving problems that arise from conflicts between equally important rights. Such conflict need not have economic impacts, but it is very important that the authorities act proactively with preparedness for the different kind of situations that can occur – if a conflict is more likely to occur at a local level it is also a local responsibility and not a state responsibility to initially solve the problem. One way of dealing with the problem in a proactive way might be to develop local action plans. It is important that the local and regional representatives take the initiative if they wish to avoid the risk of civil rights legislation for underprivileged groups being imposed on local and regional authorities. Therefore, local and regional decision-makers play an important part in carrying on systematic work to honour and defend local self-government.

41. One prominent feature in the development of modern law is the continuous differentiation with development of new legal areas. The rule of law and the fact of regulating things by law have led to an increasing amount of new acts and legal material – national as well as international. Legal rights evolve out of a range of different social settings and historical contexts, and rights are based on a variety of different values – often the international conventions on human rights – underlying the legal system.<sup>96</sup>

42. As an example of a conflict between the national and the local level, one can mention the Swedish legislation on disability from 1993 onwards. The Law on Support and Service (LSS) is based on clear claimable rights for the disabled and comprehensive duties for the municipal authority in

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<sup>96</sup> See Gustafsson, Rättens polyvalens, 2002.

question. The rights regulated in the LSS are assistance in various forms, aid resources, rehabilitation, services and special living facilities. The disabled person himself can arrange the service according to his or her special needs. However, even though the law relies on clear and predictable rights for the disabled and a clear correlation of duties and obligations for the public sector and the municipal authorities, the law soon proved not as successful as was initially hoped. A major problem was that a large number of disabled persons were denied their rights by the local welfare authorities' decisions. The problem was not so much the conditions under which the rights were granted or denied but the fact that they were not implemented properly. There were two main arguments for not giving sufficient weight to social rights. The most common reason given by local authorities for delays was the lack of economic resources. The other argument was the right to local self-government, and it was often claimed that the legislation assigned unconditional rights to the citizens and unconditional duties to the local authorities which encroached on self-government and local democracy – in fact nullified the ability to govern the local service according to its own needs and priorities. However, in Case RÅ 1993 ref. 11 the Swedish Supreme Administrative Court already took the legal stance that lack of economic means was not a valid ground for denying the stipulated rights. Nevertheless a large number of decisions delivered were not implemented due to “delayed execution”. The situation did not improve until the legislator changed the Act so that it was possible to penalise the local authorities with a fine if they did not execute the rights in accordance with the LSS.<sup>97</sup> However, the legislation did not as such solve the problems of how to set economic priorities.

### 3.4 The costs of human rights

43. One important factor for local and regional authorities is the costs of human rights. Due to its obligation to uphold rights in respect of its citizens, a local or regional authority may be required to make certain investments, e.g. for the provision of specific expenditures to meet requirements for limiting the effects of gas emissions, or for improving a drinking water system or to provide decent and sufficient housing or create panels in minority languages. In sum, this means that compliance with human rights can lead to costs for a local or regional authority.

44. Here we must transcend the black-and-white contrast between the civil and political rights, which imply forbearance on the part of the state, and the social and economic rights involving services provided by the public authorities. The public authorities must accordingly not only respect human rights themselves but also ensure their respect by others, particularly in relations among private individuals, and of course they must implement them and provide appropriate resources to make these rights fully effective. Although economic, social and cultural rights are usually built up gradually, this is precisely why the local authorities can make all the difference by developing rights in the housing, health and employment fields, but also in terms of education and recreation.<sup>98</sup>

45. The civil and political human rights that follow from international agreements are to be implemented by all member states and at all levels of society. Some of these rights do not actually cost anything – it does not cost anything to respect the ban on torture. When it comes to social and economic rights, the level or standard of the right is supposed to be determined by each treaty signatory or member state. This standard-setting may take the form of a minimum level. Therefore, every member state should determine 1) the implementation arrangements and 2) the levels of the standard. But for this to be of any real value, it is also important to make sure that the standards are fully financed. The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out. Article 9.1 of the European Charter of Local Self-Government states that “Local authorities shall be entitled, within national economic policy, to

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<sup>97</sup> Gustafsson, Rättens polyvalens, 2002.

<sup>98</sup> Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007).

adequate financial resources of their own, of which they may dispose freely within the framework of their powers.”

46. A lot of money is already spent in the social arena, on services to citizens, education, health, immigrants, etc. but it is always important to consider whether there is a need for better allocation of local and regional authorities' economic resources, i.e. can money be spent in a better way? If human rights are targeted when providing these services, one might perhaps spend the money more efficiently. All human rights require some kind of action by the public authorities; the civil and political rights need to be guaranteed too, but the scope of such action is very different depending on the right involved.

47. If the implementation of human rights should fail, sanctions can be considered. The ECHR has jurisdiction even on the local and regional level, even if the entire member state is the responsible party. This means that the member state can actually consider itself to have a right to recovery from the current local or regional level – cf. the EU and the web-based approaches to the implementation of the Service directive and the regression of structural funds. Therefore, the "incentive structure" for local or regional authorities must be realistic. Thus, everyone will benefit from co-operation between the different levels of society. The question is how this should be done, through negotiation or formal requirements. The important thing is that a common understanding is reached in the local and regional bodies on what needs to be done and how to strive for that goal.

48. Failure to secure human rights involves the risk of a conviction against the responsible state or the public authority concerned. This involves a financial cost but also a political cost for the tier of authority found guilty of violating a fundamental right. Viewed from a different perspective, the implementation of human rights may also include a financial cost in that it implies that the public authority intends to achieve a type of expenditure to enable the implementation of, for example, specific structures necessary to uphold fundamental rights guaranteed by higher standards. Therefore, we can speak of costs for local and regional authorities in the implementation of human rights.

49. As a consequence of infringement by local or regional authorities, and with regard to the responsibility of the state as a whole for the wrongful conduct of local and regional authorities, the central government should not only possess instruments that are aimed at rectifying the infringement within the time limit set, but should also have the possibility of recovering from the local and regional authorities the costs in terms of the financial consequences of such infringement. The question that naturally follows is whether all local or regional authorities are able to meet these costs, or whether the quality of the implementation of human rights depends on the financial capacity of the local or regional authorities. These questions sound provocative, but they are pragmatic and it seems worthwhile to ask them. One must not forget that local or regional authorities may also be forced to pay damages if the requirement of a human right is not fulfilled.

50. It is obvious that it costs much more – especially politically speaking but also in terms of social and economic consequences – for a public authority not to comply with human rights than otherwise. This implies that the decentralisation system must be well developed in the member states and that local and regional authorities receive enough financial resources.

4. The right methods of implementation – including the role of the elected representative

4.1 The challenge

51. When it comes to the question of implementation it is very important to point out that there is no “standard” method to be used. Whether standard setting is done at European or at national or even local level, the implementation must find the locally most effective ways, and there is a variety of methods. One has to consider, for instance, budget review from a human rights perspective, national or local or regional action plans, the need for an independent complaints mechanism independent from the executive of the local authority and from the local elected representatives, and last but not least the process has to involve the citizens. One must always bear in mind that politics is very much a question of listening and responding, a process of “ceaseless communication”.

52. The challenge is which methods should be used for implementation, to include the requirements of awareness-raising, proactive approach, exchanges of experience and human rights mainstreaming. When analysing the implementation, there might be a strong need to focus on standard-setting and the monitoring process. The responsibility of the local or regional authority depends which human right we are talking about, and the social and economic rights are to some extent to be implemented differently in different countries.

#### 4.2 Implementation methods

53. There is a variety of methods that can be used in the implementation of human rights on a local or regional level. One first step may be to mainstream local and regional budget issues and action plans – i.e. standard-setting. One problem is who is going to decide the standard-setting – possibly an international ban on capital punishment, the extent of social care at a national level, support mechanisms at a local level etc.

54. The importance of local action plans was raised again during the follow-up seminar on systematic work for human rights implementation at local and regional level, in October 2008 in Stockholm. It was stressed that one important method for promoting human rights at local level was through local action plans comprising packages of measures, activities and specific projects in a given area. These action plans could form a political action programme for fostering human rights in a given municipality or region. This is, of course, only one way of meeting the challenges faced by territorial authorities, but it is a way of putting human rights activities on a systematic and regular footing on the basis, for instance, of an annual timetable or one lasting for a whole term of office. These action plans can draw inspiration from different sources: action plans concerning minimum levels and priorities that are recommended on a European level, national action plans on minimum levels and priorities, local and regional action plans taking different policy areas into account, but also local and regional action plans related to budget. To be able to do this, there is a need for co-ordination between the Congress of Local and Regional Authorities of Europe, the Committee of Ministers, the Parliamentary Assembly of the Council of Europe (PACE) and other organs within the Council of Europe that are working with human rights and democracy issues, e.g. the Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI). Otherwise it will be very difficult to achieve a common and more coherent view on these important questions.<sup>99</sup>

55. Implementing action plans and measures to promote human rights, which must consist both of protective measures and of measures to secure those rights for citizens, is a key part of participatory democracy at grassroots level. At the same time, it is also a major challenge for local and regional elected representatives because this is a political commitment which must be backed up by the necessary legal skills, financial resources and co-ordination with other stakeholders and

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<sup>99</sup> Here the so called quadrilogue – made up of governments, members of parliament, local and regional authorities, and non-governmental organisations – might serve as an interesting model.

this entails the involvement of all tiers of government and their concerted efforts. Among limitations faced by local authorities in carrying out their work in favour of human rights, one must point out the limitations on their legal competences and the scope of their application. The legal framework for the apportionment of responsibilities between national, regional and local authorities is specific in every country and sets the boundaries for what local elected representatives can do.

56. These legal limitations go hand in hand with the adequacy or inadequacy of financial means and possibilities with which local authorities are endowed and which should correspond, ideally and as required by the European Charter of Local Self-Government, to the powers transferred to the local level. Adequate financial and human resources are essential for the implementation of specific measures, initiatives and projects, which is why political and financial support from national governments is crucial to the success of our human rights action in communities, much as is co-ordination and concentration of the efforts with all the other stakeholders involved in human rights issues – private sector and civil society across the board, and the regional, national and international level on the bottom-to-top ladder.<sup>100</sup> One can conclude that there are several important questions to be resolved when it comes to implementation.

#### 4.3 Awareness-raising

57. One important question concerning the implementation of human rights is the need to increase awareness of human rights issues among citizens, politicians and civil servants. There is a need for so-called good accountancy on the local and regional levels. It is therefore very important to give politicians and civil servants the tools to create a system where they are aware of the legal boundaries and remits in the field of human rights. It is also important that the citizens (immigrants, ethnic groups etc.) are informed about their rights but also about the minimum levels and the priorities that follow from the action plans. One can say that there is a need for a vision including social cohesion!

58. The work in progress can always be improved. Respect for human rights can be fostered through systematic training of elected representatives and staff. The local authorities have an educational and preventive role to play, but they must also set an example by rejecting all forms of discrimination and handle all cases equally. Here different checklists can be used as tools for achieving good accountancy and good administration.

59. Since local problems have an impact on the state as a whole, an important and necessary task of the member state is to secure the existence of and distribute good information about the content of the ECHR supplemented by the case law of the European Court of Human Rights and leading human rights cases from the national courts. This work could also highlight the lack of access to a fair trial that might exist in some countries and might in the long run increase availability and effectiveness and lead to a common standard in Europe.<sup>101</sup> The next step for the member state might be to develop systems for ongoing scrutiny of the implementation of human rights to make sure that practice is in line with the Convention and the case law.<sup>102</sup> This scrutiny is important to ensure that the practice is mainstreamed throughout the country. One could also establish help desks on the local and regional level.

#### 4.4 Good examples of how to step up efforts to promote human rights

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<sup>100</sup> [http://brs.skl.se/brsbibl/kata\\_documents/doc39367\\_1.pdf](http://brs.skl.se/brsbibl/kata_documents/doc39367_1.pdf)

<sup>101</sup> See *Reforming the European Convention on Human Rights; A work in progress*, CoE, 2009, p. 266 ff.

<sup>102</sup> See *Reforming the European Convention on Human Rights; A work in progress*, CoE, 2009, p. 472–476.

60. There are a lot of examples in Europe that can serve as an inspiration for how municipalities and regions can step, up efforts to promote human rights. One such model is the Citizen's Charter that was introduced in Great Britain in 1991. The intention behind the Charter was to strengthen the rights of citizens, to improve public service delivery and to achieve service standardisation.<sup>103</sup> The Charter stipulated a few basic principles for clarifying and enhancing the standard of service with which public sector organisations provide their users, e.g. openness about how public services are run, how much they cost and whether they are meeting the standards which have been set; full and accurate information in plain language which can be understood by the user; the services should be available irrespective of race or sex; and finally a well-publicised and readily available complaints procedure. Service charters are also found in the National Health Service, local authority community care services,<sup>104</sup> the Child Support Agency, primary and secondary education services and in connection with treatment of victims of crime.

61. Various types of Service Agreements, compensation mechanisms and similar instruments are also used in several European countries in order to improve the quality of public services and human rights safeguards.<sup>105</sup> The service charters used differ in terms of legal standing but the purpose is mainly the same, i.e. to specify in advance service targets which must be met. However, the Charter model used in the United Kingdom has also been criticised – partly because of the terminology used in the Charter, partly because standard-setting and conventional measurement of "performance" and "results" are seen as inappropriate characteristics of public services or human rights.<sup>106</sup>

62. One example of a municipal initiative for ongoing work on human rights at the local level is the Swedish municipalities' work on the implementation of the Convention on the Rights of the Child (CRC). Every third year the municipality performs an evaluation based on the CRC. The evaluation group consists of three reviewers from three other municipalities. These reviewers liaise with three municipal reference groups: a group of politicians, a group of municipal managers and a group of field-workers. There are about ten people in each group and the meetings are held on a regular basis and each meeting last approximately an hour and a half. The municipality has also made a survey to obtain the views of children and youth. What emerges from these discussions and questionnaires is compiled in a report which can be used in the municipality.

63. Another example from the same municipality is the Inter-Religious Council. The largest religious associations in the municipality have chosen representatives appointed to the Council. These representatives take part in regularly held meetings and discussions. The Council currently consists of three imams, two Free Church pastors, two priests from the Swedish church, and one Orthodox priest. The council is chaired by the chairman of the city council, but the vice-chairman of the city council, the municipality's Integration Co-ordinator and a secretary from one of the political parties are also included in the group. The Council meets twice a year. It has no discretion, but may raise issues dealt with according to standard practices in the organisation of local government. Responsible officials and policy makers are invited to participate in Council meetings dealing with issues of relevance to them. It can be convened in special sessions when necessary.<sup>107</sup>

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<sup>103</sup> See Culpitt, *Welfare and Citizenship. Beyond the Crisis of the Welfare State*, 1992.

<sup>104</sup> See Morris & Haigh, *The Citizen's Charter and Quality Management: Harmony or Discord*, in: Chandler (ed.), *The Citizen's Charter*, 1996, pp. 67–84, p. 73 f. See also <http://www.cabinet-office.gov.uk/servicefirst/1998/sfirst/bk1forw.htm>.

<sup>105</sup> See e.g. Naundrup Olesen, *ABSservice 2003 – Almindelige Betingelser for levering af Serviceydelse*, UfR 2002, pp. 276–283, and Kuuttiniemi & Virtanen, *Citizens Charters and Compensation Mechanisms*, Ministry of Finance, Research reports 11/1998.

<sup>106</sup> See e.g. Byone, *Beyond the Citizen's Charter; New Directions for Social Rights*, 1996. Mention should also be made of the development in the United Kingdom of a number of handbooks relating to the UK Human Rights Act that are very clear and down-to-earth and therefore can serve as a helpful tool.

<sup>107</sup> See also Pierre Corneloup & Giofranco Martini, *Intercultural and inter-religious dialogue – an opportunity for local authorities*, Recommendation 245 (2008). Another example that can be mentioned is the work with action plans according to the European Charter for equality of women and men in local life elaborated by the Council of European Municipalities and Regions (CEMR).

64. The examples show two different types of fairly informal, but still important, procedures for working on human rights issues at the local or regional level. Another more ambitious example is the network of Town and Cities for Human Rights in the region of Catalonia where work is in progress to create local human rights agendas. The signatory cities have undertaken to set up a commission which every two years is called upon to evaluate the implementation of the rights laid down in the ECHR and publish their findings. The first report aimed at identifying the actions that had been implemented and which cities were doing well and those cities where work had to be improved, in other words, an inventory. The next step was to use the findings of the evaluation to draft a proposal on participative strategic planning so that each city council could establish the strategy and actions for safeguarding human rights and define their Agenda for Human Rights.

65. The project shows that strategic planning improves the impact on actions because: a) it establishes the direction to be taken in a clear and precise manner, b) it is realistic, based on the known constraints and the available resources, and c) it helps prevent urgent matters from taking precedence over important matters. The project also shows that the planning requires a series of stages: a) diagnosis, where are we? b) strategic objectives: where do we want to be?; c) planning of actions: How will we do it? Who will do it? Which resources are to be used? What are the specific aims? Time frames? Which indicators will be used to measure the effect? The documentation on the project can probably be a very useful tool for other local and regional authorities in the work of creating local action plans/local agendas for human rights and how to perform an ongoing self-evaluation.<sup>108</sup>

#### 4.5 Monitoring and mediation

66. For verifying that human rights are implemented and respected, a system for handling citizens' complaints is necessary – the remedies need not be judicial, but they must be effective and consideration should be given to the system's powers and the guarantees it affords.<sup>109</sup> The task for each member state is to create a system at the local level where individuals feel well represented and where they can make complaints in a relatively easy and cost-free way. It is also important that civil society be involved in this process. It is not enough to use the electoral system as a corrective remedy – the remedy cannot only be in the "ballot box".<sup>110</sup>

67. As stated above, there are a lot of benefits if the local and regional authorities can manage conflicts and if they have their own control systems and legal bodies to ensure that human rights are honoured. Monitoring can be performed by the local authorities themselves or by independent bodies. In the latter case there are several examples that could serve as a model, local or regional ombudspersons,<sup>111</sup> consumer complaints boards, patient injury boards<sup>112</sup> and anti-discrimination agencies,<sup>113</sup> etc. Such local ombudspersons can also have different functions depending of the issue at stake. First the ombudsperson can have the role of a mediator who seeks friendly settlements, based on fair principles, between an individual complainant and a public authority. Secondly the

<sup>108</sup> See Diputació de Barcelona, Pilot test for the creation of a Local Agenda for Human rights 2009, Equality and Citizenship department, Office for Citizen Participation. [www.diba.cat/participatio/dretshumans](http://www.diba.cat/participatio/dretshumans).

<sup>109</sup> Jacobs & White, *The European Convention on Human Rights*, 4<sup>th</sup> Ed., 2006, p. 463–471.

<sup>110</sup> "The remedy is in the ballot box" means that if a citizen is not happy with the decisions of the elected officials in local government, then he or she can always vote against them at the next election. The argument contends that this is not a matter for the courts but for the political process. A classic situation could be a political decision that was dictated by having to decide about distribution of scarce resources.

<sup>111</sup> Whitmore, *The links between local and regional democracy and human rights*, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007)

<sup>112</sup> See <http://www.pff.se/Information-in-English/>.

<sup>113</sup> The objective of the Anti-Discrimination Agency's activities is to strengthen anti-discrimination work at the municipal and regional level, to raise visibility, influence and change the discriminatory structures and thereby prevent and combat the various forms of discrimination and to help streamline the application of discrimination legislation.

ombudsperson can have a more legal role as a Human Rights Watchdog, an Ethics in Public Office Commission, or as a Freedom of Information Commissioner.<sup>114</sup> Thus, the ombudspersons, boards or panels may vary but must be seen as important players protecting human rights and handling citizens' complaints at first instance. Independent agencies of this kind not only support and ease the burden of court appeals at the national level, but also ultimately relieve the burden of the European Court of Human Rights!

68. Even if the complaints mechanisms can vary, it is of great importance that the mechanisms of litigation are free of charge for citizens. There is probably also a need for advocates representing civil society. One can for instance envisage a solution with institutions funded by voluntary organisations or where these organisations are responsible at least for organising the submission of complaints. An independent local ombudsperson or a complaints board – i.e. a body without political influence – would probably be the most attractive from the citizen's point of view. However, even if these monitoring services or complaints mechanisms are provided by independent boards or ombudspersons, one must never forget that at the end of the day it is the politicians at local or regional level – or if such a solution is more attractive in some countries, the state – have the responsibility to make sure that these functions exist! That responsibility cannot be delegated to others.

#### 4.6 The judicial process

69. A central principle of administrative law and decision-making at the local and regional level has for a long time been that a court's jurisdiction to review the acts and decisions of public authorities depends on whether the public bodies have exceeded the powers democratically delegated to them by predominantly state legislation and whether the action may afford remedies if such powers have been exceeded.<sup>115</sup> This supervisory activity by the courts represents a positivist image of the role of the courts and forms part of a majority view of democracy. This rationalisation of the function of judicial review has been generally accepted, and recognised as providing a democratic justification for review. Most judicial review cases are about challenges to the decisions of elected bodies or local authorities taken under statutory powers. The courts would have been seen to be usurping the roles of politicians in an anti-democratic way if they had taken it upon themselves to impose restrictions on decision making by those elected bodies, as opposed to giving effect to the express or implied intentions of Parliament. However, the trend seems to be that judicial review has moved on to a concern for the protection of individuals, and for the control of power, rather than powers. It is logical that the ECHR exhorts the courts to interpret legislation, whenever passed, so as to ensure compatibility with the rights and that the courts must give those rights primacy, regardless of the national parliament's legislative intent.<sup>116</sup>

70. The right to judicial process is fundamental under the ECHR and EU Law. According to Article 6 (1) of the ECHR everyone is, in the determination of his or her civil rights and obligations, entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The concept of "civil rights and obligations" has never been clear, and it seems to have evolved considerably over time. It is suggested that any claim not manifestly ill-founded under national law should be presumed to concern a civil right or obligation, unless there are clear indications to the contrary in the case law of the European Court of Human Rights.<sup>117</sup>

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<sup>114</sup> See the Congress guidelines on the local and regional ombudsman and the results of the conference in Messina (Italy 13–15 November 1997) on "Making the protection of rights more accessible to citizens: the ombudsman at local and regional level" and Recommendation 61 (1999) on the role of local and regional mediators/ombudsmen in defending citizens' rights.

<sup>115</sup> See also the fight against corruption, Resolution 79 (1999) on political integrity of local and regional elected representatives and the Code of Conduct for [Charter on rights and obligations of] elected representatives.

<sup>116</sup> Oliver, *Common Values and the Public-Private Divide*, 1999, p. 38 f.

<sup>117</sup> See Södergren, *Vem dömer i gråzonen?*, 2009, s. 541. An interesting question that awaits a comprehensive reply from the European

71. The right of access to judicial process is also one of the general principles of EU law that has evolved in the case law of the Court of Justice of the European Union. It is argued that the individual is entitled to have any claim that raises a question concerning EU law submitted to a court for adjudication, regardless of whether the claim can be regarded as “civil” within the meaning of Article 6.1 ECHR. The requirement that national courts should “protect” the Union’s rights presupposes that all cases concerning these rights can be heard by a court. The uniform application and useful effect of EU law requires that all questions of the interpretation of EU law can be referred to the Court of Justice of the European Union by national courts under the Article 267 procedure. In situations where EU law requires access to judicial process, the national legal system is supposed to determine which court has jurisdiction and to resolve any questions of classification of rights or claims that may be necessary for this determination.<sup>118</sup>

72. Another important issue to bear in mind is that the relationship between human rights and local self-government cannot be seen as an isolated phenomenon. For European Union member states, there is also co-existence with the fundamental rights of the EU.<sup>119</sup> The entry into force of the Lisbon Treaty will give a somewhat new focus to the implementation of human rights in Europe. The EU protocol of fundamental rights has become judicial. There will be two parallel options for court proceedings – individuals taking their case to the European Court in Strasbourg and states taking their case to the EU Court in Luxembourg. The courts will make decisions taking the same human rights into consideration. However, the standard setting of the fundamental documents is alike but not identical and this opens up the possibility of different interpretation and disparate judgments. Developments in coming years will show if and how standard-setting and judicial process monitoring human rights will be affected. In order to consolidate human rights in Europe, EU ratification of the European Convention on Human Rights would be an advantage, and ratification of the Lisbon Treaty makes it possible.<sup>120</sup> Likewise, given that 27 member countries belong to two human rights systems but 20 of the 47 member states do not, some consideration might need to be given to a potential risk of division of cases between the systems and what will then be the impact on the European Court and the Council of Europe. However, even if these questions fall outside the scope of this report it is important that the Congress work for EU ratification of the ECHR.<sup>121</sup>

#### 4.7 Local and regional responsibilities

73. Article 4.3 of the European Charter of Local Self-Government provides “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” Since most of the questions concerning human rights are to be dealt with at the local or regional level, it is also natural that the different systems to protect and monitor those rights should be at the same level, i.e. close to the citizens. Even if many human rights issues require access to a court, they can often benefit from other forums for a first appeal, e.g. local ombudspersons<sup>122</sup> or other authorities or agencies with

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Court is whether national rules that absolutely bar certain categories of claims from the courts are in conformity with Article 6 (1) – i.e. whether such rules should be regarded as “substantial” or “procedural”.

<sup>118</sup> See Södergren, *Vem dömer i gråzonen?*, 2009, s. 542.

<sup>119</sup> Harris, O’Boyle & Warbrick, *Law of the European Convention on Human Rights*, 2009, p. 29.

<sup>120</sup> The 2005 Juncker Report on co-operation between the EU and the Council of Europe suggested such ratification

<sup>121</sup> See also the address given by Secretary General Thorbjørn Jagland at the conference “Fundamental rights in the EU in view of the accession of the Union to the European Convention on Human Rights and Fundamental Freedoms”, Madrid, 2 February 2010.

<sup>122</sup> See for example Russia, Serbia and Spain. It might be worth mentioning that the United Nations Committee for Economic, Social and Cultural rights stated in 2001, with regard to Sweden, that “While recognising that a number of Ombudspersons exist in the State party, the Committee recommends that the State party consider, in the framework of the National Plan of Action for Human Rights, the creation of a national human rights institution to deal with the protection and promotion of all human rights, including

similar functions – in the same way as different boards and agencies handle consumer issues.<sup>123</sup> As an example, the region of Catalonia has model legislation for cities wishing to employ a local ombudsperson, and there are 40 such local ombudspersons in the region of Catalonia alone.<sup>124</sup> It is also worth pointing out that – in the same way that public services can be provided by private players – some of these forums can be provided by NGOs and private players. The important thing is that the citizen's human rights are protected.

74. The powers and responsibilities of local and regional authorities are increasingly varied and complex and it is obvious that individual or statutory decisions can sometimes infringe citizens' rights. This necessitates effective remedies, and the stipulation of judicial remedies is a general principle of law shared by all legal systems. Any prejudicial decision taken by a public authority at local or national level can therefore be appealed against before an independent and impartial tribunal. If the right to an effective remedy is to be completely meaningful, access must be guaranteed to all the relevant administrative documents, and adequate reasons must be provided for the administrative decisions at issue. Local and regional authorities have the same role to play as any other public authority in investigating and taking action in the event of a complaint.<sup>125</sup>

75. It is important to have an independent and functional complaints mechanism at the local and regional level. Even if these mechanisms must be independent from the executive of the local authority and from the local elected representatives, it is probably best from the citizens' standpoint that these mechanism form part of local self-government – the questions must be handled quickly and it must be easy to make complaints. However, one must keep in mind that there is a need for different kinds of control mechanisms depending which kinds of human rights we are talking about. It is important that different control systems are developed for different issues and that access to the court system to claim one's rights is always secured. It is also important that these independent ombudspersons or complaints boards etc. are given the power to actually make the local and regional authorities follow up their decisions or at least to have a system for pressing charges against the local and regional authorities themselves in court.<sup>126</sup>

76. In the case *R.K. and A.K. v. the United Kingdom*, No. 38000/05, 30 September 2008, the applicants complained that their daughter had been placed temporarily in care due to a medical misdiagnosis and there was no effective remedy for their complaint. The court stated that "The authorities, medical and social, have duties to protect children and cannot be held liable every time genuine and reasonably-held concerns about the safety of children vis-à-vis members of their families are proved, retrospectively, to have been misguided... The Court is satisfied that there were relevant and sufficient reasons for the authorities to take protective measures, such measures being proportionate in the circumstances to the aim of protecting M. and which gave due account and procedural protection to the applicants' interests, and without any lack of the appropriate expedition... The Court considers that the applicants should have had available to them a means of claiming that the local authority's handling of the procedures was responsible for any damage

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economic, social and cultural rights."

<sup>123</sup> E.g. the Swedish system with a Consumer Ombudsman and the National Board for Consumer Complaints (ARN), which is a public authority that functions roughly like a court. Its main task is impartial adjudication of disputes between consumers and business operators.

<sup>124</sup> See *Diputació Barcelona, xarxa de municipals, Els drets humans; Adaptió de les normatives municipals a la Carta Europea*, Setembre de 2008, and *Diputació Barcelona, xarxa de municipals, Síndics defensors; Apunts per a la seva implementació*, Desembre de 2008.

<sup>125</sup> Whitmore, *The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy* (Sigtuna, Sweden, 13–15 June 2007).

<sup>126</sup> See *The Congress guidelines on the local and regional ombudsman and the results of the conference in Messina* (Italy 13–15 November 1997) on "Making the protection of rights more accessible to citizens: the ombudsman at local and regional level" and *Recommendation 61* (1999) on the role of local and regional mediators/ombudsmen in defending citizens' rights.

which they suffered and obtaining compensation for that damage."<sup>127</sup> Therefore there was a violation of Article 13, but not of Article 8.

77. In case NJA 2005 s. 462 the Swedish Supreme Court found that there was a general obligation for a member state to pay damages to an individual if there had been a breach of rights under the ECHR. In case NJA 2009 s. 463, there was a suspicion that a woman's husband had committed crimes against her. The woman and her three children were therefore moved by the local authority and to a temporary location in the municipality. The woman and the children stayed at the temporary home for a little over a month. The situation can be said to be a typical situation where the same case discloses several human right issues concerning a person. The person has a right to be protected, but what method of protection should be used? Afterwards, the provincial government directed sharp criticism at the municipality since the decision to move the family was considered contrary to the ECHR protection against unlawful detention. The family sued the municipality with a claim for damages due to illegal restraint and misconduct. The Supreme Court found that Article 13 of the Charter required that every person whose rights and freedoms as defined by the Convention were violated should have access to an effective remedy before a national authority notwithstanding that the violation had been committed by someone acting in the exercise of public authority. In accordance with the subsidiarity principle, it followed that national authorities and courts had the prime responsibility for implementation of the ECHR rights.<sup>128</sup> The Swedish Supreme Court found that the municipality had acted wrongly and stated that a municipality even without specific national legal basis could be required to pay damages for breach of the ECHR if the member state was to meet its obligations under the Convention. This means that individuals can henceforth bring claims for damages under the ECHR against local or regional authorities, with or without national legislation giving the citizen that right.

78. This case is important and represents a step forward in terms of protection of human rights, but it also has broader implications – if the local and regional authorities are responsible for paying damages by virtue of some kind of "polluter pays principle", it is logical that they are given and also accept responsibility for organising protection of human rights in a functional way. It is better to spend money on organising an efficient system than to pay the same amount in damages due to the lack of a functioning system. There is a need for a functioning incentive structure – the fact that a municipality or a region can be held accountable for badly implemented human rights can probably strengthen the incentive to do right.

#### 4. Conclusions

79. The state as a whole is not the only guarantor of human rights. Local and regional authorities also deal with human right issues on an everyday basis and politicians and civil servants at the local or regional level are closer to citizens' everyday needs. Furthermore, local and regional responsibility already has a welfare aspect which in many cases and to a large extent is strongly connected to human rights. In accordance with the principle of subsidiarity, local and regional authorities may be considered to be the primary players in fulfilling the goals of the fundamental international conventions. It is accordingly always a local and regional responsibility to make sure that human rights are respected and that the responsibilities that follow from law and international obligations are fulfilled. As the Commissioner for Human Rights said: "Think globally, act locally".<sup>129</sup>

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<sup>127</sup> See Monserrat Enrich Mas, Selected judgements of the European Court of Human Rights concerning local or regional authorities, updated on 15 September 2009.

<sup>128</sup> van Dijk et al, Theory and Practice of the European Convention on Human Rights, 4<sup>th</sup> Ed., 2006, p. 126, and Pellonpää, Europeiska människorättskonventionen, 2007, p. 139.

<sup>129</sup> See the [Commissioner's Recommendation on systematic work for implementing human rights at the national level](http://www.coe.int/t/commissioner/Viewpoints/090302_en.asp), [http://www.coe.int/t/commissioner/Viewpoints/090302\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/090302_en.asp).

80. The importance of systematic work for human rights cannot be underestimated. In the conclusions of the International Conference on Systematic Work for Human Rights Implementation, twelve recommendations were issued to the member states.<sup>130</sup> These recommendations are very important and underline the urgent need for a baseline study giving a broad and accurate picture of the current human rights situation and the development of national human rights action plans or strategies to address the human rights challenges. Such plans should contain concrete activities and indicate the authorities responsible for their implementation. Another important issue is to involve all stakeholders during the entire process, including national human rights institutions,<sup>131</sup> civil society and representatives from disadvantaged groups of people. Such an inclusive and participatory approach will contribute to the legitimacy of the plan, create shared ownership and make implementation effective. Last but not least, human rights planning needs to be integrated into the ordinary work of the public administration to ensure effective co-ordination and co-operation between the authorities at all levels, by setting up networks or other forums for the exchange of experiences and information, discussions and planning. To achieve this, human rights work needs to be co-ordinated with the budgetary process to secure proper funding. The legal authority to perform certain functions is meaningless if local or regional authorities are deprived of the financial resources to carry them out (cf. Article 9 of the European Charter of Local Self-Government).

81. It is important that local action plans are developed in a transparent and co-operative way – all decisions made should have sound motivation with an easily understandable argumentation. However, these questions are so important that they require activity from the Council of Europe and from national parliaments – it may even be that these priorities cannot be set at the local or regional level if some kind of common standard is to be preserved all over Europe. Here you find a classical question – how to deal with great inequalities between different member states and regions within the states, and how to foster empowerment. It is also important to remember that it does not matter if the local and regional authorities have a presentable action plan if the proper funding for carrying out the plan is not provided – there is always a need for checks and balances.

82. There is no standard solution for implementing human rights at local and regional levels, but a first step is to create a toolkit of the methods available and to adapt to local circumstances. It is also important to foster a human rights culture with education and training. The public officials and other professionals who deal with the human rights of others need proper information and education to ensure that they have a thorough and up-to-date knowledge of the international standards relevant to their field of competence. Thus, there is a need for awareness raising and education among the local and regional authorities themselves and among the citizens.

83. The politicians at local and regional level have a responsibility to keep up ongoing dialogue with citizens and with civil society. There have to be well-developed channels for this communication and collaboration. Requirements will probably also increase in Europe, and so will the need to determine economic priorities, for example the proportion of elderly people is growing at the same time as financial assets are shrinking.

84. Politics is a process of “ceaseless communication” where never-ending interaction between elected representatives and voters is needed. Both the democratic system and the elected politicians will benefit vis-à-vis the voters if one starts thinking in terms of human rights and if human rights are included in the political discourse. The role of elected representatives is not only

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<sup>130</sup> Rights work! Make them real! Conclusions from the International Conference on Systematic Work for Human Rights Implementation held in Stockholm on 6–7 November 2008. <https://wcd.coe.int/ViewDoc.jsp?id=1408617&Site=CM> and <http://www.sweden.gov.se/sb/d/11087>.

<sup>131</sup> <http://www.nhri.net/>.

to present political visions; ability to work in a proactive way and deal with the consequences also counts. The Swedish Supreme Court case clearly shows increased responsibility for local and regional authorities in terms of taking responsibility for human rights in all the different sectors where human rights might occur. Everyone has something to gain if the elected representatives and the public officials become aware of this fact. There will be a win-win situation: "If we do this, we can win that, etc...."

85. Therefore, one must focus on promoting rights as a challenge with potential. Inbuilt promotion is generally better and sounds more positive than concentrating on how to deal with consequences. This work might need some kind of mainstreaming and there might be a need for some kind of human rights help desks at local or regional level. The establishment of a network – like the Network of Towns and Cities for Human Rights in Catalonia – could also be of great help in the work taking place in the different municipalities and regions.

86. Local and regional authorities need to be proactive, and there is a need for increased and improved collaboration between the different levels of society. This might be time-consuming, but will pay off in the end. There are at least two ways to arrange this co-operation: either establish formal rules of proper consultation or choose to work with negotiating rounds – not only between the state and local or regional levels, but also with negotiations between the regions. It is also important that the municipalities start labelling what is already being done in the field of human rights. "An actual problem in the municipality costs this, while providing a human rights solution will cost that, but by doing so we will save this and also gain that." It would be easier to argue for a national compensation system if the municipalities or the regions could show the actual costs and figures.

87. Some basic requisites are needed for success. One such important element is to make the politicians and the civil servants more aware of the fact that many of the tasks they already perform relate to human rights, and those human rights issues are not just another burden placed on local or regional authorities. The conventions and the case law of the European Court of Human rights must be translated and distributed as manuals and handbooks, etc. Professional training and strategic education of politicians and civil servants would increase the credibility of the political system and its representatives. It is not only important to educate the politicians and staff in local and regional authorities, it is also very important to have ongoing education and an induction programme on human rights policy for newly elected representatives and other staff members who are starting work with a local or regional authority.

88. A human rights perspective mainstreamed into everyday politics might lead to better quality of social services, increased social cohesion and inclusion and less racial and xenophobic tension. Governance should include a form of management where human rights are mainstreamed into all aspects, from the education of administrators and decision-makers and the type of organisational structure to the constructive management of dialogue techniques, efficient co-operation with different partners, benchmarking and evaluation.<sup>132</sup>

89. The possibility of building citizens' confidence requires positive action by local or regional elected officials. We need to increase the importance of human rights issues in the daily political debate. To a large extent it is a matter of how to sell an argument! The challenge is to have the courage to give honest answers to different problems, e.g. providing care for undocumented refugees or a decent life for Roma, etc. can have a positive effect on other areas of society. Rights-based governance might strengthen the trust people have in their elected representatives and thus strengthen democracy.

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<sup>132</sup> [http://brs.skl.se/brsbibl/kata\\_documents/doc39367\\_1.pdf](http://brs.skl.se/brsbibl/kata_documents/doc39367_1.pdf)

90. An independent complaints mechanism must be set up. The complaints mechanisms may look different in different communities, and there are several examples that could serve as a model – local and regional ombudspersons<sup>133</sup>, national or thematic ombudspersons, consumer complaints boards, patient injury boards<sup>134</sup> and anti-discrimination agencies<sup>135</sup> etc. However, it is of great importance that this is free of charge for the citizens, and there is probably also a need for advocates representing civil society. One can for example envisage a solution with institutions funded by voluntary organisations or with these organisations responsible at least for organising complaints procedure. Local information desks or local or regional ombudspersons might be established to provide citizens with help when making complaints. The complaints mechanism or bodies can vary and have different functions depending on which kind of human rights are dealt with. Firstly, the ombudsperson can have the role of a mediator who seeks friendly settlements, based on fair principles, between an individual complainant and a public body. Secondly, the ombudsperson can play a more important legal role as a Human Rights Watchdog, an Ethics in Public Office Commission, or a Freedom of Information Commissioner. The ombudspersons, boards or panels may vary but must be seen as important players protecting human rights and handling citizens' complaints at first instance.

91. It is most important that there should be a transparent and independent complaints body at local or regional level. To avoid errors and omissions, local and regional authorities need to consider mainstreamed human rights dimensions in the transparent planning and budgeting of their activities. This could possibly be done by way of increased co-operation with the Fundamental Rights Agency of the EU based in Vienna. A major task of the Agency is to collect and analyse official and non-official information and data on fundamental rights issues in the EU. Given the differences in data availability and quality across the EU, the Agency is also asked to develop methods and standards to improve data quality and comparability.<sup>136</sup>

92. Since local and regional problems have an impact on the state as a whole, an important and necessary task of the member states is to secure the existence of, and to distribute valid information about, the content of the ECHR supplemented by the case law of the European Court of Human Rights and leading human rights cases from the national courts. Such work would increase availability and effectiveness and lead to a common standard in Europe. Another task for the member states is to develop systems for ongoing scrutiny of the implementation of human rights to make sure that practice is in line with the Convention and the case law. Finally, the member state also has a responsibility to ensure that adequate education and professional training concerning human rights is offered to civil servants, police and judges etc.<sup>137</sup>

93. Systematic work for implementing and monitoring human rights at the local and regional levels in the member states not only helps implement human rights, but will also reduce the burden for the national level and enable the European Court of Human Rights to function more effectively. Injustice and mistakes should be dealt with according to the principle of subsidiarity, i.e. at the level where they occur. Therefore, municipalities and regions must be considered an under-used resource

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<sup>133</sup> Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007).

<sup>134</sup> See <http://www.pff.se/Information-in-English/>.

<sup>135</sup> The objective of the Anti-Discrimination Agency's activities is to strengthen anti-discrimination work at the municipal and regional level, to raise visibility, influence and change the discriminatory structures and thereby prevent and combat the various forms of discrimination and to help streamline the application of discrimination legislation.

<sup>136</sup> See [http://fra.europa.eu/fraWebsite/home/home\\_en.htm](http://fra.europa.eu/fraWebsite/home/home_en.htm). The Fundamental Rights Platform (FRP) is a network for co-operation and information exchange, set to act as the main channel for FRA's co-operation with civil society and to ensure a close co-operation between the Agency and relevant stakeholders.

<sup>137</sup> Recommendation Rec (2004) 4 of the Committee of Ministers to member states, Reforming the European Convention on Human Rights; A work in progress, CoE, 2009, p. 671–675.

in the struggle to keep the European Court as a last resort. It can also be mentioned that Protocol 14 has long been debated as an efficiency-enhancing reform of the ECHR, but it must be stressed that empowering the municipalities and regions more in the work of promoting human rights might be just as important a reform. Another important development is to make a systematic evaluation (scrutiny) of what national legal systems do to implement human rights. In some cities, the government has established a special monitoring unit to verify that laws and rules are in conformity with the ECHR and its standards. In some countries, there is a separate entity for dealing with the issues in Parliament. Even at the regional level there are similar units, as in Catalonia and the Basque Country. Thus, systematic scrutiny of the local and regional level would be of great importance.

94. In principle, the focus of the Congress is human rights and questions concerning democracy or local government. Thus, the Congress has an important benchmarking, awareness-raising and enabling role regarding the role of local and regional authorities in the implementation of human rights. The Congress has an important role as a mediator of successful experiences which can be strengthened and systematised (benchmarking). The Congress should collect and communicate good practices and criticise not so good examples, showing that one should have the political courage to talk even about unpleasant things. The Congress might also create networks where information could be exchanged. Another important role could be played by the Association of Local Democracy Agencies (ALDA), an international NGO that co-ordinates a network of Local Democracy Agencies (LDAs). The LDAs are local NGOs acting to foster human rights and local democracy.

95. The issue of the costs of social and economic human rights consists of two parts: that decided at the national level, which also is secured by proper financing, and the remainder which the municipality or the region can decide in its own remit, which is financed by "local" means. In the latter case, priority problems can occur where substantive rights can be set against each other if there is not enough funding for both. In the first case, the municipality is more of an "agent" to the state as a whole – the basic level should be implemented as well as civil and political rights. However, it is important that the local or regional authorities have enough funding for the proper management of human rights related issues. If the economic situation is unfavourable, there is always a risk that, because of economic priorities, human rights will not be fully fulfilled. The question is crucial, no matter how the relationship between the central and the local/regional level is organised and how local or regional activities are financed, whether the money comes from the state or the economy of the local or regional authorities is financed by taxes. The best way of dealing with the problem is probably through negotiations between central government and local or regional government to reach a solution satisfactory to the parties involved. However, the Congress has to try to ensure "checks and balances", i.e. to make sure that the responsibilities given to the municipalities or the regions are also followed up by the proper funding.

96. The focus of the Congress is human rights and questions concerning democracy and local and regional government. The Congress has an important awareness-raising and enabling role, as well as a role of mediator of successful experiences to be consolidated and systematised. The Congress could therefore be responsible for monitoring activities concerning human rights, i.e. introducing human rights as an indicator in the ongoing monitoring process. The Congress can also prepare special reports in which the human rights situation in member states is highlighted, annually, biannually or in some cases every fifth year.

97. The importance of ongoing monitoring must be underlined. The Congress could therefore also consider audit reports on specific themes, each year with a different focus. The importance of

calling on independent authors cannot be understated, and the Congress could perhaps set up a group of independent experts together with the NGOs working on human rights.

98. The Institutional Committee should have the primary responsibility, while each specialised committee should evaluate its own area. But the most important thing is adding human right issues as a new dimension to the ongoing monitoring of local and regional democracy in member states and an ongoing ambition to strengthen the financing principle of human rights implementation

Local governments constitute territorial entities with a political leadership accountable to citizens and responsible for public services such as education, health and housing, and it is a reality that they are increasingly acknowledged as key players in guaranteeing human rights. Real-life examples demonstrate this in a factual way, for example when mayors have to take decisions on whether to ban or allow demonstrations they must weigh the fundamental right to freedom of assembly/expression against the preservation of public security. Or when a municipality receives a Roma group, mayors must base their decisions on non-discrimination principles, the right to housing, health, etc.

This compendium of texts includes recommendations and resolutions on this specific issue. They all aim at raising the awareness of local and regional authorities in order to respect, protect, fulfill and promote human rights at local and regional level. The three reports concern respectively:

- "The role of local and regional authorities in the implementation of human rights"
- "Developing indicators to raise awareness of human rights at local and regional level"
- "Best practices of implementation of human rights at local and regional level in member states of the Council of Europe and other countries."

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. The Congress of Local and Regional Authorities is an institution of the Council of Europe, responsible for strengthening local and regional democracy in its 47 member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees, it brings together 648 elected officials representing more than 200 000 local and regional authorities.

