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UN-HABITAT

INTERNATIONAL LEGAL INSTRUMENTS ADDRESSING GOOD GOVERNANCE

Summary

This report analyzes the main international legal instruments agreed under the auspices of the UN addressing good governance or aspects of it. The objective of this initiative was to study how widely the principles of good urban governance, as defined under the Global Campaign on Urban Governance, are agreed in international legally binding conventions. One test of good governance depends largely on the degree to which it delivers on the promise of human rights (civil, cultural, economic, political and social rights). Therefore, the focus of this report is on international human rights law, with a specific focus on the good urban governance principles of equity, civic engagement, transparency and accountability. An important conclusion is that international human rights law protects a wider scope of rights to good governance than has been addressed under the Global Campaign on Urban Governance. This suggests an implicit international consensus on key principles of good governance, even if the term “good governance” is not explicitly used.

*Prepared within the framework of the
Global Campaign on Urban Governance
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This document was compiled by Ms. Johanna Jokinen, the focal point for legal affairs under the Global Campaign on Urban Governance, Urban Governance Section, Urban Development Branch. UN-HABITAT staff member comments have been incorporated into the report following an internal consultation. The report has also benefited from the comments made by the Office of the High Commissioner for Human Rights.

The material used in the report are the authentic legal texts from the United Nations Treaty Collection Database, general comments drafted by the different treaty committees, international law books and the UN-HABITAT Concept Paper for the Global Campaign on Urban Governance.

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PREAMBLE

This analysis of international legal instruments addressing good urban governance aims to support the normative debate on the principles of good urban governance advocated by the UN-HABITAT Global Campaign on Urban Governance. The Campaign seeks to contribute to the eradication of urban poverty through improved urban governance. It aims to increase the capacity of local governments and other stakeholders to practice good urban governance and to raise awareness of and advocate for good urban governance around the world. The promotion of normative debate regarding the principles of good urban governance is one of the Campaign's core strategies for achieving its objectives. More information on the Global Campaign on Urban Governance is available at www.unhabitat.org/governance.¹

The purpose of this report is to study how widely the *principles of good urban governance* as defined by the Global Campaign on Urban Governance are agreed in international legally binding conventions. The principles of good urban governance used in this study are equity, civic engagement, transparency and accountability. The decision to concentrate on these principles was based on the fact that these principles incorporate aspects of human rights law, while other principles, like sustainability, subsidiarity, efficiency and security as defined under the Campaign, do not have any existence in human rights law as such.

This report concentrates on treaty law, as the access to good governance is understood as *a legally binding human right*. This is not to say that "soft law" does not have a role in addressing good governance issues; only that it is not analyzed in the study. However, it needs to be mentioned that in recent years several UN resolutions have been adopted that focus on the role of good governance in the promotion of human rights.²

The report also seeks to demonstrate that Member States of the UN have already agreed, in a legally binding way, to certain of the principles of good governance, even if the concept of governance in itself does not appear in the legally binding texts. It has to be noted that international conventions are not directly targeted to cities but to states. However, these instruments contain aspects of governance that are applicable within countries, including cities, and therefore apply to good governance at the local level.

This document has been designed as a resource to support National Governments, local authorities, development professionals and researchers with an interest in promoting good urban governance. The report also intends to support the advocacy work of the Campaign through its Global Steering Group Members and other partners.

¹ The Global Campaign on Urban Governance. Concept Paper, 2nd Edition, March 2002, 12.

² See e.g. Commission on Human Rights resolution 2001/72.

INTRODUCTION TO INTERNATIONAL LEGAL INSTRUMENTS

*"11. We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone, and to freeing the entire human race from want. 12. We resolve, therefore, to create an environment — at the national and global levels alike — which is conducive to development and to the elimination of poverty. 13. Success in **meeting these objectives depends, inter alia, on good governance within each country....**"³*

The United Nations Millennium Declaration clearly states that good governance is a key tool for the elimination of poverty. The Millennium Declaration is not legally binding but it is a document of intent in which the Member States of the UN commit themselves to promote good governance **within** their countries. This applies to all levels of governance, including urban governance.

Good urban governance is not a topic in itself in any legally binding international legal instrument but there is a wealth of United Nations **human rights instruments** of direct relevance and applicability to questions of good governance. International human rights norms and standards are derived from three principal types of sources: Treaty law, customary international law and other types of instruments, such as declarations, recommendations, bodies of principles, codes of conduct, guidelines and standard rules such as the Declaration on the Right to Development.

Treaty law includes the law of human rights as set out in many international agreements (treaties, covenants, conventions and protocols) collectively (either bilaterally or multilaterally) developed, signed and ratified by states. These instruments are legally binding for the states which are party to them and due to that, the rights stated in these instruments are judicially enforceable.⁴ Many prerequisites of good governance, such as freedom from discrimination, freedom of association, opinion, expression and assembly, right to vote and take part in public affairs and security of person are stated in the following international conventions:

- The Covenant on Civil and Political Rights (ICCPR) (1966)
- The Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)

Customary international law is international law that develops through a general and consistent practice of states, followed because of a sense of legal obligation. If, over a period of time, states perform in a certain way because they all believe that they are required to do so, that behavior comes to be recognized as a principle of international law, binding on states, even if not written in a particular agreement. For example, while the Universal Declaration on Human Rights is not, in itself, a binding treaty, certain provisions of the Declaration are considered to have the character of customary international law. This is

³ The United Nations Millennium Declaration/ACC/2000/POQ/INF.7.

⁴ The general rule is that treaties cannot bind third parties without their consent. However, situations in which the rights and duties of third parties are involved have occasionally been created by treaties which are said to establish objective regimes, creating rights and obligations valid universally. Certainly, there is less difficulty when a treaty creates rights for third parties than the situation where a treaty purports to impose obligations on non-parties. Timothy Hillier, *Principles of Public International Law* (London 1999), 58.

because they are shared by the international community and have been reaffirmed and elaborated in subsequent declarations and resolutions.⁵

Other types of instruments such as declarations, recommendations, bodies of principles, codes of conduct, guidelines and standard rules such as the Declaration on the Right to Development (“soft law”) have a role in addressing good governance issues. These instruments have mainly moral force and are not legally binding but might provide good policy guidelines to states. They may become legally binding if recognized by a large number of states.⁶

Merely establishing a set of rules is not enough to ensure the application of principles of good governance. Good monitoring mechanisms are needed. Two main types of human rights monitoring mechanisms relevant to the analyzed international legal instruments in the report are as follows:

- "Conventional" (or treaty based) monitoring. The above mentioned treaties establish committees of experts (treaty bodies) whose task it is to monitor the implementation of the relevant treaty mainly through periodic reports submitted by the state parties. Treaty bodies might also examine individual complaints of human rights violations.
- "Extra-conventional" (or charter-based) monitoring. This is based on procedures and mechanisms established by the Commission on Human Rights or the Economic and Social Council, including a confidential procedure for dealing with communications relating to consistent patterns of gross violations of human rights (the ‘1503 Procedure’ named after the ECOSOC resolution). It also includes special procedures that examine, monitor and report on human rights situations either in specific countries or concerning a specific human rights problem. They are entrusted to working groups composed of experts acting in their individual capacity, to individuals designated as special rapporteurs, representatives and independent experts or directly to the Secretary-General.⁷

The analyzed international legal instruments recognize two types of human rights: individual and collective. According to the classical justification of human rights, rights belonging to entities other than human beings could not be considered as “human rights”. However, with the development of rights such as those of assembly and association which are possessed by individuals but which can be asserted only by collections of individuals, it has become clear that collective rights are recognized by the international community. From this, the idea of peoples' rights has followed. Such rights are seen as belonging to peoples rather than individuals.⁸ From the legal point of view the concept of a collective right, such as the right to development, is more complicated than individual rights since it is not always clear what constitutes a “people”. The distinction between individual and collective rights becomes more visible when legally binding international conventions become a part of national legislation. When this is done, an **individual** right such as right to vote becomes a legally enforceable right, while a **collective** right remains more in the realm of moral rights.

The focus of this report is on the legally binding international conventions (“treaty law”) or, more specifically, on the specific articles of those conventions addressing aspects of good governance. General comments to these specific articles are used to spell out the aims, meanings and implications of the treaty articles. Since basic principles of good governance

⁵ See A.H. Robertson and J.G. Merrils, *Human Rights in the World – An introduction to the study of the international protection of human rights* (New York 1996), 27-30.

⁶ See Timothy Hillier, *Principles of Public International Law* (London 1999), 32-38.

⁷ See A.H. Robertson and J.G. Merrils, *Human Rights in the World – An introduction to the study of the international protection of human rights* (New York 1996), 77-112.

⁸ Timothy Hillier, *Principles of Public International Law* (London 1999), 298.

are human rights which everyone should have access to, treaty law provides the strongest legal backing to good governance as a human right. The articles of the Universal Declaration of Human Rights and the Declaration on the Right to Development will also be examined, since some of the articles of these declarations can be considered to have a legally binding force. Good governance is understood to represent the principles of the Global Campaign on Urban Governance.

PRINCIPLES OF GOOD URBAN GOVERNANCE IN LEGALLY BINDING CONVENTIONS

A UN inter-agency meeting to discuss the principles of good urban governance, held on the occasion of the Istanbul+5 meeting in June 2001 in New York, agreed on five core principles of good urban governance: equity, effectiveness, accountability, participation and security. UN-HABITAT's proposed list of seven norms⁹ can be subsumed under these above-mentioned five principles. The UN-HABITAT Executive Director presented the results of this meeting to the member governments during the World Urban Forum held in Nairobi from 29 April-3 May 2002.¹⁰

This report analyzes different aspects of good governance in legally binding international human rights conventions based on the principles advocated by the Global Campaign on Urban Governance. From a human rights point of view, **equity, civic engagement, transparency and accountability** can be considered as basic principles of good governance. The vision of the "Inclusive City", a place where everyone, regardless of wealth, gender, age, race or religion, is enabled and empowered to fully participate productively and positively in the opportunities cities have to offer, incorporates all these basic characteristics of good governance.

The decision to focus this report on equity, civic engagement, transparency and accountability is made because the report is concentrating on **legally binding** articles safeguarding the principles of good urban governance advocated under the Global Campaign on Urban Governance. This does not mean that sustainability, subsidiarity, efficiency and security as the principles of good urban governance are not linked to international human rights instruments. In fact, they are firmly rooted in the priorities of the international development agenda and are therefore part of international commitments made by governments at major UN conferences.¹¹ It also has to be remembered that the seven principles of the Global Campaign on Urban Governance are interrelated and mutually reinforcing. However, principles such as sustainability, subsidiarity, efficiency as defined under the Global Campaign on Urban Governance do not feature prominently in legally binding human rights law.

Another principle which is not analyzed here is "the right to the security of person", which is safeguarded in the International Bill of Human Rights and in several thematic legally binding international conventions. However, security is defined within the framework of the Global Campaign on Urban Governance to include the security of individuals' living environment. As such, it does not get a legal backing from legally binding international human rights conventions.¹²

⁹ The seven norms of good urban governance as defined by the UN-HABITAT Global Campaign on Urban Governance are sustainability, subsidiarity, equity, efficiency, transparency and accountability, civic engagement and citizenship and security.

¹⁰ Progress report of the Executive Director on the Global Campaign on Urban Governance, HSP/WUF/1/DLG.I/Paper 7, 20 March 2002, 5.

¹¹ See the Global Campaign on Urban Governance. Concept Paper, 2nd Edition, March 2002, 18-19.

¹² The Global Campaign on Urban Governance. Concept Paper, 2nd Edition, March 2002, 24-25.

Equity

Equity is defined by the Global Campaign on Urban Governance as equal access to decision-making processes and the basic necessities of urban life:

*The sharing of power leads to equity in the access to and use of resources. **Women and men must participate as equals in all urban decision-making, priority-setting and resource allocation processes. Inclusive cities provide everyone – be it the poor, the young or older persons, religious or ethnic minorities or the handicapped – with equitable access to nutrition, education, employment and livelihood, health care, shelter, safe drinking water, sanitation and other basic services.***

Practical means of realizing this norm include, inter alia,

*-Ensuring that **women and men have equal access to decision-making processes, resources and basic services and that this access is measured through gender disaggregated data;***

*-**Establish quotas** for women representatives in local authorities and encourage their promotion to higher management positions within municipalities;*

-Ensure bye-laws and economic development policies support the informal sector;

*-**Promote equal inheritance rights for land and property;***

-Establishing equitable principles for prioritizing infrastructure development and pricing urban services;

-Removing unnecessary barriers to secure tenure and to the supply of finance;

-Creating fair and predictable regulatory frameworks.¹³

Equity as the principle of good urban governance is guaranteed in the non-discrimination clauses of the International Bill of Human Rights.¹⁴ The non-discrimination clause can be considered as a basic prerequisite for all the principles of good governance. As defined by the Global Campaign on Urban Governance, equity addresses the civil and political rights of women and men with a strong connection to economic, social and cultural rights. Article 2 of the Covenant on Civil and Political Rights (ICCPR) contains a non-discrimination clause which is amplified by article 3, which contains an undertaking to respect the principle of equality of men and women in enjoyment of the rights secured:

*Art 2(1): "Each State Party to the present Covenant undertakes to respect and to ensure **to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.**"¹⁵*

*Art 3: "The States Parties to the present Covenant undertake to ensure **the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.**"¹⁶*

The non-discrimination clauses are applicable as much to civil and political rights as to economic, social and cultural rights. Articles 2 and 3 refer to all individuals without distinction of any kind within the territory and jurisdiction of the states party to the ICCPR and guarantee every individual a right to be included and to participate in the public affairs of the state. Political rights set forth in the ICCPR are applicable to the local level because of their applicability to all individuals. The same kind of non-discrimination clause is found in the Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁷

¹³ The Global Campaign on Urban Governance. Concept Paper, 2nd Edition, March 2002, 21-22.

¹⁴ International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights together with the Universal Declaration of Human Rights constitute the International Bill of Human Rights. The Universal Declaration of Human Rights is not referred in this context because it is not a legally binding document. See <http://www.unhcr.ch/udhr/miscinfo/carta.htm>.

¹⁵ ICCPR (1966), Art 2(1).

¹⁶ ICCPR (1966), Art 3.

¹⁷ ICESCR (1966), Art 3.

Equity under international human rights legislation is defined in such a way that it guarantees civil and political rights to women and men but does not stress the importance of the equal opportunity of the “excluded” to take part in decision-making.¹⁸ Equity understood under the Campaign stresses the importance of economic and social rights to “excluded” groups. This right to an adequate standard of living is guaranteed as the right of everyone in the article 11(1) of the ICESCR and clarified to be of a special importance to the poor and other disadvantaged groups in the Limburg Principles on the implementation of the ICESCR:

*Art 11(1): "The States Parties to the present Covenant recognize **the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions....**"¹⁹*

*Art 14. Given the significance for development of the progressive realization of the rights set forth in the Covenant, particular attention should be given to **measures to improve the standard of living of the poor and other disadvantaged groups....**"²⁰*

Article 25 of the ICCPR guarantees the right to participate in public affairs, voting rights and the right to equal access to public service to all citizens. General comments to article 25 support the Campaign definition of equity guaranteeing **the equal access of women and men to decision-making processes and a need for an affirmative action and gender disaggregated data** to accomplish that. Article 25 goes further than to promote the equal access of women and men to decision-making processes by mentioning a need for affirmative action to promote access to decision-making for all citizens.

*"The right to participate in the conduct of public affairs is not fully implemented everywhere on an equal basis. States must ensure that the law guarantees to women article 25 rights on equal terms with men and take effective and positive measures to promote and ensure women's participation in the conduct of public affairs²¹ and in public office, including appropriate affirmative action. Effective measures taken by States parties to ensure that all persons entitled to vote are able to exercise that right should not be discriminatory on the grounds of sex. **The Committee requires States parties to provide statistical information on the percentage of women in publicly elected offices including the legislature as well as in high-ranking civil service positions and the judiciary.**"²²*

*"Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. **Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.**"²³*

The most specific text supporting the equal participation of women and men in urban policy making is found from the Convention on the Elimination of All Forms Discrimination against Women (CEDAW), as is stated in the Preamble of the Convention and article 7:

Preamble: "Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the

¹⁸ See Convention on the Rights of the Child (1989) and International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990).

¹⁹ ICESCR (1966), Art 11.

²⁰ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

²¹ See the definition of the conduct of public affairs in the General Comment to the Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art 25): 12/07/96. CCPR General Comment 25, Paragraph 5.

²² Equality of Rights between Men and Women (article 3): 29/3/2000. CCPR/C/21/Rev. 1/Add. 10, CCPR General Comment 28, Paragraph 29.

²³ CCPR General Comment 25, Paragraph 23.

*prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,*²⁴

*Art 7: "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country."*²⁵

The most profound article to safeguard equity as defined by the Campaign can be found in the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which also guarantees the right of everyone to own property and the right of inheritance. This property aspect is specifically safeguarded to women in article 16(1) in the CEDAW:

*Art 5: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution; (c) Political rights, in particular the rights to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) Other civil rights, in particular: ... (v) The right to own property alone as well as in association with others; (vi) The right to inherit; (ix) The right to freedom of peaceful assembly and association; Economic, social and cultural rights, in particular: (iii) The right to housing..."*²⁶

*Art 16: "1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration."*²⁷

Civic Engagement

Civic engagement is defined in the following way by the Global Campaign on Urban Governance:

People are the principal wealth of cities; they are both the object and the means of sustainable human development. Civic engagement implies that living together is not a passive exercise: in cities, people must actively contribute to the common good. Citizens, especially women, must be empowered to participate effectively in decision-making processes. The civic capital of the poor must be recognized and supported.

Practical means of realizing this norm include, inter alia,

-Promoting strong local democracies through free and fair municipal elections and participatory decision-making processes;

²⁴ CEDAW (1979), Preamble.

²⁵ CEDAW (1979), Art 7. See art 4, Declaration on the Elimination of Discrimination against Women. Proclaimed by General Assembly resolution 2263(XXII) of 7 November 1967. Convention on the Political Rights of Women safeguarded already the political rights of women **at all levels of government**. Convention on the Political Rights of Women (1954). See esp. articles I, II and III.

²⁶ CERD (1965), Art 5. See art 6, United Nations Declaration on the Elimination of All Forms of Racial Discrimination. Proclaimed by General Assembly resolution 1904 (XVIII) of 20 November 1963.

²⁷ CEDAW (1979), Art 16. See art 6 (1), Declaration on the Elimination of Discrimination against Women. Proclaimed by General Assembly resolution 2263(XXII) of 7 November 1967.

-Establishing the legal authority for civil society to participate effectively through such mechanisms as development councils and neighbourhood advisory committees;
*-Promoting an ethic of **civic responsibility** among citizens through such mechanisms as “City Watch” groups;*
-Making use of mechanisms such as public hearings and surveys, town hall meetings, citizen’s forums, city consultations and participatory strategy development, including issue-specific working groups;
*-Undertaking city **referenda** concerning important urban development options.²⁸*

The Campaign’s emphasis on rights and responsibilities with regard to the principle of civic engagement is echoed in the preamble of the ICCPR:

Preamble: "Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant...."²⁹

Civic engagement under the Campaign is mainly about civil and political rights. It is about people's right to participation and about mechanisms supporting people's participation. Civic engagement is well guaranteed in article 25 of the ICCPR as the right to participate in public affairs, voting rights and the right to equal access to public service:

Art 25: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."³⁰

What is crucial about article 25 in relation to good governance is that it recognizes and protects the right of "**every citizen**" in the area it regulates. No distinctions are permitted between citizens in the enjoyment of these rights. Article 25 deals with the right of individuals to participate in the processes defined in the article which constitute the conduct of public affairs. These rights are considered as individual rights, which can give rise to claims. This strengthens the legal value of article 25. The way in which civic engagement is defined under the Global Campaign on Urban Governance emphasizes people's rights (as opposed to citizen’s rights) so it is a statement about a collective right and, therefore, more vague.

Article 25 sets out important political rights and the article appears to apply not only to the right to vote in national elections, but also to the same right in local elections and to the right to take part in public affairs in general.³¹ The operational part of civic engagement related to free and fair elections and participatory decision-making processes is widely regulated by article 25 as clarified in the general comment on article 25. Article 25 stresses poverty as an impediment to the exercise of political rights and due to that calls for positive action to overcome specific difficulties:

*"Paragraph (b) of article 25 sets out specific provisions dealing with the right of citizens to take part in the conduct of public affairs as voters or as candidates for election. **Genuine periodic elections** in accordance with paragraph (b) are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. **Such elections must be held at intervals** which are not unduly long and which ensure that **the authority of government continues to be based on the free expression of the will of electors**...."³²*

²⁸ The Global Campaign on Urban Governance. Concept Paper, 2nd Edition, March 2002, 24.

²⁹ ICESCR (1966), Preamble.

³⁰ ICCPR (1966), Art 25.

³¹ Timothy Hillier, *Principles of Public International Law* (London 1999), 38.

³² CCPR General Comment 25, Paragraph 9.

*"The right to vote at elections and referenda must be established by law and may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote. **It is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements....**"³³*

*"Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected. **Positive measures** should be taken **to overcome specific difficulties**, such as illiteracy, language barriers, **poverty**, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively...."*³⁴

*"In conformity with paragraph (b), **elections must be conducted fairly and freely on a periodic basis** within a framework of laws guaranteeing the effective exercise of voting rights. Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will...."*³⁵

*"In order to ensure the full enjoyment of rights protected by article 25, **the free communication of information and ideas about public and political issues between citizens**, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion...."*³⁶

*"The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and **the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.**"³⁷*

*"...Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). **Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government.**"³⁸*

*"Citizens also take part in the conduct of public affairs by exerting **influence through public debate and dialogue with their representatives or through their capacity to organize themselves.** This participation is supported by ensuring freedom of expression, assembly and association."³⁹*

As it is clarified in the general comment to article 25 of the ICCPR, participatory mechanisms by which individual citizens can exercise their right to participate are well safeguarded in the ICCPR. The right to participate should be established by the constitution and other laws by state parties to the Covenant. However, the right to participate in the conduct of public affairs through popular assemblies or through other participatory mechanisms and the right to exert influence in the conduct of public affairs are only efficient if the freedom of opinion and expression, peaceful assembly and the freedom of association are safeguarded. These three rights, which are crucial preconditions to good governance, are guaranteed in articles 19, 21 and 22 of the ICCPR as stated below:

³³ CCPR General Comment 25, Paragraph 10.

³⁴ CCPR General Comment 25, Paragraph 12.

³⁵ CCPR General Comment 25, Paragraph 19.

³⁶ CCPR General Comment 25, Paragraph 25.

³⁷ CCPR General Comment 25, Paragraph 5.

³⁸ CCPR General Comment 25, Paragraph 6.

³⁹ CCPR General Comment 25, Paragraph 7.

Art 19: "1. Everyone shall have **the right to hold opinions without interference**. 2. **Everyone shall have the right to freedom of expression**; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals."⁴⁰

Art 21: "**The right of peaceful assembly shall be recognized**. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."⁴¹

Art 22: "1. **Everyone shall have the right to freedom of association with others**, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States Parties to the International Labor Organisation Convention of 1948 concerning freedom of association and protection of the right to organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."⁴²

Accountability and Transparency

Within the framework of the Global Campaign on Urban Governance, accountability and transparency are described as follows:

*The accountability of local authorities to their citizens is a fundamental tenet of good governance. Similarly, **there should be no place for corruption in cities**. Corruption can undermine local government credibility and can deepen urban poverty. Transparency and accountability are essential to stakeholder understanding of local government and to who is benefiting from decisions and actions. **Access to information** is fundamental to this understanding and to good governance. Laws and public policies should be applied in a transparent and predictable manner. **Elected and appointed officials and other civil servant leaders need to set an example of high standards of professional and personal integrity**. **Citizen participation is a key element in promoting transparency and accountability**.*

Practical means of realizing this norm include, inter alia,

-Regular, organized and open consultations of citizens on city financial matters and other important issues, through such mechanisms as the participatory budget; transparent tendering and procurement procedures and the use of integrity pacts and monitoring mechanisms in the process; internal independent audit capacity and annual external audit reports that are publicly disseminated and debated;

-Regular, independently executed programmes to test public officials' integrity response;

-Removing administrative and procedural incentives for corruption, including simplifying local taxation systems and the reduction of administrative discretion in permit processing;

-Promoting an ethic of service to the public among officials while putting into place adequate remuneration for public servants;

-Establishing codes of conduct and provision for regular disclosure of assets of public officials and elected representatives;

-Developing practically enforceable standards of accountability and service delivery, such as ISO, that will transcend the terms of public office holders;

-Creating public feedback mechanisms such as an ombudsman, hotlines, complaint offices and procedures, citizen report cards and procedures for public petitioning and/or public interest litigation;

-Promoting the public's right of access to city information;

⁴⁰ ICCPR (1966), Art 19.

⁴¹ ICCPR (1966), Art 21.

⁴² ICCPR (1966), Art 22.

Accountability and transparency under the Campaign are defined as a lack of corruption in cities, high standards of professional and personal integrity of public officials and elected representatives, participation and access to information. The strongest legal backing against corruption can be found from the United Nations Convention against Transnational Organized Crime. This convention includes provisions regarding the sanctioning of acts of corruption involving public officials⁴⁴ (*Criminalization of Corruption*) and several provisions related to the phenomenon of corruption. The Convention is not yet in force and is still open to signature. Articles 8 and 9 of the Convention will provide, when in force and as a part of national legislation, strong support in the fight against corruption and this will also give local authorities the responsibility to take more efficient measures against corruption.

*Art 8: "1. Each State Party shall adopt such **legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:** (a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; (b) **The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;** 4. For the purposes of paragraph 1 of this article and article 9 of this Convention, "public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function."⁴⁵*

*Art 9: "1. In addition to the measures set forth in article 8 of this Convention, each State Party shall, to the extent appropriate and consistent with its legal system, **adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.** 2. **Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions."***

Articles 8 and 9 of the United Nations Convention against Transnational Organized Crime strongly support the definition of accountability and transparency of the Global Campaign on Urban Governance. State obligations in both articles cover measures (legislative, administrative and other measures) to fight corruption and to promote, with different methods, a code of conduct of public officials and elected representatives. The Convention defines corruption as a criminal act to which the criminal law of the State Party can be applied while in the definition of the Campaign corruption is defined in a more modest way; e.g.: "**Corruption can undermine local government credibility....**"

Participation plays a crucial role in promoting transparency and accountability as it is defined under the Global Campaign on Urban Governance. It is closely linked to the public's right of access to information. Access to information is safeguarded in article 19 of the ICCPR:

"The freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".⁴⁶

The general comment on article 19 specifies the scope of the applicability of the article:

⁴³ The Global Campaign on Urban Governance. Concept Paper, 2nd Edition, March 2002, 23.

⁴⁴ The General Assembly adopted International Code of Conduct for Public Officials in December 1996. Although, it is not a legally binding instrument, it represents a broad agreement on the issue. Resolution 51/59, annex, December 1996.

⁴⁵ United Nations Convention against Transnational Organized Crime, 15 November 2000, New York, Art 8.

⁴⁶ ICCPR (1966), Art 19 (1).

“Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to impart information and ideas of all kinds”, but also freedom to “seek” and “receive” them “regardless of frontiers” and in whatever medium, “either orally, in writing or in print, in the form of art, or through any other media of his choice”. Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.”⁴⁷

Accountability and transparency under the Campaign are closely linked to participation, mainly defined as taking part in the conduct of public affairs as guaranteed in article 25 of the ICCPR and as clarified in the general comment to article 25:

Art 25: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.”⁴⁸

“Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is exercised through voting processes which must be established by laws that are in accordance with paragraph (b). Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.”⁴⁹

Both articles 19 and 25 of ICCPR go further in defining the scope of accountability and transparency. The biggest difference is that they provide individual rights instead of focusing on collective rights.

GOOD GOVERNANCE IN OTHER LEGAL INSTRUMENTS

Universal Declaration of Human Rights (1948)

As mentioned earlier, the Universal Declaration of Human Rights is not, in itself, legally binding. However, certain provisions of the Declaration are considered to have the character of customary international law. Since 1948, the Universal Declaration has acquired a greatly reinforced status not only as “a common standard of achievement for all peoples and all nations” but also as a statement of principles which all States should observe. It has inspired more than forty State constitutions and examples of legislation quoting or reproducing provisions of the declaration can be found in all continents.⁵⁰ The Declaration recognizes the principles of non-discrimination, civil and political rights, and social and economic rights important to good urban governance. All the rights guaranteed in the Declaration relevant to good urban governance are also guaranteed in the ICCPR and the

⁴⁷ Freedom of Expression (Art 19): 29/07/83. CCPR General Comment 10, Paragraph 2.

⁴⁸ ICCPR (1966), Art 25.

⁴⁹ CCPR General Comment 25, Paragraph 7.

⁵⁰ A.H. Robertson and J.G. Merrills, *Human Rights in the World – An introduction to the study of the international protection of human rights* (New York 1996), 29.

ICESCR, which means that the rights declared in the Universal Declaration of Human Rights are legally enforceable.

Articles supporting the principles of good urban governance in the Universal Declaration of Human Rights are the following:

Equity

Art 1: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

*Art 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, **without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status....**"*

Art 17 (1): "Everyone has the right to own property alone as well as in association with others."

Art 25: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Civic Engagement

*Art 19: "Everyone has **the right to freedom of opinion and expression**; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

*Art 20 (1): "Everyone has **the right to freedom of peaceful assembly and association.**"*

*Art 21: "Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has **the right to equal access to public service** in his country. (3) **The will of the people shall be the basis of the authority of government**; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or equivalent free voting procedures."*

*Art 29 (1): "Everyone has **duties to the community in which alone the free and full development of his personality is possible.** (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."*

Declaration on the Right to Development (1986)

The Declaration on the Right to Development is not a legally binding document but does set forth important objectives for governance. The right to development has been asserted as a human right⁵¹ since the economic development of the poorer countries of the world is essential to their social well-being and political stability. Without it, they are not in a position to guarantee the civil, political, economic, social or cultural rights prescribed in the legally binding international conventions. However, the right to development can not be said to be a legally enforceable right.⁵²

⁵¹ As stated in the Preamble of the Declaration on the Right to Development: "Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations".

⁵² See A.H. Robertson and J.G. Merrills, *Human Rights in the World – An introduction to the study of the international protection of human rights* (New York 1996), 293.

The concept of participation is of central importance in the Declaration on the Right to Development, as it is in the principles of Global Campaign on Urban Governance. What is important in the Declaration on the Right to Development, and is different from the Campaign, is that the right to development is both an individual and a collective right and the principle of equity is closely linked to participation.

Articles supporting the principles of good urban governance in the Declaration on the Right to Development are the following:

Civic Engagement

Art 2: "1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development. 2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development...."

Art 8: "1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices. 2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights."

Equity

Art 6: "1. All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion...."

CONCLUSIONS

Existing binding international law provides a strong legal backing for the principles of good urban governance as defined by the Global Campaign on Urban Governance. Since the target of the rights guaranteed by the conventions analyzed in this report is **"every citizen"** it can be interpreted that the applicability of the articles protecting the aspects of good urban governance covers cities, and individuals in cities. This is important since the conventions create individual rights and provide legal instruments **"to all individuals"** if their rights are violated.

Such a strong legal backing also makes it possible to conclude that many of the key principles of good urban governance, as defined by the Campaign, have already been agreed under the auspices of the UN. Therefore, there exists a *de facto* consensus on the content of good governance even if the term in itself is not used. This also means that the countries party to these conventions have existing legislation guaranteeing good urban governance practices.

The principles of good urban governance as defined by the Global Campaign for Urban Governance are about civil, political, economic and social rights, which explains why the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights provide such a strong legal backing to these principles. The Campaign focuses equally on economic and social rights in connection to "excluded groups," as well as on the importance of "the excluded groups" in the decision-making processes. The conventions reviewed in this paper affirm the importance of both civil, political rights and economic and

social rights to "the excluded groups", as they permit **"no distinctions between citizens in the enjoyment of these rights,"** recognizing the fact that the absence of civil and political rights can block access to social and economic rights.

The question of **individual versus collective rights** becomes a critical issue, which should be considered by the Campaign if the principles of good urban governance are to be understood as legally binding. This is because individual legally binding rights will give rise to the possibility for claims in the case of violation of the right in question.

The above findings point towards future priorities for the Campaign in promoting good urban governance principles. Since there is already a wide understanding on certain aspects of good governance provided by existing international law, more specific individual rights, which are not yet covered by international law, could be discussed and promoted as a priority in connection to the development of principles of good urban governance. This would include defining more specific individual rights for "the citizens of the city" in addition to the collective rights already defined. This would bring the normative debate closer to the question of **"who has the right to the city"**, an item which is not yet recognized by existing international law.

