



**UNITED NATIONS**  
**DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS**

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**Commission on Sustainable Development**  
**Twelfth Session**  
**14 – 30 April 2004 ■ New York**

**ACCESS TO BASIC SERVICES FOR ALL**  
**PARTNERSHIPS AND RIGHTS-BASED APPROACH**

**BACKGROUND PAPER NO. 4**

**Submitted by**  
**UN-HABITAT and UNITAR**



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## **ACCESS TO BASIC SERVICES FOR ALL**

### **PARTNERSHIPS AND RIGHTS-BASED APPROACH**

*A working paper based on consultations with governmental officials,  
local authorities and associations of local governments, enterprises,  
civil society organisations and international organisations  
prepared by*

**UN-HABITAT and UNITAR**

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## Table of contents

### **1. Background**

### **2. Basic services: some common characteristics**

- 1. Access to these services is an essential component of economic, social and cultural rights*
- 2. Access to these services is unequally and inequitably provided*
- 3. Basic services are closely interrelated*
- 4. Access to basic services is affected by three majors trends: urbanisation, decentralisation and privatisation*
- 5. Access to basic services for all requires investments that have to be financed from public and private, international, national, and local sources*

### **3. Good and bad practices in the delivery of basic services to all**

- 1. Involve the poor*
- 2. Develop partnerships*
- 3. Recognise the central role of local authorities*

### **4. Listening to the stakeholders**

- 1. Governments*
- 2. Local authorities*
- 3. Civil society Organisations*
- 4. Private enterprise*
- 5. The United Nations, the World Bank and the regional Banks, and the World Trade Organisation*

### **5. Access to basic services for all: toward an international framework**

### **6. Three options and next steps**

**ACCESS TO BASIC SERVICES FOR ALL**  
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*The paper below is a working paper. It focuses on actions to be undertaken to secure access to basic services for all in the context of globalisation, decentralisation, and urbanisation. It takes the view that the broadly shared appeals to partnerships, participatory decision-making, efficient and transparent pro-poor governance require, at the national level, clear institutional, legal and regulatory frameworks to delineate the rights and responsibilities of each stakeholder. It identifies three options for assisting governments in designing such national frameworks: the adoption of a series of codes related to sectors or actors, a declaration recognising that everyone is entitled to access to basic services and the negotiation of guidelines to assist governments and other stakeholders in its implementation, or the international recognition of a right to access basic services and the adoption of related national and international obligations. It invites to further consultations to clarify the needs and the options.*

## 1. Background

Access to water, sanitation, energy, transport, waste disposal, health, communication, and education, in other words access to basic services, is an essential component of “an adequate standard of living”. To meet this need of each human being is becoming, throughout the world, a political and economic challenge whose dimensions are changed by decentralisation.

In Johannesburg, UNITAR and UN-HABITAT presented, at the suggestion of DESA, a type 2 partnership on “Local Capacity-Building and Training for Sustainable Urbanisation: a Public-Private partnership”. At this occasion, the “Institut de Gestion Déléguée” of France introduced a “Charter on Local Public Services” elaborated between local and regional authorities and enterprises and setting the responsibilities of each of them. Since Johannesburg, local authorities associations, governments and international organisations have taken diverse initiatives to facilitate and encourage partnerships in the delivery of basic services.

In Yaoundé, for instance, at the Africities Summit, mayors and local authorities decided to put in place “Committees for access to basic services” gathering all the actors of the local partnership to be established”. The Swiss Agency for Development and Co-operation (SDC), for its part, is elaborating with enterprises and Civil Society Organisations (CSO) a code on access to water and sanitation. These two initiatives and others as well as the debates they elicited suggest that there is a need for an international framework that helps clarifying at the national level the responsibilities and obligations of governments, local authorities, enterprises, and CSOs in securing a more equitable access to basic services.

This working paper is based on extensive consultations of documents, in house experiences, and, more important, exchanges of views with individuals from governments, local authorities, enterprises, civil society organisations (CSOs), and the United Nations. Consultations and meetings of actors concerned are foreseen to prepare and enrich a second version of this working paper. It is nevertheless the view of the authors that the convergence of the opinions gathered gives already a strong basis to the analysis and the proposals made.

## 2. Basic services: some common characteristics

There is no universally accepted list of basic services. The list retained in this note - water supply, sanitation, waste management, transportation, energy supply, health care, communication and education – is an extensive one. Yet housing could have been added. Some of these services could be considered more essential than others; but this would depend of the point of view taken. Some require a stronger involvement of local authorities than others. Some are delivered through costly networks of infrastructures, while others do not require heavy investments, but have very high working costs. Despite their diversity, these basic services have in common five essential characteristics that will be highlighted below before moving to proposals that could improve access to each of these services for all.

### 1. Access to these services is an essential component of economic social and cultural rights

The Universal Declaration of Human Rights recognises in article 25 that “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 social security. Similarly, article 26 recognises “the right to education”. Also, of essential importance is respect for the principle of non-discrimination: everyone is entitled to all “the rights and freedoms set for 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”. Article 11 of the International Covenant on Economic, Social and Cultural Rights states that “the State Parties recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, housing, and to the continuous improvement of living conditions” Article 12 relates to physical and mental health and article 13 to the right to education. The Committee on Economic, Social and Cultural Rights has expanded on the content of articles 11 and 12 and the obligations it creates on States parties to the Covenant in General Comments 4, “the right to adequate housing”, 14 “the right to health”, 15 “the right to water”. These General Comments establish links with sustainable access to safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, refuse disposal, site drainage, emergency services and with costs of “getting to and from the place of work”. The language used in articles 11 and 12 of the Covenant as well as in the General Comments 4, 14, and 15 confirm that access to the basic services is contained in the right of everyone to an adequate standard of living. Moreover Principle 1 of the Rio Declaration on environment and development states, “human beings are entitled to healthy and productive life in harmony with nature”.

## *2. Access to these services is unequally and inequitably provided*

Throughout the world, individuals, families, communities, and even whole cities remain without basic services for a variety of reasons that include: policy discrimination against the poor or in favour of the wealthy; ethnic discrimination; high costs of production and distribution; lack of capital and operating funds; corruption, mismanagement, lack of foresight. Whatever the reasons, the poor are suffering from this situation that harms their efforts toward a decent and dignified life: lack of access to basic services is at the same time the result and cause of poverty.

To break this vicious circle, the United Nations Millennium Declaration registered the commitments of Heads of states and governments “to have achieved [by 2020] a significant improvement in the life of at least 100 million slum dwellers” and “to halve the proportion of people who are unable to reach or to afford safe drinking water”. Furthermore, the Plan of Implementation of the WSSD has added to halve the proportion of people who do not have access to basic sanitation. It also calls for actions to: “deliver basic health services for all” and “improve access to reliable and affordable energy services”. Consistent with the Millennium Declaration and the WSSD, access to basic services for all requires pro-poor strategies, ensuring environmental sustainability.

## *3. Basic services are closely interrelated*

As basic services are interrelated, a deficiency in one or another may affect access to or benefits from other services. For instance, sanitation, water quality, energy use, and waste disposal affect health and, as a consequence, mortality and economic productivity. Energy availability and affordability impact on transportation costs, water availability and cost. Etc. ... Well-planned integrated strategies would therefore save resources and permit simultaneous progress in access to different basic services. This calls for the training of, and co-operation among, those responsible at the national and local level to design and implement policies and projects related to the production and the delivery of basic services in an environmentally sustainable manner.

## *4. Access to basic services is affected by three major trends: urbanisation, decentralisation and privatisation*

Urbanisation is growing in the developing world with an increasing share of the population living in slums or periurban areas, which increases the risk of non-delivery of one or several basic services. Decentralisation of responsibilities from national government to regional or local authorities is sometimes deliberate, sometimes the implicit result of the incapacity of the state to

assume its responsibilities by lack of means or will. In the former case, decentralisation may improve access to basic services provided that adequate resources are accessible to local authorities and that they acquire the necessary management skills. In the latter, it may further deteriorate the living conditions of the poor. Similarly, privatisation is sometimes a deliberate choice for more efficiency and quality in the delivery of services; sometimes it is a desperate remedy to the deterioration of the public supply of basic services and the lack of financing. Here again, if privatisation is well targeted, contracts well conceived and monitored, it may lead to an improvement in service delivery for all. If not, the situation of the poor is likely to deteriorate. The fact that the involvement of the private sector takes several forms as enumerated below gives flexibility to find the most efficient partnership depending of local and national circumstances.

**People living in urban areas**  
(% of total population)

	1950	1975	2000	2030
<b>World</b>	29.8	37.9	47.2	60.2
<b>Developed</b>	54.9	70.0	75.4	82.6
<b>Less developed</b>	17.8	26.8	40.4	56.4

*World Urbanisation prospects: The 2001 Revision*

5. *Access to basic services for all requires investments that have to be financed from public and private, international, national, and local sources*

In the developing world, the quasi totality of road and rail infrastructure, electricity grids, water and sewage networks, urban transportation networks, hospitals and health centres were and are financed from public money. The amounts required to repair and maintain these infrastructures and to further extend them so that everyone has access to basic services exceed the capacity of the local and national budgets of most of these countries and in some could be met if priorities were reset taking into account people demands. The hope that the private sector would fill the gap has been exaggerated. With few exceptions, the private sector is not ready at the beginning of the 21<sup>st</sup> century to finance basic infrastructures as it did, in some cases, in Europe and North America in the 19<sup>th</sup> century, simply because the return on investments is too long and there are less risky opportunities. Rather, it appears that the private sector can be well placed for, and willing to, repair, maintain, extend eventually, and operate these infrastructures under conditions that are developed below. This means that most of the basic infrastructures will have to be financed by the state or local authorities on budgetary resources, foreign aid or loans from the World Bank or Regional Development Banks.

### Some quantified aspects on basic services:

- Currently, approximately 1.1 billion people have access to safe water and approximately 2.4 billion people have access to basic sanitation and over 4 billion people discharge untreated wastewater into local water bodies.

*Henri Smets, The cost of meeting the Johannesburg targets for drinking water, 2004*

- \$70 billions per year are currently being spent on water management. \$170 billions are needed if the world is to address the problem of 1.2 billion people without water access and 2 billion without sewage.

*Margaret Catley-Carlson, Chair of Global Water Partnership, 2001*

- Aid for water is of 3.4 billion a year.
- Over two billion people in developing countries do not have access to reliable forms of energy.

*K. Toepfer (UNEP)*

- The World Bank estimates that investments of \$1 trillion will be needed in this decade and upwards of \$4 trillion during the next 30 years to meet developing countries' electricity needs alone. Electricité de France estimates the investment needs to €7 billion a year over 25 years.
- Of the 3 billion people who live in rural areas of developing countries, 900 million have no reliable (all-weather) road access, and 300 million have no connection at all to the rest of the country.

*James D. Wolfensohn, President, The World Bank, 2000*

- The poorest pay 30 percent of their income only for transportation.

*University of California, 2002*

- In 1994, foreign aid accounted for 12 percent of total infrastructure financing in developing countries (including transport), while private financing of infrastructure accounted for 7 percent and was rising. In 1996 private sector lending to emerging markets peaked at \$196 billion. Since then it has fallen and estimates for 1999 are just over \$17 billion.

*World Bank, 2004*

Besides these heavy investments, examples abound of small investments that improve waste collection, sanitation, energy use, transportation, health conditions, sewage and that can be realised by each household or local communities with help from local authorities, CSOs, or enterprises. Such investments are facilitated by incentive policies and micro-credits. Small investments cannot serve as a substitute for investments in infrastructure, both kind of investments are necessary and complementary. In a given country, responsibilities for their financing has to be shared between households, micro-credit institutions, local authorities, national government, public and private companies, donors, regional and international financial institutions, national and international CSOs. Each stakeholder has responsibilities in making basic services accessible and none can shift its responsibilities on another.



### 3. Good and bad practices in the delivery of basic services to all

Reports, seminars and workshops offer hundreds of examples of failure and success in the delivery of basic services to all and certainly the first lesson to be drawn is that each case is unique: successes are not easily replicable and an approach that failed may succeed in other circumstances or in other times. Nevertheless, these examples are a source of inspiration for decision makers and advisors and, if the ideas they suggest are adapted to the local realities, they may prove extremely useful. They should be published and widely disseminated as requested in particular by local authorities in the interviews conducted and meetings attended in the preparation of this note.

Keeping in mind the risk incurred in drawing general conclusions from specific examples, three broad recommendations will be proposed: to involve the poor, to develop partnerships, and to recognise the central role of local authorities as it responds directly and indirectly to the bad practices and weaknesses more commonly mentioned: lack of sustained pro-poor focus, inadequate mechanisms for associating the poor in the decision-making process, lack of resources for investment in service infrastructure, insufficient information reaching both decision makers and the public at the local level, opaque and corrupt governance.

#### 1. *Involve the poor*

Traditionally, the poor have not been included in assessing their own needs, although they frequently number a large proportion of the urban population. This has often led to the construction of facilities that they do not use properly, about which they do not care and to which they are not ready to contribute. On the contrary, if consulted and convinced that their situation could be improved, they will be willing to participate in construction - the local authority providing material and guidance - and to pay charges for the services which they are benefiting from. The case of community toilets in Pune and other Indian cities presented in the UN-HABITAT report "Water and Sanitation in the World's Cities: Local Action for Global Goals" (page 232), provides an excellent illustration of the advantage of involving the poor. For it to be achieved, it is important to put in place appropriate participatory processes and structures, complemented by capacity building initiatives aimed at offsetting the inhibitions of those social groups that have long been excluded and the distortions in power relations that exist both at the local and national levels. Participatory approaches foster a sense of ownership and enhance accountability and transparency in service delivery. Such processes help invest the micro resources of individuals and the social capital of communities. Going a step further and following the report "Unleashing Entrepreneurship: Making Business Work for the Poor" of the Commission on the Private Sector and Development, it could be recommended to convert informal assets of the poor and of communities into clear property rights that could be used as collateral in obtaining small scale loans. This potentially promising avenue would require broad institutional reforms.

#### 2. *Develop partnerships*

As the international community, national governments, local authorities, enterprises, and CSOs share responsibilities in the delivery of basic services to all, it is natural to recommend that they develop partnerships. And, indeed, many success stories highlight the importance of good co-operation between two or more of these actors. The virtues of partnerships are not challenged. First, partnerships imply the participation of representatives of the people concerned not merely as customers or consumers but as citizens and partners. This helps to involve the poor as recommended above. Second, partnerships help in building capacities, in particular at the local level, as they obliges local or national authorities to design strategies, to discuss them with the partners and to put monitoring mechanisms in place. Third, partnerships may bring institutional

and technical innovations that may result in saving financial and natural resources. Fourth, they help in mobilising financial resources of the different partners in a more coherent and efficient way. Fifth, they improve monitoring, as each participant wants its partners to deliver what they promised.

### **Improving access to basic sanitation through partnerships (Mozambique)**

Basic sanitation and hygiene are fundamental to good health, improvement of school attendance, increasing productivity and dignity for the population. To achieve this, the government of *Mozambique* has, in collaboration with water & sanitation stakeholders, forged partnerships with donors, CSOs, CBOs and the private sector to facilitate accelerated provision of basic sanitation. The strategy of this initiative focuses on:

**Setting demand levels through participation** Through this process residents themselves identify their sanitation problems and recommend actions to overcome them, including behaviour change.

**Resource mobilisation** The local authority has developed strong partnerships with donors, CSOs, CBOs and the private sector to mobilize resources to meet the communities needs:

1. Partnership between communities stimulates participation and increases awareness.
2. Partnership with donors contributes to capacity building, develops communication strategies, provides resources and facilities, strengthens the co-ordinating role of local governments and facilitates supervision.
3. Partnership with CSOs improve the planning process and streamlines activities.

While recalling the virtues of partnerships, their advocates also sound a note of caution. Partnerships are time consuming, simply because of so many conversations are necessary to avoid misunderstandings and conflicts. A local authority should not, therefore, enter into too many partnerships. Partnerships cannot replace the responsibilities of governments. Partnerships, and this is the main difficulty, bring together actors who, by nature, have different time horizons, objectives and interests, which is a potential source of conflict. To work efficiently, partnerships require patience, a clear legal and institutional framework, training and monitoring institutions. These difficulties do not imply that conditions have to be optimal before entering into a partnership. On the contrary, partnerships should be seen as a dynamic that progressively create the conditions of their success. To start, partnerships have to be modest in scope and based on a well-designed programme the goals of which all the partners accept and where the contribution of each participant is clearly spelled out.

### **3. Recognise the central role of local authorities**

UN-HABITAT has been engaged in a collection of service indicators for over 15 years creating a time series database for a representative sample of cities around the world. This database allows inter-city comparisons and comparison with regional means, which can provide an estimate of the scope of the problems in individual cities. Building on this database, the City Development Index (CDI) offers a synthetic measure of availability of services at the city level and eventually at the level of particular communities. Similarly to the UNDP Human Development Index (HDI), the CDI shows that cities with similar level of resources and even within a same country can be ranked very differently. Analysing the reasons for different achievements from one city to

another, it can be concluded that, if the supply of basic services is vulnerable to international and national circumstances, access to these services is directly affected locally by good or bad governance, good or bad policy choices and good or bad management style of the local authorities. This demonstrates their central role in access to basic services for all. In planning for corrective action, each city, and each community within the city, will have different priorities depending upon existing levels of services, local wealth, growth rates, the availability of sufficient natural resources (e.g., water), consumption patterns by the industrial or agricultural sectors, accessibility to materials and skills, ideology (e.g., laissez faire vs. regulation; cost recovery vs. public service). There is also a different mix of potential roles and responsibilities within each service: various actors may contribute more or less to efficiency and equity, depending upon their relationship with other actors. In theory this may be a very complicated operations management problem, requiring linear programming to optimise inputs and outputs. In practice, it is a political problem that local authorities have to handle.

The fact that a number of cities are badly managed and that this deprives the poor from access to basic services is not necessarily a reason for centralising at the state level the delivery of these services. First, there are also many examples of poorly managed national entities in charge of the delivery of one or another service. Second, from examples gathered, it seems that the dialogue with communities is more easily established and, above all, sustained by the local authorities than by national entities. Third, national entities are usually specialised in the delivery of one service and have little time and resources for co-operating among themselves. It is easier, even if not spontaneous, to take into account the interrelations between the different basic services at the local level. Fourth, in a context of rapid urbanisation, it is wise, as in the case of partnerships, to reckon on a dynamic improvement of the managerial capabilities of local authorities. UNITAR with the network of International Training Centre for Local Actors (CIFAL, a decentralised co-operative programme) and UN-HABITAT through different activities are actively contributing to this goal.

The lessons drawn above would be enriched if an attempt were made to correlate the degree of success in discharging each responsibility with the level of satisfaction among citizens in the provision of basic services. A survey comparing, for example, the various suppliers' points of view with those of the individual citizens or their communities, might be useful in illustrating this point. UN-HABITAT has done at least one study (in Thailand) in which the public provision of private services was thoroughly examined. This will be exploited in a second version of this paper.

#### **4. Listening to the stakeholders**

Governments, local authorities, civil society organisations, private enterprises, international organisations and development banks have a range of responsibilities in the supply of basic services and in making them accessible to all. Some of these responsibilities are implicit in the previous section on good and bad practices. In this section, they will be spelled out for each stakeholder on the basis of different interviews and experiences accumulated in the United Nations.

In considering the list of responsibilities assigned to the different stakeholders, one should keep in mind that:

- First, because of different economic, social, legal, and institutional circumstances, there is not a single model. Some responsibilities, therefore, could be shifted from one actor to another.

- Second, some of the obligations or responsibilities of each stakeholder were mentioned by other stakeholders. This is indicated in the lists below to underline under which conditions each partner considers that it can co-operate efficiently.

### *1. Governments*

Even if it has been argued above that local authorities have a central role in the access to basic services, governments have the overall responsibility to ascertain that basic services are available in an environmentally sustainable manner and that everyone has access to them. Governments can delegate part of their responsibilities to local authorities and pass contracts with national or foreign enterprises for the delivery of some services. In this perspective, it is the responsibility of the government to submit to the national legislature the appropriate legal and institutional framework and to establish regulations as well as control and monitoring mechanisms.

The local authorities are expecting clear delegation of authority, access to necessary financial sources and information on national and international decisions that affect the delivery of basic services. From their point of view, the state should:

- Delegate responsibilities in the supply of basic services through enabling legislation.
- Allocate resources from the national budget for basic services using objective measures of need and allow local authorities raise appropriate taxes.
- Authorise local authorities to raise taxes.
- Authorise local authorities to borrow external funds, to float bonds and to receive directly financial aid from bilateral or international institutions. The situation differs from a country to another. When the government is agreeable to direct borrowing by local authorities, the international financial institutions accept henceforth to receive their requests. Governments are naturally concerned about the risk that local authorities become over indebted or that the Government lose control of the total indebtedness of the country vis-à-vis the international or regional financial institutions. Some form of control by the financial authorities is therefore in order.
- Resolve conflicts in policy and legislation at the national level and receive appeals from the local level
- Inform local authorities on both national policies and international norms, standards and conventions related to the delivery and access to basic services.
- Encourage and facilitate city to city co-operation.

The following points are put forward by enterprises that are concerned about clarity of the role of the different partners, transparency in the decision-making process, fair competition, and judicial security. According to them, the state should :

- Establish clear rules related to the different modes of participation of the private sector: service contracts, lease contracts, concession contracts, BOT contracts, privatisation, joint ventures, multi-utility contracts.
- Establish a high authority responsible for privatisation in case the state decides to privatise the delivery of some of the basic services, set the norms and goals to be respected by the enterprises, and monitor their implementation.
- Establish a strong national authority supervising and standardising contracts and assisting local authorities in negotiating contracts with enterprises.

- Clarify the respective responsibilities of the state, the local authorities, or the entity in charge of delivering a particular basic service.
- Recognise access to justice for the enterprises and their rights to indemnities in case of changes in the legislation (in particular related to land property or the duration of the contracts).

The CSOs are particularly concerned by the involvement of the poor in the decision-making process and by the role they can play themselves in the delivery of basic services. They expect the state to:

- Encourage or mandate participation, adoption of minimum standards, equitable distribution of available resources and disaster mitigation at the local level when it decentralises responsibilities to local authorities.
- Recognise a right to access to basic services and to provide access to justice to communities and CSOs.
- Recognise the role of small-scale providers.

In addition to the claims listed above, governmental officials and UN entities on the basis of accumulated experiences suggested the following points. The state should:

- Ensure that participatory processes exist at the local and national levels.
- Resolve contractual conflicts through an appropriate judicial system.
- Develop human resources through training of trainers.
- Set standards and baselines for local services provision for different classes of towns and cities and the protection of natural resources and ecosystems.
- Set rules and regulations to protect the environment and manage natural resources in a sustainable manner.
- Mandate spatial planning for provision of services.
- Collect and analyse indicators of local service delivery in setting priorities for corrective action and budget allocations.
- Monitor local authorities' management performance as a basis for technical assistance, capacity building or other corrective action.
- Provide technical and capacity building support to local authorities.
- Facilitate the identification of local minimum standards for services provision.

## 2. Local authorities

Within the legal and regulatory framework established by the state as described above, local authorities have the particular responsibility to develop long term plans for the supply of basic services and to choose the modalities that would permit all to have access to these services. In doing so they should keep in mind that basic services are interrelated look for optimal “multi-sectoral tradeoffs”. Their partners insist on good governance in making the right choices insisting on transparent procedures, consultation, and equity in allocating subsidies or fixing prices. It is at the local level that the social engineering can be usefully develop to clarify what is needed, socially acceptable, and stimulates the participation of the population.

CSOs and the private sector expect that the local authorities will:

- Adopt spatial plans and regulations for future urban growth and extension of services into growing areas.
- Adopt strategies and plans for universal access to basic services, in consultation with CSOs, enterprises and other key actors.
- Monitor and adjust service delivery programmes on the basis of regular and timely feedback from citizens, service recipients and service providers (e.g., in the budget cycle).
- Promote demand optimisation and management among households and other services users and eco-efficiency in the use of natural resources.
- Develop human resources development for all aspects of services delivery.
- Call on local private enterprises and small scale providers.

The private sector appreciates that elected persons and mandated professionals with whom they negotiate and work be properly trained and knowledgeable on laws and rules guiding public-private partnership. It expects that the provisions of contracts with local authorities permit sound business practices. The local authorities should:

- Establish contracts that are based on an honest inventory of fixtures, spell out the obligations of the contracting parties and a time horizon, fix the tariffs and conditions to summon the customers who do not pay their bills in distinguishing those who do not want to pay from those who cannot, foresee revision of clauses in case of unforeseen difficulty and access to justice in case of litigation.
- Take advantage of the training facilities offered by the international community.

CSOs are keen that the poor be involved and treated with equity. They demand that the local authorities:

- Promote civic engagement through consumer education and awareness, ombudsman offices, public hearings, participatory planning, etc.
- Establish procedures that secure the consultation of communities. CSOs proposed the concept of “procedural rights, i.e. the right to be consulted and to know about choices, quality, attribution of subsidies.”
- Base taxes on incomes.

In addition to the points made above by CSOs and private enterprises, local authorities and UN entities indicated that the former have the responsibility to:

- Analyse financial resources such as regional and local taxes, transfers from the national budget, loans from financial institutions national or international, micro-credit, revenue bonds, general obligation bonds, user fees and subsidies and choose among those that are accessible, taking into account the interests of all and particularly the poor.
- Assess applicable modes of delivery (e.g., municipal corporations, service districts, service contracts, management contracts, lease contracts, concession contracts, BOT contracts, full privatisation, joint venture, multi-utility contracts).

- Determine best modes of delivery through the comparative examination of rates of return, social impact, environmental protection, sustainability, etc. Contracts may be made with international or national, large or small, enterprises, or with not-for-profit associations, including CSOs. Or, the local authority may choose to retain all or part of the delivery system as a publicly provided service. The local authority should be free to revert its decision provided proper indemnity is allocated to the partners.
- Formulate the conditions of contracts, put in place the regulatory measures and adopt mechanisms for equitable and effective regulation and dispute resolution in the public interest.
- Formulate and adopt disaster mitigation plans for essential services.

### 3. Civil Society Organisations

Civil society organisations are recognised internationally as key actors for the involvement of the poor and for the delivery of services to them and for the protection of the environment. They are also considered internationally as witnesses that remind public authorities and enterprises the responsibilities they have vis-à-vis the poor and the environment. In this perspective, they are seen by some as a resource for establishing and implementing correct pro-poor policies and by others as obstacles in the conduct of their policies, eventually “manipulated by the opposition parties”. It is encouraging to note that local authorities and enterprises that have worked with CSOs on precise projects appreciate positively their contributions. It is why some legal obligation to involve the CSOs as mentioned on several occasions above may help to establish constructive partnerships. CSOs should:

- Train themselves and obtain knowledge necessary to participate in planning and decision-making.
- Distribute relevant information to interested members of the public and engage them in dialogue on services needs.
- Represent populations in public dialogue on services provision.
- Help citizens identify priorities and determine minimum acceptable service standards appropriate to both resources available and community priorities.
- Participate in consultations with local authority and public or private service providers, contribute in planning and budgeting, and evaluate if the design of plans provide access to basic services to the poor.
- Contribute to service delivery in poor areas.
- Monitor services delivery by the state, local authorities, or enterprises.
- Participate in conflict resolution processes on behalf of the poor.

### 4. Private Enterprise

The requirements of the private sector vis-à-vis the state and the local authorities have been spelled out above. The main responsibility of the private enterprises is to fulfil their contractual obligations vis-à-vis the local or national authorities in conformity with sound business practices. It is for the local authority to introduce realistic social and environmental clauses and for the enterprise to accept them or not before the contract is signed. In case of complete privatisation of a basic service it is for the enterprise to comply with the goals and obligations set by the highest authority responsible. As the enterprises ask for transparency in the decision-making process,

similarly, local authorities demand that enterprises do not bribe public officials or others to obtain a contract or its modification or to be the beneficiary of privatisation. The contracting enterprise should:

- Fulfil contractual obligations in timely and efficient manner.
- Engage in good faith efforts to extend services to the poor, in particular negotiate with the local authorities rates/tariffs at a level that both ensures acceptable profit and cross-subsidises those living in poverty.
- Look for and apply cost saving and environmentally sound technologies.
- Hire and train local workers.
- Solicit regular and timely feedback from services recipients.
- Submit to transparent auditing and regulation.

##### 5. *The United Nations, the World Bank and the Regional Banks, and the World Trade Organisation*

The United Nations, the World Bank and Regional Banks and the WTO have all adopted the millennium development goals as a guide for their action and, in particular, the fight against poverty. During the above-mentioned consultations, their role in norms and rules setting, in technical assistance and financing was underlined by the four other stakeholders. In addition, their capacity to gather experiences from all around the world and to draw lessons is highly regarded while local authorities and CSOs ask for a better dissemination of this information and analyses. The difficulty in locating credible and consistent data on financial needs to provide all with access to basic services points to a lacuna. More worrying is the fact that the concept of basic services has no generally accepted definition and the fact that each UN entity works in its specific sector of competence makes it difficult to take advantage of the interrelations in the supply of basic services.

At this stage there has not been a systematic inventory of the activities of the United Nations related to access to basic services, but preliminary consultations have indicated convergence of views on the importance of access to basic services to meet the right to adequate standard of living and the millennium goals. There is a strong support for pro-poor policies among the United Nations entities. To advocate such policies is considered as a priority role of the UN. Public private partnership is supported for the sake of efficiency and resource mobilisation, provided attention is given to equity. Moreover, it is in line with the spirit of the Global Compact and the Millennium Declaration that highlight principles shared by the multinational corporations. Decentralisation is perceived as a trend that will release energies and initiatives but which will have to be closely monitored and framed by the national government. United Nations organisations are more and more inclined to recognise the importance of local authorities in reaching out to the poor and seek their advice in the negotiation of international norms and conventions that they will have the direct responsibility to implement. In this matter, UN-HABITAT and UNITAR have a pioneering role. UN-HABITAT was created to work across sectors in the same way that local authorities must. Its mandate includes working with local authorities to strengthen their ability to wise management decisions that entail tradeoffs among many important objectives. UNITAR with its programme CIFAL invites cities that have successfully solved a problem to share their approach with interested cities of the same region. All UN entities consulted converge with the expectations of the other stakeholders that the United Nations should:

- Develop analyses on access to basic services by sector and in an integrated manner and propose policies to overcome obstacles.



- Disseminate the analyses as well as exemplary cases, in forms accessible to local authorities and CSOs.
- Advocate pro-poor policies.
- Set norms and standards.
- Recognise the role and involve local authorities associations in the negotiation of these norms and standards. This was explicitly requested at the High Level Meeting between UN Agencies and Programmes and World Associations of Local Authorities held in Geneva on 23-24 October 2003.
- Provide technical assistance.

The World Bank and Regional Development Banks are involved in many projects and programmes with the aim to provide a better access to “modern “ services to the poorest populations in particular in the areas of water, sanitation, energy and transport through the financing of infrastructures and the support to micro credit mechanisms. Several bilateral donors do the same. From the point of view of local authorities and also states, the international financial institutions should:

- Clarify conditions under which local authorities could have direct access to international loans from the World Bank and Regional Banks as well as bilateral development agencies.
- Advise governments accordingly.
- Develop co-financing of infrastructures and support to micro credit schemes.

UNCTAD and the UNHCHR, both of which have developed constructive working relations with the WTO, insist on two fundamental issues. First, Governments should have sufficient space, or in other words enough margins of manoeuvre, to discharge their development responsibilities and particularly in implementing policies to give the poor access to basic services. Second and more essential, it is time to work on the reconciliation of the underlying principles of trade laws, i.e. liberalisation, with those of human rights that call for the protection of human needs and values that are considered fundamental to humanity. In this perspective governments are invited in setting rules and norms in UN bodies and WTO to:

- Give its full meaning to the principle of non discrimination, i.e. not to take measures that would *de facto* discriminate against the poor.
- Recognise the need for balance between different principles and interests.
- Give governments sufficient space to develop pro-poor policies.

## **5. Access to basic services for all: toward an international framework**

From the analysis made above five conclusions emerge:

- First, pro-poor policies are necessary to promote the progressive realisation of economic, social and cultural rights through improving access to basic services.
- Second, partnerships between different actors involved in the delivery of basic services have to be promoted and implemented to increase efficiency, better meet the needs of the poor, and find the necessary resources.

- Third, international obligations for the states and local authorities have to be consistent, balanced and should permit governments to conduct pro-poor policies.
- Fourth, important financial means will have to be mobilised for several decades if the direction given by the Millennium Declaration has to be followed.
- Fifth, information on norms and rules related to basic services has to be easily available to all stakeholders and, particularly, local authorities. Capacity building at national and local levels should permit to develop management policies, tools and skills for making multi-sectoral decisions regarding priorities and tradeoffs in favour of the poor. Exchange of experiences have to be facilitated.

To find ways to meet the financial needs is not the central purpose of this paper. Many organisations including the World Bank, the Regional Development Banks, and also UNDP, UN-HABITAT, and UNEP are working on it as well as the G8. In the perspective of this working paper, it is assumed that the financing of infrastructures and promotion of micro-credit mechanisms would be facilitated if partnerships develop and if responsibilities and role of all the stakeholders were clarified.

The call for more consistency in international obligations is certainly an invitation to academics, CSOs and UN bodies to undertake research and analyses on this issue, based on concrete cases. Yet, it is first of all a pressing invitation addressed to all governments to consider the implications of rules elaborated for a given domain in a particular institution on the other domains dealt with in other institutions, and particularly the implication of trade laws and intellectual property rights on human rights and the room left to development strategies. For instance, human rights law overtly seeks substantive equality, even where this means temporarily undertaking affirmative action programmes that give special treatment to some in order to realise the human rights for all. Non-discrimination under trade laws seeks equal treatment for nationals and non-nationals with a view to improving international competition. But, is this always realistic if the nationals referred to here are poor grass root enterprises and the non-nationals are powerful multinational corporations? Could this not run the risk of creating a level playing field of unequal players and consequently entrenching existing inequalities, discrimination and marginalisation? The partnerships advocated in this note provide room for complementary activities to avoid this situation arising. Similarly, the adoption of the TRIPS Agreement meant that the balance between public and private interests, which was embodied in the *International Covenant on Economic, Social, and Cultural Rights*, could become skewed.

Both the necessity and the difficulty to establish sustained and efficient partnerships have been underlined. It is the strong view of many of those who have been consulted that partnerships would be facilitated if the roles and responsibilities of the different partners in the delivery of basic services were to be clearly incorporated in laws, rules and institutions at the national level.

It is submitted here that in doing so governments and parliaments would benefit from internationally agreed instruments and from a database of good practices. Indeed, there are universal principles to be respected and a list of issues that have to be addressed even if each country has to develop laws and rules adapted to its circumstances. It is suggested that the instruments agreed at the global level be further elaborated in the framework of the Regional Commissions to take advantage of their good understanding of the regional specificity and of their expertise in the interrelated domains of housing, transport, energy, water, sanitation, health and education.

The difficulty to establish and maintain strong pro-poor policies has been equally underlined. Indeed, the spirit of the Millennium Declaration is to conduct affirmative actions in favour of the poor, but to move from intention to practice is not easy. In day-to-day life, governments are confronted with choices in the allocation of resources; they are subject to pressures so that, all too

often, the needs of the poor are given less priority than those of the more powerful. A right-based approach would acknowledge the existence of deficiencies in the provision of basic services to the poor, oblige the state to marshal all possible means to eradicate such shortcomings, give all stakeholder a clear sense of priorities, and provide civil society organisations with a solid base to remind national and local authorities of their obligation vis-à-vis the less favoured and eventually take legal proceedings. More specifically:

- ***In terms of outcomes***, a rights based approach promotes the progressive universal realisation of accessible, affordable, adaptable, non-discriminatory and quality basic services necessary for promoting certain economic, social and cultural rights such as the right to health, the right to water, the right to adequate housing and the right to education.
- ***In terms of process***, a rights based approach promotes respect for certain civil and political rights in the process of service delivery and its monitoring. Thus, a rights based approach promotes the right of everyone to take part in the conduct of public affairs (the right to participation), as well as the freedom to seek, receive and impart information that is relevant to understanding basic service delivery and influencing relevant decision making processes. Further, given the nature of human rights as legal rights, a rights based approach also promotes access to justice, equality before the law, courts and tribunals, and effective monitoring of service providers and service delivery among its essential elements.

## **6. Three options and next steps**

At this stage, three options could be considered to develop an international framework that would help countries to pro-poor policies conduct and develop partnerships so that everyone could access basic services.

- To elaborate several international instruments in order to facilitate the relationship between two partners such as a Code on Public-Private Partnership, to clarify the Status and Roles of the Civil Society Organisations or the Powers and Responsibilities of Local Authorities, or to make recommendations on sectoral issues such as water and sanitation, energy, transport, health, and education. Elements to be incorporated in such instruments have already been gathered in the context of diverse initiatives some of them were mentioned above.
- To build upon the Covenant on Economic, Social and Cultural Rights and on the Millennium Goals, to adopt in the General Assembly a declaration recognising that everyone is entitled to access basic services and request the Secretary General to launch negotiations on guidelines that would help governments in creating an environment favourable to the implementation of this entitlement. This would take advantage of the interrelations between the different basic services while inviting all stakeholders to co-operate and to focus on the delivery to the poor and environmental sustainability.
- To launch a process for the recognition of the right of everyone to access basic services as a human right and to explicit this right to a general comment and guidelines. The general comment would spell out the obligations of the state to respect, protect, facilitate and fulfil. The guidelines would assist governments in developing policies conducive to the implementation of this right.

These three options are not mutually exclusive as the codes suggested in the first one could explicit sectorally the guidelines proposed in the second and the guidelines mentioned in the last

two options would be very similar. The first difference is that option one neglects the multi-sectoral tradeoffs in the delivery of basic services, which would risk to increase costs and diminish efficiency. The second difference lies in the degree of obligations that states accept to effectively conduct pro-poor policies. The rights approach, absent from the first option, remains light in the second and strong in the third one.

It would be premature at this stage to make a definite choice as consultations with the stakeholder are still going on. It is why this note is circulated as an information note to the CSD 12. In addition it will serve as a background document for a parallel event to be organised on this occasion by the French delegation, UNITAR and UN-HABITAT.

From May to August 2004, under the guidance of both a political committee and the assistance of a technical committee, a representative sample of stakeholders will be invited to comment this document focusing in particular on the following issues:

- What is the definition of basic services?
- Is the right to basic services universal or contextual?
- Who is responsible for provision of basic services?
- Who is responsible for monitoring the provision of basic services?
- Who could be the main actors?
- What changes are necessary insure inclusion of all key actors in decision-making for basic services?
- What changes are necessary to insure delivery of basic services to all?
- What changes in national enabling legislation are needed?
- How would responsibilities be affected by decentralization?
- Where will resources come from?
- What are the relative advantages of the three options proposed at the end of section 4?

The document will then be revised and submitted to the World Urban Forum that is organised by UN-HABITAT in Barcelona in September 2004.

A final version would be elaborated thereafter that would be submit to the CSD 13 that will the make recommendations to ECOSOC for follow up actions related to an international framework that would permit everyone to access basic services.

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