

**ANALYSIS OF AND RECOMMENDATIONS ON
THE WORKING DOCUMENT “TOWARDS AN
AFRICAN CHARTER FOR LOCAL
GOVERNANCE”**

An Input for an Expert Group Meeting on the “*African Charter on the Values and Principles of Decentralisation*”, held in Yaounde, Cameroon – 7 to 9 May 2012.

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A. INTRODUCTION

1. The purpose of this document is to provide a brief analysis, with recommendations, of the report "*Towards an African Charter on Local Governance*" – by Mr. Jean-Pierre Elong Mbassi. This latter working document was commissioned by the AU Commission during its 1st consultation on Local Governance in Yaounde in 2009.

2. The structure of this document centres around seven main areas:

- a) Towards a Common Understanding of the Term "Charter";
- b) The African Union (AU) and Decentralisation, Local Government and Local Governance;
- c) Conceptualising Decentralisation, Local Government and Local Governance in Africa;
- d) Challenges and Problems of Decentralisation in Africa;
- e) Assessment of the Principles of Decentralisation;
- f) Elements of a Structure for the African Charter on Decentralisation, Local Government and Local Governance; and
- g) Structuring a Process for Dialogue, Consultation and Adoption.

B. TOWARDS A COMMON UNDERSTANDING OF THE TERM "CHARTER"

3. It is important to remind ourselves what the term charter means and how it has been used, relevant to this project of developing an African Charter on Decentralisation, Local Government and Local Governance.

What is a "Charter"?

4. Some definitions of a Charter include:

- A document outlining the principles, functions, and organization of a corporate body; a constitution (Free Dictionary)
- A written grant by a sovereign or legislature whereby its rights and privileges are defined (Oxford)

5. Notable common elements in these two definitions are: it is owned or adopted by some form of corporate entity with a defined authority; it has a formal status that is captured in writing; it spells out rights and privileges; and defines the organisational and institutional form of the said entity.

6. Some examples through history show how the term charter has been used and the form that it has taken:

19TH Century Example: Chartist Movement

7. The Chartist Movement, or Chartism, was an attempt in Britain to build an independent political party devoted to the interests of working people. The movement began in 1837 and inspired a general strike in August 1839. A mass demonstration in Newport in November 1839 was met by troops who fired on the crowd and killed at least 15. *The name Chartist came about because the movement advocated a charter for reform of the British political system.* The proposed charter included six points:

- Universal suffrage (i.e., all men in society would be allowed to vote)

- Secret ballots
- Annual Parliaments
- Removing property requirements for Members of Parliament
- Payment of Members of Parliament
- Equal electoral districts

20TH Century Examples

Charter of the United Nations, 1945

8. The UN Charter was signed by 50 of the original 51 members; Membership in the UN is open to all other peace-loving states which accept the obligations contained in the Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

9. Pre-amble Extract:

"We the peoples of the United Nations determined: to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom ..."

African Charter On Democracy, Elections And Governance (2007)

10. The African Charter on Democracy, Elections and Governance, adopted by the African Union in January 2007, is Africa's bid to promote and develop its governance systems. Two years after its adoption, only two countries signed and ratified it. By early 2012, of the 54 AU member states, 39 Member States have signed the document, but only 15 have ratified it.

11. Pre-amble: *"We, the Member States of the African Union (AU) ..."*

12. Objectives of the Charter (selected extracts):

"6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance; ..."

10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;

11. Promote gender balance and equality in the governance and development processes ..."

13. Political, Economic and Social Governance (selected extracts):

Article 34: "State Parties shall decentralize power to democratically elected local authorities as provided in national laws."

Article 35: "Given the enduring and vital role of traditional authorities, particularly in rural communities, the State Parties shall strive to find

appropriate ways and means to increase their integration and effectiveness within the larger democratic system.

(Note on process: The development of the draft Charter assumed two intertwined methodological strands: (a) stakeholder dialogue process and (b) desk research & write-up.)

14. By the end of January 2012, the 15 Member States who have signed this charter are:

1. Mauritania (28/07/2008)
2. Ethiopia (06/01/2009)
3. Sierra Leone (08/12/2009)
4. Burkina Faso (06/07/2010)
5. Lesotho (09/07/2010)
6. Rwanda (14/07/2010)
7. Ghana (19/10/2010)
8. South Africa (24/01/2011)
9. Zambia (08/07/2011)
10. Guinea (11/07/2011)
11. Chad (13/10/2011)
12. Niger (08/11/2011)
13. Guinea-Bissau (04/01/2012)
14. Nigeria (09/01/2012)
15. Cameroon (16/01/2012)

Towards a European Charter on Multi-level Governance

15. A White Paper on Multilevel Governance was adopted by the Committee of the Regions of the EU in June 2009. It proposes that steps be taken to *"initiate a consultation process with a view to drawing up a European Union Charter on multilevel governance, which would establish the principles and methods for developing a common and shared understanding of European governance, based on respect for the principle of subsidiarity, which would support local and regional governance and the process of decentralisation in the Member States, candidate countries and neighbouring states, and which would stand as a guarantee of the*

political will to respect the independence of local and regional authorities and their involvement in the European decision-making process."

European Charter of Local Self-Government

16. The European Charter of Local Self-Government was adopted in 1985 under the auspices of the Congress of the Council of Europe. This Council was established in 1949 and now has 47 member countries. This Council is not to be confused with the Council of the European Union. For over 15 years, the Council of Europe and the European Union have implemented numerous joint programmes.

17. The purpose of this Charter is to make good the lack of common European standards for measuring and safeguarding the rights of local authorities, which are closest to the citizen and give him the opportunity of participating effectively in the making of decisions affecting his everyday environment. The Charter is in three parts. The first part contains the substantive provisions setting out the principles of local self-government. It specifies the need for a constitutional and legal foundation for local self-government; Part two contains miscellaneous provisions relating to the scope of the undertakings entered into by the parties. In accordance with the intention of securing a realistic balance between the safeguarding of essential principles and the flexibility necessary to take account of the legal and institutional peculiarities of the various member States, it permits the parties specifically to exclude certain provisions of the Charter from those by which they consider themselves bound.

African Mayors Climate Change Declaration 2011

18. The purpose of the African Mayors Climate Change Declaration was to prioritise key concerns of African local governments ahead of the United Nations Framework Convention on Climate Change Conference of the Parties 17- COP17.

Durban Adaptation Charter for Local Governments (2011)

19. The Durban Adaptation Charter was adopted on the 4th December 2011 on the occasion of the "Durban Local Government Convention: adapting to a changing climate" - towards COP17/CMP7 and beyond –

Global Charter-Agenda of Human Rights in the City.

20. At the UCLG World Council, gathered on December 11th, 2011 in Florence (Italy), it adopted the Global Charter-Agenda for Human Rights in the City. It aims to promote and strengthen the human rights of all the inhabitants of all cities in the world.

General Observations and Lessons

21. A perusal of the above examples suggest a number of common assumptions and characteristics that most Charters share:

- a) *Aspirational*: Charters aspire to and/or elaborate a future state of affairs and vision. Elements of this future state may exist presently, but it is deemed to be inadequate. It is also aspirational in that it seeks to obtain greater buy-in and support.
- b) *Core Values and Principles*: Charters outline a common and shared set of values and principles. This set of values and/or principles is used as a condition for membership within a particular entity and as a basis for accountability.
- c) *Content Specific*: Charters address a particular content, substantive or thematic area. It can be political, social, environmental, religious, business-related etc. In other words, Charters have a defined scope or terms of reference.
- d) *Behaviour-changing*: Charters are aimed at changing past and present behaviours and practices. The statement of principles is meant to lead to new and different actions in line with the vision, principles and content-specific issues.
- e) *Defined signatories and membership*: Charters have an assumed signatory and/or membership base that is usually well defined. The target audience to whom the Charter applies is very clear.
- f) *Defined corporate form and authority*: Charters are usually associated with an existing corporate entity, of whatever kind. This entity must have authority over the signatories and members.
- g) *Progressive Realisation and Implementation*: Since Charters mainly speak to a future state of affairs, incrementalism in actions by the signatories is often assumed. This is necessary to reach the sufficient and desired broad-based buy-in and acceptance. Also often there are factors and conditions that make it impossible to realise the vision and implement the principles overnight.

C. THE AFRICAN UNION (AU) AND DECENTRALISATION, LOCAL GOVERNMENT AND LOCAL GOVERNANCE

22. There is sufficient evidence to conclude that across the African continent and within the AU there is an increasing ground swell of support for the broad thrust towards decentralisation, local government, local governance and local development. Some of these indicators include:

- a) Constitutional and legal frameworks in many African countries that promote, recognise and protect decentralisation and local government;
- b) The establishment of AMCOD in 2003 and the UCLGA in 2005;
- c) The resolution of the UCLGA in 2005 to establish an AU recognised Pan-African Council of Local Governments;
- d) The recognition of AMCOD as a Special Technical Committee by the AU Heads of State in 2007 that will focus on Decentralisation and Local Government;
- e) The establishment of country-specific and regional-based African Local Government Associations;
- f) The active participation of individual and organised African local government formations in global forums, e.g. COP 17, Commonwealth Local Government Forum, ICLEI etc;
- g) The African Charter on Democracy, Elections and Governance, adopted by the African Union in January 2007 which encourages Decentralisation amongst member states (Article 34);

- h) Recognition of the 2004-2007 AU Strategic Plan to involve local governments in the formulation and implementation of policies and implementation;
- i) The endorsement by the Executive Council of the AU, 20th Ordinary Session (January 2012), of the Report of AMCOD of its 2nd Ordinary Session which contains key decisions on decentralisation and local development, including the decision to draft an African Charter on the Values, Principles and Standards of Decentralisation and Local Governance;

23. The seven reasons advanced for an improved relationship between the AU and local governments and for the advancement of the decentralisation agenda are clearly made. Points that need emphasis or greater nuance include:

- a) The **intention to expand and strengthen local democracy in public life must be paramount in the African policy paradigm on decentralisation**. This is a precondition for vibrant accountability and local responsiveness. Arguments about administrative efficiency must not be divorced from the objectives of active citizenship and deepening public participation.
- b) The local level must be viewed as the catalyst for sustainable development. Stated differently, there **must be an inextricable link between local democratic governance and sustainable development**. The argument must be made more forceful to indicate that the attainment of the MDGs, climate change and country development objectives, requires as a precondition strong, vibrant and responsive local governments and local governance modalities.
- c) Territorial governance from the local level **must grapple more decisively with the common, but differentiated, needs of local urban governance and local rural governance and development in Africa**. Urbanization trends in Africa requires specific decentralisation responses, while poverty and under-development in rural areas arguably require a greater appropriate mix of centralisation and decentralisation initiatives.
- d) A closer analysis of the literature, **experiences and lessons of decentralisation in Africa must be more simply and succinctly summarised**. For example, some argue there have been two waves of decentralisation in Africa post independence, (firstly centralisation, then followed by decentralisation) however the overall track record has been uneven. Some also point to important differences in the Francophone and Anglophone experiences on decentralisation. All these historical and colonial-related nuances cannot be glossed over in developing a continent-wide Charter on Decentralisation.
- e) The **need to articulate various levels of governance on the continent is critical**. The 2009 EU's Committee of the Regions' *White Paper on Multi-Level Governance* should shed some important insights. The proposed African Charter on Decentralisation can begin to specify the relevant governance levels that need to be articulated: e.g.
 - Pan-African / continental
 - Regional
 - Country
 - Provincial / State / District (Inter-mediate sub-national level)
 - Local government
 - Community / Commune / Village / Ward
- f) The **status and role of (organised) local government in international affairs requires more debate and clarification**. For example, at the level of

the UN, the United Cities and Local Government (UCLG) is regarded as a non-governmental stakeholder. Should the AU take its cue from the UN with regard to the status of the UCLG Africa? Other important questions that need to be addressed explicitly or implicitly include the extent to which local governments need to be regulated (if at all) by national governments regarding international development and cooperation matters.

- g) What is absent is a recognition of traditional forms of governance in Africa and what this means for Decentralisation. Conceptually it is **important to include traditional forms of governance in the discourse on African decentralisation and local governance at the outset**. This will require more work and consideration.

D. CONCEPTUALISING DECENTRALISATION, LOCAL GOVERNMENT AND LOCAL GOVERNANCE IN AFRICA

25. The general overview of decentralisation is largely representative of current thinking and debates. What is critical is to more fully reflect the main conceptual debates and categories and then to accurately emphasize the distinctive African elements and lessons. There are many conceptual paradigms by which to understand and simplify decentralisation. In addition to what is suggested in the paper, the following **definitions** have also been argued.

26. Turner and Hulme¹ (1997) state that "*most authors are agreed that decentralisation within the state involves a transfer of authority to perform some service to the public from an individual or an agency in central government to some other individual or agency that is 'closer' to the public to be served*".

27. Attahi² (1997) reflects that "*for many rulers decentralisation constitutes a transfer of power from the state to newly elected local bodies, more specifically the local governments*".

28. Martinussen³ (2004) argues that "*the term decentralisation has been used to encompass a variety of alternative institutional and financial arrangements for sharing power and allocating resources*".

29. The literature identifies four main **types** of decentralisation: deconcentration; delegation; devolution; and privatisation:

- *Devolution*: the devolution of power to sub-national units is seen as the ideal form of decentralisation since it combines the joint promises of local democracy and technical efficiency.
- *Deconcentration*: this is where countries operate administrative structures that delegate responsibilities for functions within specific sub-national territories to field level civil servants.
- *Delegation*: this takes place when public enterprises and other semi-autonomous government agencies are assigned responsibility for implementing sector priorities.

¹ Governance, Administration & Development, 1997 (Turner and Hulme eds)

² Article on Governance and Urban Development in Africa in the book: Governing Africa's Cities (1997), Mark Swilling (ed)

³ State Society and Market (2004), John Martinussen (ed)

- *Privatisation*: this is when government agencies divest themselves from responsibility for the provision of infrastructure and services.

30. Three **dimensions** of decentralisation are noted: fiscal decentralisation; political decentralisation; and institutional decentralisation.

31. Potential **advantages (goals)** of decentralisation are argued to be:

- a) Improved efficiency in the provision of services;
- b) Improved local democracy, local governance and opportunities for public participation;
- c) Improved equity across local spaces;
- d) Greater effectiveness in service delivery;
- e) Political equality as political power will be more broadly distributed;
- f) Responsiveness to the local community because local leaders are best placed to understand the specific local needs;
- g) Greater accountability by local leaders since they are more accessible to communities;
- h) Local specific plans can be tailor-made to for local areas;
- i) Inter-organizational coordination can be achieved at a local level;
- j) Greater experimentation and innovation;
- k) Workload reduction at agencies at th centre of government will allow them to focus on more strategic issues.

32. In 2001 the UNCDF hosted a Symposium on Decentralisation and Local Governance in Africa. This meeting reflected on some of the key decentralisation issues unique and relevant to Africa. Seven **motivating factors** were identified for decentralisation in Africa:

- a) The failure of centralized public sector management evidenced by various crises;
- b) The resulting decline in state resources for reforms in search of new governance paradigms;
- c) Pressures for political reforms by actors outside the state;
- d) Pressure from external donors;
- e) Urbanization;
- f) The use of decentralisation by ruling groups to neutralize or seek compromises with regional or local elites;
- g) The pressures of globalization compelled many national governments to focus on strategic issues of national political and economic management.

33. Three **dilemmas** for decentralisation in Africa were identified:

- *Political dilemmas*: an unwillingness by some national leaders to share political power and also the potential of local elite capture;
- *Economic dilemmas*: redistribution can be complicated and often significant resources are required for capacity building of sub-national entities and officials;
- *Management dilemmas*: this includes the appropriate institutional design across levels of government regarding inter-governmental relations and coordination mechanisms.

34. It is argued there are typically five **decentralisation instruments**:

- a) Allocation of responsibilities for public goods and services across the various levels of government and to other entities;
- b) Allocation of taxes across the different government levels and also how to distribute taxes between urban and rural areas;
- c) Transfers systems from the central to sub-national levels: this is also referred to as the inter-governmental fiscal regime;
- d) Central government controls over sub-national levels of government;
- e) Regulation and management of local government elections.

35. Three popular **myths and misperceptions about decentralisation** were discussed:

- *Decentralisation is a panacea*: it is argued that decentralisation obviously has positive effects, however there can also be negative effects. For example, inappropriately designed decentralisation can undermine macro-economic stability and worsen regional disparities.
- *Decentralisation prerequisites*: many argue that decentralisation is dependent on factors such as local capacity, enabling frameworks, significant locally derived resources. However there are others that point out that in some parts of the world some local governments have performed well without some of these conditions and requirements.
- *The primacy of political will*: few doubt the crucial importance of political will in decentralisation. In examples such as Uganda, Ethiopia and South Africa it is argued that the original vision and political will did not lead to the realisation of the of the imagined systems. Therefore it is important to realise the relevance and contingency of other success factors.

36. Three **challenges for approaching decentralisation** were highlighted:

- Defining an inter-governmental system that makes sense in a particular country;
- Creating mechanisms for coordinating the activities of various actors;
- Developing an appropriate strategy for implementing decentralisation.

37. There are valuable efforts underway to assess the **state of decentralisation and local government in Africa** (e.g. UNDP work on Eastern and Southern Africa - work in progress). This was also recognized by the 2nd Ordinary Session of AMCOD in 2011.

38. Various authors, academics and practitioners have undertaken work on this topic. For example, in 2001, Dele Olowu⁴ argued that "*African countries are at once regarded both as centralised and excessively decentralised. The formal state structure is centralized, but society is decentralized and people live in scattered rural communities.*"

39. Olowu argued that compared to other regions in the world, Africa has the weakest formal local government structures, judged in terms of size of expenditure

⁴ UNCDF Symposium Proceedings: Decentralisation and Local Governance in Africa, 2001

and employees, but at the same time decentralisation is not new to Africa. Since colonial times various attempts were undertaken to decentralise state structures. In the 1980s and 1990s there were waves of reform of decentralisation that were widely regarded to have failed or collapsed. By the end of the 1990s there were four forms of decentralisation in Africa:

- Deconcentrating with nominal devolution, e.g. Ghana and Cameroon;
- Devolution, e.g. Mauritius and Uganda;
- Partial Devolution (Urban Areas only), e.g. Mozambique and Botswana; and
- Federations, e.g. Ethiopia, Nigeria and Tanzania.

40. Attahi (1997) presents a slightly more optimistic trajectory of decentralisation in Francophone Africa. In his view, after independence most Francophone countries abolished the multiparty system which were accompanied by administrative decentralisation techniques in order to widen the base of authority and legitimacy of the newly created state. By the end of the 1970s, due to many pressures, some states that were severely affected by the economic crises adopted decentralisation, e.g. Benin and Burkina Faso. Countries such as Togo and Niger created communes with appointed executives.

41. The end of the 1980s saw the return to political pluralism and a new wave of democratisation in Francophone Africa. In the early 1990s there were mass protests against the one-party regimes. This led to many constituent assemblies and multi-party elections in many countries. Strong commitments were made to democratisation and decentralisation, e.g. Benin and Mali.

42. More urgent work must be done to assess the current state of decentralisation, local government and local governance in Africa. Patterns, trends, regional and unique issues need to be identified.

43. One indicator of the present state of affairs is reflected in the 2010 UN Habitat Report on the *State of African Cities* which argues that,

"Many African municipalities are financially weak because their revenue- and finance-generating structures are inadequate and inefficient. Decentralising responsibilities without fiscal decentralisation contributes to urban decay, poor services and the proliferation of slums. Fiscal must match political decentralisation in order to create more revenue-generating options and decision-making power for local authorities..."

44. The report goes further to state that the experience over the past decades has yielded four broad types of city / urban area-wide governance structures:

- a) *Autonomous local authorities*: In some city regions, authority and power are embedded in local authorities that enjoy high degrees of autonomy, including spatial planning, policy development and legislation.
- b) *Confederate regional government*: Local authorities enter into voluntary cooperation and agree on the regional-level functions to be carried out by a dedicated apex authority with clearly spelled out mandates and powers (such as a metropolitan development authority). The effectiveness of this governance arrangement clearly depends on the degree of effective power lodged in the regional authority. This approach can only succeed if all local authorities in the city-region participate in, and adhere to, the regional body's decisions.

- c) *Mixed systems of regional governance*: Under mixed systems of regional governance, the higher tiers of government (national, state/provincial) share power with local authorities in the delivery of specific public functions. These are defined under a variety of flexible arrangements based on prevailing political conditions.
- d) *Unified regional governance*: One single government entity, typically a fully-fledged ministry is responsible for an entire city region. Planning, plan implementation, monitoring and evaluation are all lodged in this body. Local authorities exercise power over a limited number of clearly spelled out lower-level assignments.

45. One of the way forward tasks is to clarify the distinctiveness and inter-relationships between the core concepts of decentralisation, local governance and local government. What should be apparent from the above discussion is that decentralisation is the national schema and framework for sub-national government, local governance and local government. Local governance similarly is the broader framework for state, non-state and civil society actors within which local government is key driver and player.

46. Swilling⁵ (1997) reinforces this view when he states that “*this conception of local governance self-consciously places local government at the centre of its vision, but qualifies this by referring to partnerships and the resource / capacity conditions that need to be met. This immediately points to both the horizontal and vertical matrix of relationships that define the nature and dynamics of local governance*”.

E. CHALLENGES AND PROBLEMS OF DECENTRALISATION IN AFRICA

47. Based on the above discussion of the conceptual definitions and categories of decentralisation and some observations of its trajectory in Africa, it should be obvious that the problems and challenges can be expanded and measured against the above conceptual categories.

48. The following problems and challenges can therefore be added or elaborated as follows:

- a) **Not all African countries have constitutionally entrenched or protected decentralisation and local government.** In a recent study by the UNDP on decentralisation in Southern Africa, a survey of 14 countries show that only 9 countries reflect and promote local government in their constitutions.
- b) The **observation that that not all local governments in Africa are “autonomous” is a contentious one.** The first difficulty with the local government autonomy argument is that no municipality can be completely autonomous. All local government are subject to national level laws and regulatory frameworks. Secondly, many would disagree that local government autonomy unqualified is not desirable from the perspective of policy or practice. More nuanced approaches speak about “relative autonomy” of local government. In South Africa for example, the term autonomy does not feature at all in the Constitution (which has an entire chapter dedicated to local government) or in any of the primary legislation. In the inter-governmental scheme, local government is described a sphere which is distinctive, inter-

⁵ Governing Africa’s Cities, 1997: Mark Swilling (ed)

dependent and inter-related to the national and provincial spheres of government.

- c) The observation is correctly made that **in some African countries the entire population does not fall under local government**. The absence of wall-to-wall local government is therefore regarded as a problem, since those excluded from the municipal regime do not gain from its intended benefits elaborated earlier.
- d) In some African states there is **no correspondence and complementarity between political, administrative and fiscal decentralisation**. This observation was made in the UN Habitat's 2010 State of African Cities Report.
- e) The report also correctly observes that **coordination mechanisms at a local government level within a decentralised regime are critical. This is absent in many African countries**. However, some of the nuanced lessons on coordination and decentralisation show that a simplistic argument that local government is the only locus of coordination is flawed. Decentralisation should have multiple foci of coordination, with local government occupying a special place.
- f) Moreover what is **missing in the Working Document is a discussion on the appropriate levers and tools for coordination in decentralisation**. Development planning can be a powerful tool to bolster decentralisation and also enable coordination between various levels of government and between government and non-state actors. A common problem of development planning is the poor articulation of planning processes across different state levels, which often results in undermining local governments and local communities.
- g) It is agreed that **local government associations (LGAs) have a varying legal status in African states**. Some examples where they are regarded as NGOs is politically problematic, but at the same time LGAs cannot have equal status to that of central government. The latter must retain the discretion, within constitutional checks and balances, to regulate the nature of decentralisation and local government in a country based on national, historical, strategic and contextual country considerations.
- h) Other **problems of decentralisation in Africa that will require elaboration** include:
 - i. Poor local government capacity;
 - ii. Poor articulation between local government and traditional forms of government;
 - iii. High levels of corruption, patronage and nepotism;
 - iv. Uneven revenue base across local government and skewed fiscal transfers;
 - v. Increasing levels of urbanisation in major cities and towns, which is often marked by the absence of national policies on urbanisation and/or urban development;
 - vi. Poor mechanisms and provisions to address inter-governmental conflicts and disputes.

49. Regional- and country-specific challenges with decentralisation on the continent will need to be more carefully categorised and analysed.

50. In the South African instance, some of the key systemic problems with cooperative governance (this is the country-specific conception and approach to decentralisation) that have been identified are⁶:

- a. First, national regulation of provincial and local governments lacks coherence and consistency. There are long-standing uncertainties about the functional responsibilities of different spheres, national policy-making affecting the other spheres is often poorly coordinated, and the overall administration of municipal legislation is generally inadequate.
- b. Secondly, in practice, there are two major coordination problems: One relates to inconsistencies in national/provincial concurrency, the other is the absence of a structured intergovernmental relationship between national government and metropolitan municipalities despite the acknowledged importance of these cities to the economy.
- c. Thirdly, the system of supervision of provincial and local governments is poorly regulated and largely ineffective. The division of monitoring, support and supervision roles between national government and provinces is unclear, staffing and resourcing of these functions is inadequate and monitoring and intervention practices are inconsistent. Strengthening the entire supervisory regime to ensure that provincial and local performance is properly and effectively supervised is essential if performance and accountability of all spheres is to be improved.

In addition to this, various country-wide state of local government reports have been undertaken in the country. The last one was the *State of Local Government in South Africa* (2009) as well as a *Ten Year Review of Local Government in South Africa* (2011)

51. In a current working draft of *Local Government in Southern Africa* (2011/12) the UNDP identifies the following as some of the key challenges in implementing decentralization in Southern Africa:

- a) **“Lack of consistency in the legal framework:** Lack of consolidation of the numerous pieces of legislation is one major obstacle to decentralization in the region. In addition, outdated legislation need to be reviewed regularly to reflect the current reality and address emerging issues.
- b) **Inadequacy of resources:** Most countries in Southern Africa do not have adequate resources (human and financial) to sustain the implementation of the decentralization process. Coordination and monitoring of decentralized bodies also require significant resources.
- c) **Pockets of resistance:** There are pockets of resistance to decentralization among line ministries. A misperception about reform and the consequence of change seems to prevail in all the countries in the region. Staff at the centre fear losing their authority or jobs due to decentralization.
- d) **Financing mechanisms and unfunded mandates:** Current financing mechanisms in Southern Africa are inappropriate for decentralization. They leave LGs with inadequate funds to fulfill decentralized functions.
- e) **The role of civil society:** An important hurdle for strengthening downward accountability is the weakness of the civil society. Citizens lack experience in organizing themselves and are ill-equipped to demand their needs. Although there has been an increase in the number of NGOs mobilizing citizens to participate, the role of civil society has been limited, given the weak legal

⁶ Draft Green Paper on Cooperative Governance – Working Draft – March 2011

framework. In some countries, politicians and the elite believe that regular citizens are not capable of making independent decisions”.

F. ASSESSMENT OF THE PRINCIPLES OF DECENTRALISATION

52. The report identifies seven principles that are germane to an African Vision of Local Governance. Brief comments are made on each:

52.1 The Principle Relative Autonomy

- Initial proposed formulation with **additional amendments**:

“The law hereby institutes local governments as relatively autonomous sub-national entities entitled to free exercise of their competencies. Recognition of the principle of relative autonomy has to be enshrined in the constitution. The constitution shall, in addition, specify the method of definition of territories falling within the jurisdiction of local governments, the nature and scope of powers reverting to them, their responsibilities, obligations and functions.”

- Secondary proposed formulation with **additional amendments**:

“Local governments shall be endowed with a legal personality and financial autonomy within a defined nationally decentralized framework of powers and functions. They shall freely administer themselves through deliberative assemblies and executive organs elected in accordance with the provisions of the law.

Modification of the boundaries of territories falling within the jurisdiction of local governments may only be done in keeping with the provisions of the law.

Local governments shall obligatorily be consulted in advance either individually or collectively through their national association, on any legal or regulatory instrument, any national sector policy, or any program or project having a direct or indirect impact on the lives of the local populace or on the exercise by local governments of their competencies.

~~*No restriction shall be placed on compliance with the principle of local government autonomy save in exceptional cases specified by law. Local governments shall have the right to sue before competent courts should they deem their autonomy abused by higher levels of governance.*~~

~~*Central and all sub-national governments must be bound by law to cooperate and support each in the attainment of national and sub-national development priorities.*~~

~~*Provisions shall be made in law to address inter-governmental disputes by way of mediation. The involvement of the courts should be final step in a sequence of non-judicial processes and mediation efforts.”*~~

- Remarks

As argued earlier an unfettered approach to local government autonomy is problematic for various reasons. An additional danger is what the document refers to as “localist tendencies”. There are also broader ideological undertones of federalism

and unitarism in this conception, which needs to be the domain and discretion of individual African States.

52. 2 The Principle of Subsidiarity

- Initial proposed formulation with **additional amendments**:

“Public responsibilities shall be exercised by the authorities closest to the citizens to whom the decisions apply. Such responsibilities may not be transferred to a higher level of governance save where the latter offers better guarantees of pertinence and efficacy for the envisaged public action”.

- Secondary proposed formulation with **additional amendments**:

“As much as possible, harmonization of public policies at local level shall be the main responsibility of local governments. The latter shall cooperate with the other levels of governance towards achieving better efficiency in public action. To do so, central governments will play a supportive alignment role and ensure that enabling institutional and practical conditions shall be determined and operationalized via laws and/or regulations to ease relations and collaboration between the various levels of governance.”

- Remarks

This principle is fully supported with an explicit added reference to the enabling and supportive role to be played by central and national governments. In many instances national governments can unblock local problems and bring additional partners and resources to bear.

52.3 The Principle of ~~Entrenchment~~ Differentiation

- Initial proposed formulation with **additional amendments**:

“Local governments shall exercise their competencies having regard to local societal realities and the values and customs underpinning same, without undermining basic national principles, norms and standards. Consequently, local governments shall be bound to adapt national laws and regulations, or national development initiatives or programs, to the socio-cultural contexts where such laws and development initiatives apply”.

- Secondary proposed formulation with **additional amendments**:

Such possibility of adaptation may be materialized through establishment of consultation frameworks with other local-level stakeholder, including traditional and/or moral authorities. The said consultation frameworks may take the form of advisory boards, entitled to make proposals or give opinions about guidelines or decisions concerning the management of affairs falling within the ambit of local governments.

- Remarks

The term “entrenchment” does not adequately reflect the intention and meaning of the text. “Differentiation” better speaks to the possibility of local adaptation and contextualization. The added qualification of not undermining basic national norms

and values is intended to ensure local adherence to the countries' core constitutional, legal and national principles.

52.4 The Principle Of Participation

- Initial proposed formulation with **additional amendments**:

*“Local governments shall promote inclusion and the **appropriate** participation of all segments of civil society in the **planning, implementation, performance management and evaluation** of their competencies. No one shall be discriminated against on the basis of their sex **and sexual orientation**, age, physical vulnerability, social status, **religion, place of origin, ethic origin or race**”.*

- Secondary proposed formulation with **additional amendments**:

*“To encourage the effective participation of the civil society in the management of the community, local governments shall encourage the development of fresh public expression spaces (such as neighborhood councils for instance) and new forms of elections (such as referendum for instance), and incorporate them into the usual **or establish new** local governance mechanisms. The law shall empower local governments to determine and adopt appropriate forms of popular participation and civic engagement”.*

- Remarks

Participation and active citizenship must be encouraged throughout the entire cycle of planning, implementation, performance management and evaluation. Again the qualification of “appropriate” allows for local context to be considered. Secondly, discrimination in all its guises must be abhorred.

52.5 The Principle Of **Co- (or Shared) Responsibility and Complementarity**

- Initial proposed formulation with **additional amendments**:

“The main mission of local governments is to promote improvement of the living conditions and environment of the local populace. To do so, they shall initiate the elaboration and concerted adoption, by all local vital forces, of local development plans and programs that define the objectives to be attained as well as their target dates to permit access by the population to essential services and promote gainful and employment-generating activities, with a view to protecting local ecosystems and ensuring consistency with national and regional development policies.

*These development plans and programs shall be the subject of a commitments charter adopted by all **inter-governmental and non-state** parties, a charter that should define the framework for collaboration to be established for attainment of targeted objectives, as well as the indicators to measure progress in the implementation of commitments made.*

*In the exercise of their responsibilities, local governments shall be accountable to citizens in respect to their decisions regarding local policy and management. Similarly, they shall ensure the publication **and appropriate dissemination** of information about their financial status and shall be subject to supervision and control in accordance with the law”.*

- Remarks

While local governments carry the primary responsibility of improving the living conditions of local residents, this is also a shared responsibility with other state agencies and non-state stakeholders. This must be made explicit.

Secondly the publication of information could be viewed narrowly, hence *appropriate dissemination* is critical in local contexts where the conventional publication of information is still inaccessible to most local residents.

52.6 The Principle Of Efficiency

- Initial proposed formulation with **additional amendments**:

“Local governments shall be endowed with the requisite capacities to discharge their responsibilities. Accordingly, as much as possible and subject to constitutional principles, the national development vision and ~~to the~~ resources available, the laws and regulations shall:

- 1. empower local governments to determine the organization of local administration and the conditions governing recruitment and remuneration compatible with their financial capacity within a common national framework of standards, thus guaranteeing better delivery of and quality services to the population;*
- 2. authorize local governments to recruit personnel based on an organization chart and on job descriptions approved by the deliberative organ. The law shall define the frame of reference of local government responsibilities with clear description of the missions, tasks and conditions of acceding to the different posts and functions. Recruitments shall be based on merit, professional competence and human qualities and in compliance with the rules of transparency. Personnel management and advancement and career prospects shall be based on qualification and accreditation standards approved by the State. Personnel of local governments shall be entitled to continuous training to permit the latter continually adapt their human resources to the responsibilities they are supposed to accomplish.*
- 3. Endow local governments with sufficient financial resources proportionate to their responsibilities and tasks. Local governments shall establish accounting, auditing and management systems that allow for transparent management of financial resources, in strict compliance with the financial and accounting nomenclatures defined by law.*
- 4. Entrust local elected officials with the full and entire responsibility to manage the financial resources of local governments. The said financial resources shall be readily available to permit the rapid and efficient performance by local governments of their missions at the service of the population. State control and supervision of financial management by local governments shall, under no circumstance, deprive the latter of their freedom to determine their spending priorities in the spirit of cooperative governance.*
- 5. Guarantee the viability and financial sustainability autonomy of local governments. To this end, there shall be a clear definition of: the own resources of local governments; unconditional and conditional financial transfers from other levels of government, which shall, as much as possible,*

be predictable; conditions of access by local governments to loans and financial markets.

6. *Authorize local governments to seek and implement pioneering solutions for delivering services to the population, especially by delegating part or all of their responsibilities to public and private operators or groups. The law shall define the financial and legal framework governing such delegation of responsibility”.*

- **Remarks**

Greater efficiency by local governments is undisputed. What is open to debate are the ideological and theoretical paradigms that shape our drive to improve efficiency. What is the track record and experience of New Public Management (NPM) in Africa ? What are the specific NPM policies, tools and techniques that have improved or undermined efficiency in the African local government context ?

The overall assumption behind the amendments proposed above is that efficiency must always subject to national common, but differentiated, norms and standards. In the absence of the latter national monitoring and support is very difficult.

52.7 The Principle Of Solidarity And Cooperation

- Initial proposed formulation with **additional amendments**:

“Local governments shall be entitled to form partnerships and to cooperate, including with local governments of other States, to achieve common objectives. The law shall lay down the regulations and conditions governing such partnerships and cooperation.

The law shall recognize the right of local governments to form a national association to develop solidarity relations amongst themselves and to speak with one voice in their dialog with the State and other partners. Such a national association shall be governed by public law and be part of the public decentralization management institutional mechanism.

Local governments and their national association shall be entitled to join regional, continental and world local government associations.

Central governments shall make provision for the full participation of local government associations in appropriate inter-governmental fora to ensure the attainment of national development objectives and to be the collective voice of local governments.

Central governments shall allocate appropriate resources to support the functioning of national local government associations”.

- **Remarks**

Organised local government must be supported by central governments. This must be tangible support in the form of predictable resource allocation from the national fiscus. In addition, LGAs must be viewed as partners of central governments to improve the lives of people. A consequence of this is to define the appropriate inter-governmental structures where the full participation of organised local government is necessary. The basic assumption is that LGAs cannot be regarded as NGOs.

G. ELEMENTS OF A STRUCTURE FOR THE AFRICAN CHARTER ON DECENTRALISATION, LOCAL GOVERNMENT AND LOCAL GOVERNANCE

53. In the first section of this paper it was argued that there are a number of observations and lessons that should be taken into consideration when drafting a Charter. The Charter should be aspirational; reflect core values and principles; be content specific; encourage behaviour-changing; indicate the defined signatories and membership; indicate the defined corporate form and authority; and accommodate an approach of progressive realisation and implementation.

54. Key elements that should be considered in the structure of an African Charter on Decentralisation and Local Governance should include the following:

- i. Pre-ambule
 - (We etc, Inspired by, Recognising, Reaffirming, etc)
- ii. Definitions
 - (AMCOD, AU, decentralisation, local government etc)
- iii. Objectives
 - (The objectives and aims of the Charter etc)
- iv. Scope of the Charter
 - (Addresses mainly the matters of decentralisation, local government and local governance in Africa)
- v. Principles
 - (Relative autonomy, Subsidiarity, Differentiation etc)
- vi. Implementation
 - (Approach to implementation: progressive realisation; entities that are expected to implement the Charter etc)
- vii. Monitoring
 - (Mechanisms for monitoring; intervals of monitoring; peer review etc)
- viii. Institutional Mechanisms
 - (Specification of the scope and status of the membership entity; Relationship to the AU; Secretariat etc)
- ix. Multi-Level Governance
 - (Identification of key bodies across all levels / scales related to Decentralisation, Local Government and Local Governance etc)
- x. Membership
 - (Definition of membership; process of inclusion and departure of members etc)
- xi. Amendments
 - (Process by which amendments can be effected etc)
- xii. Ratification and Signature
 - (Process of ratifying and becoming a signatory to the Charter)

H. STRUCTURING A PROCESS FOR DIALOGUE, CONSULTATION AND ADOPTION OF THE CHARTER

55. Drafting an African Charter on Decentralisation and Local Governance must comprise of both political and technical processes that should intersect and interact dynamically. Some of the critical overlapping steps in these processes should include the following:

I. Preparing the Ground:

- a. Identifying the main substantive issues and themes that could inform the Charter and the political, legal and technical consultations that will be required. Start an initial packaging of the issues and stakeholders. The resources required for the entire process must also be identified upfront.
- b. Initial selective lobbying on the concept of the Charter must seek to get in principle support for the process from crucial stakeholders, such as the Pan- African Parliament, AUC, RECs, regional LGAs, UCLGA, targetted Heads of State etc.
- c. Formalising the Institutional Management Machinery:
- d. AMCOD and UCLGA, together with the AUC, to take overall political management responsibility.
- e. A broader representative political and technical forum (could be split in two) from the various AU regions must be established to act as the sounding board for the process to develop a road map for dialogue, drafting, consultation and adoption.
- f. Formal adoption of a Secretariat and mobilisation of support, resources and a drafting team.

II. Drafting and Consultation Phase:

- a. A zero draft to be prepared for consultation; this must be approved by the overall political management entity.
- b. The technical consultations could be regional- / theme- / topic-based with inputs from experts and practitioners etc.
- c. Political consultations must be appropriately sequenced.
- d. Some form of public involvement via local and regional round tables, citizens' panels, online consultation, etc. will be important
- e. Preparation of a final draft (after an agreed number of initial drafts and an approved satisfactory consultative process)

III. Finalisation and Adoption Phase

- a. Submissions of the final draft to the relevant and agreed to political, legal and stakeholder structures for approval.
- b. Adoption and publication of the Charter at an appropriate convention bringing together local and regional representatives and representatives of the African institutions, accompanied by a signing session.
- c. A campaign to promote the signing of the charter and a publicity campaign.

End, May 2012