



HOUSING AND LAND RIGHTS NETWORK

Habitat International Coalition

Human Rights Obligations of Local Government

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The roles of local authorities and governments in respecting, protecting and fulfilling human rights are indispensable to the sovereign integrity of the state. For our purposes, a state is the entity that embodies both the self-determination and sovereignty of its constituent peoples. In the international system, the state asserts and exercises sovereignty and its related rights vis-à-vis other states.

Sovereignty is confined to the recognized territory of the state.¹ Although its meanings have varied across history, sovereignty essentially connotes *supreme authority within a territory*.² As the subject of sovereignty, the state is comprised of its (1) territory (land, territorial seas and water bodies, and corresponding natural resources), (2) people(s) and (3) institutions.³ Within their territory, states exercise their sovereignty domestically through the execution of obligations to citizens as defined by law, including treaties and general principles of international law, state constitutions and corresponding legislation. These norms also form an integrated system within which states are obliged to harmonize their laws and practices. As provided in the Vienna Convention on the Law of Treaties, a state party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”⁴

International law recognizes states as integrated systems. As far as the applicability of treaty obligations is concerned, the legal norms that apply to a state consequently apply to its constituent parts *within its jurisdiction and territory of effective control*.⁵ Explicitly, this principle prevails whether or not a state is organized within a unitary or federated system. Notably, for example, the International Covenant on Civil and Political Rights stipulates that: “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”⁶

Likewise, general principles of international law also apply to states in their integrity. The International Law Commission has confirmed that

the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.⁷

From the perspective of international law, whether unitary or federated, the integral state institutions operate within a common framework of the state’s rights (vis-à-vis other states) and domestic obligations. All spheres of government fall within this rubric, including subnational authorities. Where necessary to resolve any contradictions, the classic hierarchy of law prevails in which human rights and other forms of *jus cogens* are paramount and constantly applicable.⁸

Subnational (regional and/or local) authorities, including local government, their constituent bodies and personnel are likewise bonded and bound by international law, including general principles and human rights treaties, in their public functions and extensions. Interpreting the human right to public participation, the Human Rights Committee sums up the pervasive nature of human rights obligations in a modern state:

The conduct of public affairs...is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right...should be established by the constitution and other laws.⁹

The nature of human rights treaty obligations are binding on “every State Party as a whole,” explains the UN Human Rights Committee further:

All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally...may not point to...another branch of government as a means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant.¹⁰

All spheres of government, thus, have common human rights obligations, but differentiated roles. Local governments and local authorities (see distinction below) have a greater potential role in the delivery of services and maintaining the local machinery necessary to respect, protect and fulfill the bundle of human rights. Central government institutions, in particular ministries, undertake the principle role in reporting on the implementation of treaties. However, the guidelines on treaty-specific documents to be submitted by states parties under the International Covenant on Economic, Social and Cultural Rights (ICESCR) affirm the essential role that local governments and local authorities play also in the periodic reporting on local implementation of human rights treaty obligations.¹¹

“Local Government” or “Local Authorities”?

The human rights obligations of subnational public institutions apply whether those are qualified and referred to as “local governments” (LGs) or as “local authorities” (LAs). The two are not always synonymous. The distinction is important not to differentiate between the nature of the obligations, but to distinguish the two categories by their respective political processes.

For the citizen, local governance is the nearest of the various distinctive, interdependent and inter-related spheres of government within a territorial state.¹² In unitary states, local governance usually comprises one of two or three spheres of government; whereas, in federal states, local governance constitutes one of three, or sometimes four spheres of government.¹³

The concept of “spheres” of government offers an alternative to the hierarchy implied by the reference to “tiers” and “layers” of government. That terminology, often portraying local government as the “lowest” form, distorts the perception of more integrated approaches to governance. From the perspective of most citizens, local government/administration is actually the most proximate sphere of contact with the state’s public institutions. From the human rights perspective, local

government/administration is also the most-immediate and most-constant duty holder in day-to-day life.

The particular terminology and concepts defining “local administration” and “local government” distinguish the former is a generic term that may or may not constitute “government” as defined in representational terms.¹⁴ Both forms of governance possess certain powers conferred upon them by legislation or directives of the higher levels of government. These powers consist, in substance, in regulating and managing certain public affairs and delivering certain public services.

The extent of local governance rights and powers should be analyzed always in the context of relations between local authorities and the central sphere of government and/or regional authorities (in federal states). One of the important features of local “government” is that it has a specific, subsidiary regulatory power for the exercise of its functions, which is, however, subject to compliance with national law.¹⁵ Whether or not local administration exercises these regulatory powers and meets the qualification as “government,” the human rights obligations of each sphere of administration remain constant.

“Local government,” or “self-government,” aims at bringing government to the grass-roots and enabling the citizens to participate effectively in the making of decisions affecting their daily lives. As the level closest to the citizens, local government is in a much better position than central government to deal with matters that require local knowledge and regulation on the basis of local needs and priorities. This observation applies whether the local government operates in urban or rural settings.¹⁶

According to the UN Human Rights Council’s Advisory Committee (HRCAC), the degree of self-government exercised by citizens and local authorities can be regarded as a key indicator of genuine democracy. HRCAC sees political, fiscal and administrative decentralization to be essential for localizing democracy and its human rights cohort. The UN’s human rights policy think tank asserts also that “democracy is not possible without respect for human rights, and no human rights can be achieved without democracy.”¹⁷

“Local authorities” may include forms of governance closely associated with, or directly extending from the executive-branch of central government. However, such models are inconsistent with the more-specific notion of “local government” (or “local self-government”), which involves actual local decision making within a state.

A measure of local decision-making autonomy fosters and enables a concomitant measure local participation and meaningful citizenship for the majority of inhabitants within the subnational units belonging to the territorial state. Thus, the notion of “local authority,” as distinct from “local government,” does not necessarily lend itself to the democratic practices of government. In the modern sense of statecraft, “government” involves citizen participation. Administration defined merely as “authority” inherently does not.

Whichever the configuration of offices and division of duties and functions, the model of “local government” (LG) is understood as preferred in modern unitary states, as well as in federal systems.

The constitutive principles of “local government” are aligned with the substantive and process human rights enshrined in the International Bill of Human Rights and specific conventions. Democratic local government upholds the organic vertical development of the state. It preserves the state.

In global practice, the majority of cities have elected mayors.¹⁸ In some rare circumstances, constituents have declined their right to elect a municipal head, favoring instead appointed local governing councils.¹⁹ However, some systems indeed have central authorities assuming mayoral selections by political,²⁰ military²¹ or royal²² appointment, rather than chosen through constituent elections.

Whether elected, appointed, military or security-state governance, all subnational authority bears identical treaty obligations, regardless of its civil or official status. Its obligations arise from the authority’s status as representing institutions of a state.

Sources and Specificity in International Law

Given that international legal instruments apply to both LGs and LAs as well as, equally, constantly and complementarily to central governments, subnational institutions will find guidance on the source, level, nature and scope of their human rights obligations.

This guidance is found especially in the instruments that derive from and further inform the actual practice of implementing obligations specific to particular human rights. For example, within the state’s obligations is to respect, protect and fulfil the human right to adequate housing, which is a human right naturally exercised at a very local level. Respecting, protecting and fulfilling the human right to adequate housing involves the various spheres of government (ministries and regional and local authorities) taking steps, in coordination, to reconcile related policies (economics, agriculture, environment, energy, etc.) within the obligations under Article 11 of ICESCR and related General Comments.²³ This human right almost invariably requires the adoption of a national housing strategy also that “defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures.”²⁴ Therefore, implementing the human right to adequate housing and its corresponding state obligations entails vertical coordination involving the spectrum of public bodies spanning the range of local, central and any intermediate-level authorities.

In the related matter of the human right to water, the authoritative international law interpretation of corresponding state duties points out the need for analogous coordination among all governmental spheres in order to meet treaty obligations and realize the human right to water and sanitation.²⁵ The UN Independent Expert on the right to water and sanitation has reported numerous examples of good practice in which a state’s holistic approach involves local government’s monitoring and implementation of the treaty-based right.²⁶

Realizing the human right to adequate food has particular implications for local government. Indispensable national strategies require similar coordination among ministries and regional and local authorities to ensure that related policies and administrative decisions are in compliance with the obligations under the same Article 11 of ICESCR.²⁷

The General Comment on the right to food stresses how responsibilities at multiple levels are essential to realizing that right. While “the State should provide an environment that facilitates implementation of these responsibilities,” the Committee on Economic, Social and Cultural Rights (CESCR), monitoring compliance with ICESCR, has noted that increasingly local measures are needed to ensure food security (if not also food sovereignty²⁸). In recent years, numerous good practices and policy models exemplify the pivotal role of local decision making and preparedness to ensure the human right to food.²⁹ The Special Rapporteur on the Right to Food also has noted the role of local government in ensuring realization of the right to food through integrated national strategies.³⁰

In cases where implementation of the universal human right to social security is decentralized, the treaty-implementation guidance on the subject recognizes the importance of the local spheres of governance. The relevant General Comment advises:

Where responsibility for the implementation of the right to social security has been delegated to regional or local authorities or is under the constitutional authority of a federal body, the State party retains the obligation to comply with the Covenant, and therefore should ensure that these regional or local authorities effectively monitor the necessary social security services and facilities, as well as the effective implementation of the system. The States parties must further ensure that such authorities do not deny access to benefits and services on a discriminatory basis, whether directly or indirectly.³¹

The general prohibition against nondiscrimination is an overarching principle of human rights implementation also for LG/LA. Notably, the guidance on implementing the equal right of men and women to the enjoyment of all economic, social and cultural rights specifically obliges local implementation.³²

Peremptory Norms (*jus cogens*)

A peremptory norm (also called *jus cogens*) is a fundamental principle of international law that the international community of states has accepted as a norm from which no derogation is permitted. It is generally accepted that *jus cogens* includes the prohibition against genocide, apartheid, maritime piracy, slaving, in general (including slavery as well as the slave trade), torture, non-refoulement of refugees and asylum seekers, wars of aggression, population transfer, the denial of self-determination and territorial aggrandizement.³³

The International Court of Justice also has referred to such norms as “intransgressible principles of international customary law”³⁴...“fundamental to the respect of the human person”³⁵ and “elementary considerations of humanity, even more exacting in peace than in war.”³⁶ These peremptory norms “are to be observed by all States whether or not they have ratified the conventions that contain them.”³⁷

Conclusion

By way of human rights instruments and declaratory law, as well as through long-established general principles and peremptory norms, international law establishes multifaceted obligations to maintain standards of state behavior. States and their components actually bear at least four such dimensions of obligation in the interstate system: (1) individual obligations, (2) collective obligations, (2) domestic obligations and (4) extraterritorial obligations.

As LGs/LAs constitute organic subjects of treaties and other legal obligations of the state in which they are located, these extraterritorial human rights obligations apply equally to them. The obligation

of LGs/LAs to uphold these *jus cogens* and human rights obligations apply whether or not the central sphere of government has succeeded or failed in upholding its and of those obligations. While central government institutions are primarily responsible for reporting on the state's performance in external forums, implementation of human rights and *jus cogens* requires the adherence of all spheres of government. This evokes the principle that the Human Rights Committee has articulated, namely that one sphere of government "may not point to...another branch of government as a means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant."³⁸

In an ever more-interconnected world, local governments are in a position to make informed choices, take decisions and establish policies within their responsibility to constituents and other affected parties to apply all dimensions of their existing obligations. Where international law calls on states to take "effective measures" to remedy such situations involving gross violations of human rights, local governments have developed a community of practice in response to that call, in effect, exercising their individual, collective, internal and external obligations to apply human rights and peremptory norms in their horizontal dealings with other legal persons, entities and contracting parties.

These dimensions of human rights obligations on the part of local governments reflect a trend in developing human rights-based governance at the municipal level, including the emergence of human rights cities³⁹ and the "right to the city" movement.⁴⁰ This trend coincides also with a period in which cities have assumed multiple ties with extraterritorial local governments and other actors, multiplying their opportunities and effect at exercising their human rights obligations locally, but also in their relations and transactions with extraterritorial parties. Notably, these have taken the form of "selective procurement" resolutions not to cooperate with contractors cooperating with such illegal situations as trade in conflict minerals, human trafficking/bonded labor, or the occupations of Palestine and Western Sahara.

As the Human Rights Committee has observed, "The conduct of public affairs...covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels."⁴¹ Human rights obligations not only apply locally, but also have extraterritorial effect.

From the perspective of international human rights law, the engagement of local governments in upholding norms and standards in their local decision making is only natural and wholly expected. This local aspect of human rights implementation was not explicit in either the 2030 Sustainable Development Agenda (2015) or the New Urban Agenda (2016). These issues remained among the missing links in the deliberations toward these new global policies. However, the ensuing implementation efforts and debates must help clarify much ambiguity on the subject. Filling the gaps still requires special efforts at civic education and engagement with local authorities and governments, the most important sphere of government for the majority of citizens.

Endnotes:

- ¹ Figgis concludes that “The unity and universality and essential rightness of the sovereign territorial State, and the denial of every extra-territorial or independent communal form of life, are Luther’s lasting contribution to politics.” John Neville Figgis, *Churches in the Modern State* (London: Longmans, Green & Co., 1913, reprinted by Ithaca NY: Cornell University Library, 2009), p. 91. See also Andrew J. Williams, Amelia Hadfield and J. Simon Rolfe, *International History and International Relations* (New York: Routledge, 2012), p. 101.
- ² “A Definition of Sovereignty,” *Stanford Encyclopedia of Philosophy*, at: <http://plato.stanford.edu/entries/sovereignty/>.
- ³ Article 1 of the Convention on Rights and Duties of States (inter-American), 26 December 1933, provides: “The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”
- ⁴ Vienna Convention on the Law of Treaties (1969), Article 27.
- ⁵ See observations on applicability in territory of effective control: “Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDaW) upon Consideration of Reports Submitted by States Parties,” A/52/38/Rev.1, 12 August 1997, para. 170; “Concluding observations of the Human Rights Committee: Israel,” CCPR/C/79/Add.93, 18 August 1998, para. 10; “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel,” E/C.12/1/Add.27, 4 December 1998, para. 8; “Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel,” CERD/C/304/Add.45, 30 March 1998, paras. 4, 12; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001. Conclusions and Recommendations of the Committee against Torture: Israel,” CAT/C/XXVII/Concl.5, 23 November 2001. “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel,” E/C.12/1/Add.90, 23 May 2003, para. 15. “Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel,” CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32; “Concluding observations of the Committee on the Elimination of Discrimination against Women: Israel,” CEDAW/C/ISR/CO/5, 5 April 2011, paras. 2, 12, 13, 16, 17, 21–24, 26, 28, 38, 40; Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/ISR/CO/3, 16 December 2011, paras. 8, 16, 19, 24, 28, 29, 32–33, 35–36; Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/14–16, 3 April 2012, paras. 3, 4, 10, 23, 24, 26, 28, 29; Human Rights Committee, “Concluding observations on the fourth periodic report of Israel,” CCPR/C/ISR/CO/4, 21 November 2014, paras. 5, 9, 12, 13, 15–18, 22.
- ⁶ International Covenant on Civil and Political Rights (1966) Article 50.
- ⁷ Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: <http://www.un.org/documents/ga/docs/56/a5610.pdf>; and Commentaries, at: http://www.eydner.org/dokumente/darsiwa_comm_e.pdf.
- ⁸ Ian D. Seiderman, *Hierarchy in International Law: The Human Rights Dimension* (Antwerp: Intersentia, 2001); Michael Akehurst, “The Hierarchy of Sources of International Law,” *British Yearbook of International Law*, Vol. 47 (1974–75), 273–85, at p. 283.
- ⁹ HRC General Comment No. 25: Article 25 (Participation in public affairs and the right to vote) (1996), CCPR/C/21/Rev.1/Add.7, 27 August 1996, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/21/Rev.1/Add.7&Lang=en.
- ¹⁰ Human Rights Committee (HRC), General Comment No. 31: “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant” (2004), para. 4, at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsiYoiCfMkoiRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWog/hW/Tpki2tPhZsbEJw/GeZRASjdFuujQRnbJEaUhby31WiQPI2mLFDe6ZSwMMvmQGVHA%3d%3d>. Also Vienna Convention, op. cit. [supra 4].
- ¹¹ “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents,” HRI/MC/2005/3, 1 June 2005, para. 50, at: [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/0867ad7cd7b13e4fc1257019004677d2/\\$FILE/G0542226.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/0867ad7cd7b13e4fc1257019004677d2/$FILE/G0542226.pdf).
- ¹² Education & Training Unit for Democracy and Development, “Three Spheres of Government” (South Africa), at: <http://www.etu.org.za/toolbox/docs/govern/spheres.html>.
- ¹³ Human Rights Council Advisory Committee, “Local government and human rights,” A/HRC/AC/13/L.4, 14 August 2014, para. 6, at: http://www.hlrn.org/img/documents/A_HRC_AC_13_L.4_EN.pdf.
- ¹⁴ Ibid.
- ¹⁵ Ibid., para. 8.
- ¹⁶ Ibid., para. 6.
- ¹⁷ Ibid., para. 10.
- ¹⁸ Andrew Stevens, “World mayors, their parties and politics,” *City Mayors Politics*, No. 10 (28 July 2014), at: <http://www.citymayors.com/politics/political-parties-mayors.html>.
- ¹⁹ “Nine cities reject elected mayors,” *BBC News* (4 May 2012), at: <http://www.bbc.com/news/uk-politics-17949950>.
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- http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/development-advocate-pakistan/local-government-acts-2013-and-province-local-government-relatio.html.
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- ²³ CESCR, General Comment No. 4: "the right to housing" (1991), para. 12, at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_4759_E.doc.
- ²⁴ As stated in the Global Strategy for Shelter, para. 32.
- ²⁵ CESCR, General Comment No. 15: "The right to water (arts. 11 and 12 of the Covenant)" (2002), para. 51, at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJpdX7m2Tx5L7detnk4aL8Sk%2bOCLoaHsUFVMh6SviNU92S8cbmrriTaya9N9pSBR%2b0tHil/LewK1gfET938Og3y>.
- ²⁶ Catarina de Albuquerque with Virginia Roaf, *On the right track: Good Practices in realising the rights to water and sanitation* (Geneva: OHCHR, 2012), at: http://www.ohchr.org/Documents/Issues/Water/BookonGoodPractices_en.pdf; and "Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque: Mission to Egypt," 5 July 2010, A/HRC/15/31/Add.3, paras. 37, 45, 49, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/149/35/PDF/G1014935.pdf?OpenElement>.
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- ³⁰ "Report of the Special Rapporteur on the right to food, Olivier De Schutter: Mission to Canada," A/HRC/22/50/Add.1, 24 December 2012, para. 16, at: http://www.srfood.org/images/stories/pdf/officialreports/20121224_canadafinal_en.pdf. In his country mission to Canada, the Special Rapporteur noted that "Numerous municipalities across the country have opposed this restriction [posed in the draft Comprehensive Economic and Trade Agreement with the European Union] on the ability of local authorities to promote urban-rural linkages and local economic development through institutional purchasing, and have requested exemptions." "UN food envoy scolds Ottawa's anti-poverty efforts," CBC News (3 March 2013), at: <http://www.cbc.ca/news/politics/story/2013/03/03/pol-cp-un-food-envoy-slaps-ottawa-on-scrapping-census-and-eu-trade-talks.html>.
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- ³² CESCR General Comment No. 16: "The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)" (2005), para. 42, at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1AVC1NkPsgUedPIF1vfPMJpdX7m2Tx5L7detnk4aL8Sk%2bOCLoaHsUFVMh6SviNU92S8cbmrriTaya9N9pSBR%2b0tHil/LewK1gfET938Og3y>.
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- ³⁴ International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, p. 257, para. 79, at: <http://www.icj-cij.org/docket/files/93/7648.pdf>.
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- ³⁶ ICJ, *The Corfu Channel Case (Merits)* (Leyden: Sijthoff, 1949), p. 22, at: <http://www.icj-cij.org/docket/files/1/1645.pdf>.
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- ³⁸ HRC, General Comment No. 31, op. cit., para. 4. Also Vienna Convention, op. cit. [supra 5].
- ³⁹ Barbara Oomen and Moritz Baumgärtel, "Human Rights Cities," *The SAGE Handbook of Human Rights*, 2, at: <http://kks.verdus.nl/upload/documents/Oomen%20Baumgartel%20Human%20Rights%20Cities%20v2%20March%202013.pdf>.
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