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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Report of the United Nations High Commissioner for Human Rights on the role of the public service as an essential component of good governance in the promotion and protection of human rights

Summary

The present report begins by providing some background information on good governance and human rights and definitions of relevant concepts. It then addresses the role of public service as an essential component of good governance in the promotion and protection of human rights and highlights the major challenges to public service in the promotion and protection of human rights. It also contains a compilation of good practices based on submissions received from Member States, intergovernmental organizations, national human rights institutions, a non-governmental organization and an observer to the United Nations.

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I. Introduction

1. In its resolution 19/20 on the role of good governance in the promotion and protection of human rights, the Human Rights Council requested the Office of the High Commissioner for Human Rights to prepare and present to the Human Rights Council, at its twenty-fourth session, a comprehensive report outlining the role of the public service as an essential component of good governance, including a compilation of best practices based on information received from Member States of the United Nations, national human rights institutions (NHRIs) and non-governmental organizations (NGOs). At its twenty-fourth session, the Council was informed that, in accordance with the calendar of thematic resolutions of the Council, the report would be submitted to the Council at its twenty-fifth session.

2. The Council invited the relevant stakeholders to provide information on “good practices and their views regarding the organization, training and education of the public service in the promotion and protection of and respect for human rights”. The submissions were to include views on “impartiality, accountability and transparency and the highest standards of efficiency, competence and integrity, as well as activities developed to assist and support the public service”.

3. Submissions were received from 35 Member States, 4 intergovernmental organizations, 1 NGO, 2 NHRIs and 1 observer to the United Nations.

II. Background and definition of concepts relating to good governance and human rights

A. Defining the role of public service as a component of good governance and its linkage with human rights

4. The definition of good governance has evolved over time and has shifted from governance priorities aimed at increasing economic efficiency and growth to those governance policies and institutions that best promote greater freedom, genuine participation, sustainable human development and human rights. The international community has, directly or indirectly, established the interconnection between good governance, human rights and sustainable development in a number of declarations and other global conference documents. In making the link between good governance and human rights, Human Rights Council resolution 7/11 recognizes that transparent, responsible, accountable and participatory government that is responsive to the needs and aspirations of the people, including women and members of vulnerable and marginalized groups, is the foundation on which good governance rests. It also recognizes that such a foundation is an indispensable condition for the full realization of human rights, including the right to development.¹

¹ The concept of good governance was earlier dealt with by the former Commission on Human Rights in a number of resolutions between 2000 and 2005. In its resolution 2000/64, the Commission identified the key attributes of good governance as transparency, responsibility, accountability, participation and responsiveness to the needs and aspirations of the people. The resolution also expressly linked good governance to an enabling environment conducive to the enjoyment of human rights and to promoting growth and sustainable human development.

5. There is no universally recognized definition of “public service”. Public service is often broadly bracketed with public administration and public sector governance. According to the United Nations Development Programme (UNDP), “Public administration refers to: (1) The *aggregate machinery* ... funded by the state budget and in charge of the management and direction of the affairs of the executive government, and its interaction with other stakeholders in the state, society and external environment; (2) The *management and implementation* of the whole set of government activities dealing with the implementation of laws, regulations and decisions of the government and the management related to the provision of public services.”² Closely linked with this is the notion of public sector governance which, according to the Definition of basic concepts and terminologies in governance and public administration (E/C.16/2006/4), “has been defined as regimes of laws, rules, judicial decisions and administrative practices that constrain, prescribe, and enable the provision of publicly supported goods and services” (para. 26).

6. While definitions vary, this report focuses specifically on those aspects of public administration and public sector governance that relate to delivery of and equitable access to public service, transparency in budgets and public finance, responsiveness to the views of the people, their participation in decisions that concern them and enhanced accountability.

7. Various themes that fall within the rubric of good governance are inextricably linked with the promotion and protection of human rights. Four prominent themes are: (a) strengthening democratic institutions; (b) improving service delivery; (c) the rule of law; and (d) combating corruption.³ Notably, “in the realm of *delivering State services to the public*, good governance reforms advance human rights when they improve the State’s capacity to fulfil its responsibility to provide public goods which are essential for the protection of a number of human rights, such as the right to education, health and food.”⁴

B. Good governance and human rights: complementarity and convergence?

8. The relationship between good governance and human rights is a complex one, given the different origins and usage of the concepts. In earlier connotations, the good governance concept had a technocratic bias which was aimed at creating the best possible conditions for economic development.

9. A seminar on good governance practices for the promotion of human rights, jointly organized in 2004 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNDP, concluded that there is a mutually reinforcing relationship between good governance and human rights (E/CN.4/2005/97, p. 2). “Human rights principles provide a set of values to guide the work of Governments and other political and social actors ... Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This

² UNDP *Public Administration Reform: Practice Note*, pp. 1–2. Available from www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/public-administration-reform-practice-note-/PARPN_English.pdf.

³ *Good Governance Practices for the Protection of Human Rights* (United Nations publication, Sales No. E.07.XIV.10), p. 3.

⁴ *Ibid.*, p. 2.

includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.”⁵ Moreover, “governance is central for effective policy formulation and implementation, including for the integrated delivery of essential services, such as education, water, sanitation and health.”⁶

10. In resolution 19/20, the Human Rights Council outlines the following good governance principles: accountability, transparency, integrity, non-discrimination, participation, equality, efficiency and competency. Many of these principles overlap as human rights principles, though it is essential that when the two concepts are linked, good governance should ideally be defined and guided by existing normative interpretations of these human rights principles and human rights standards more broadly. This general approach of using human rights as a guide can also apply to good governance principles such as integrity, which is not a human rights principle per se, but in the context of good governance, integrity is a key element that completes the notion of accountability and transparency.

III. How can a human rights-based approach contribute to improving public service?

A. General added value of a human rights-based approach to public service

11. “States are responsible for delivering a variety of services to their populations, including education, health and social welfare services. The provision of these services is essential to the protection of human rights such as the right to housing, health, education and food.”⁷ The role of the public sector as service provider or regulator of the private provision of services is crucial for the realization of all human rights, particularly social and economic rights. Certain services, such as policing or administering justice, focus directly on the protection of individual freedoms and others, such as education, health and food, have a markedly social character which is essential for building the human capital necessary for sustainable development and the realization of economic and social rights.

12. A human rights-based approach to public services is integral to the design, delivery, implementation and monitoring of all public service provision. Firstly, the normative human rights framework provides an important legal yardstick for measuring how well public service is designed and delivered and whether the benefits reach rights-holders. The human rights framework empowers rights-holders and requires States as duty bearers to act in conformity with their human rights obligations. Secondly, human rights principles can contribute to guiding and improving public service, complementing existing value systems such as public service ethos and other good governance principles such as efficiency, competency and integrity. This approach also leads to improved public service outcomes and better quality of public service. Thirdly, public service providers should not underestimate the financial or reputational costs of violating human rights and the resulting loss of public trust, low morale and poor public perception. Fourthly, a human rights-based

⁵ Ibid., pp. 1–2; see also E/CN.4/2005/97, para. 8.

⁶ Global Thematic Consultation on Governance and the Post-2015 Development Framework: Consultation report, 2013, sect. 4.1.1.

⁷ *Good Governance Practices for the Protection of Human Rights* (United Nations publication, Sales No. E.07.XIV.10), p. 38.

approach also protects against discrimination and tests whether existing public service systems protect the rights of persons who are vulnerable and marginalized or whose access is hampered by poverty, disability or other forms of exclusion.

13. Public authorities often handle complaints with human rights implications across a wide range of public services, but what is missing is an awareness and consideration of these implications. A human rights-based approach can be used more broadly to inform policymaking by public officials and development specialists, enabling them to take decisions that are in line with the international human rights obligations of the State.

B. Applying human rights principles to public service

14. In order to follow a human rights-based approach, key human rights principles must be applied to decision-making regarding public service and in all aspects of public service.

15. As indicated in the Definition of basic concepts and terminologies in governance and public administration (E/C.16/2006/4), accountability entails holding elected or appointed officials charged with a public mandate responsible and answerable for their actions, activities and decisions (para. 48). Social accountability is of particular importance in the arena of public services. In a recent report, OHCHR and the Center for Economic and Social Rights pointed out that “‘Social accountability’ is used to refer to a broad range of activities in which individuals and CSOs [civil society organizations] act directly or indirectly to mobilize demand for accountability ... They frequently employ participatory techniques of data collection and lobbying for transparent access to the information needed to evaluate budgets, monitor public expenditure and delivery of public services, create citizen and community score cards, run social audits, etc. Aided by new information and communication technologies, CSOs and social movements have been creative in inventing new techniques of social accountability. These include community mapping through crowd-sourcing or use of global positioning systems to display and analyse information about service delivery.”⁸ Citizen engagement is a core element of social accountability, and has the potential to empower citizens and elevate the voices of the most vulnerable. The report of the twelfth session of the Committee of Experts on Public Administration underscores several issues that are important for citizen engagement, including the culture of public service and the need to promote the highest standards of public service (E/2013/44-E/C.16/2013/6, para. 34).

16. Also linked with accountability is the existence of accessible and effective remedies for violations of rights. Avenues through which individuals can complain can include NHRIs, public service internal appeals processes and legal action through national courts. Relevant bodies must be vested with the power to order reparations and to have their decisions enforced; decisions should be transparent, and knowledge of them should be disseminated widely, as a lack of awareness of these processes can hinder the effective realization of human rights and lead to a failure to prevent abuses.

17. The act of whistle-blowing also plays an important role in ensuring accountability for human rights violations. If people who expose illegal conduct or misconduct in public service administration are not protected by law, they are less likely to disclose information that might be of significant public interest. Provisions on whistle-blowing should include the existence of reporting mechanisms and legal protection for the whistle-blower.

⁸ OHCHR and Center for Economic and Social Rights, *Who Will be Accountable?: Human Rights and the Post-2015 Development Agenda* (New York and Geneva, United Nations, 2013) p. 44.

18. Transparency ensures unfettered access to timely and reliable information on decisions and performance. Various United Nations mechanisms have stressed the need for transparency for those responsible, inter alia, for administering social assistance payments,⁹ the extractive industries¹⁰ and security and criminal justice sectors,¹¹ as well as with regard to the privatization or contracting out of services.¹²

19. During the recent twelfth session of the Committee of Experts on Public Administration, “the right to access information was underscored for its role in promoting transparency. Governments should not only recognize the right of access to information but engage in the proactive disclosure and elimination of requirements to provide prior proof of interest ... The judiciary must be capable of enforcing these rights and/or responsible institutions could be charged with guaranteeing implementation” (E/2013/44-E/C.16/2013/6, para. 56). In his 2013 report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression points out that “the right to access information is one of the central components of the right to freedom of opinion and expression, as established by the Universal Declaration of Human Rights (art. 19), the International Covenant on Civil and Political Rights (art. 19 (2)) and regional human rights treaties” (A/68/362, para. 2). He also lists some of the core principles that are crucial to guaranteeing the right to information, including maximum disclosure, obligation to publish, promotion of open government, limited scope of exceptions, processes to facilitate access, limited costs, open meetings and the fact that disclosure takes precedence over laws that are inconsistent with the right to information (A/68/362, para. 76).

20. The principles of non-discrimination and participation underpin the perennial theme of equality in international human rights law. Non-discrimination means that no individual or group should be treated adversely due to race, religion, ethnicity, sexual orientation or any other defining characteristic.¹³ Setting standards for recruitment purposes, for example, dictating that certain academic achievements must be met by applicants, is not discriminatory as it seeks to maintain a high level of professionalism in the delivery of services. In addition, temporary special measures such as the implementation of quotas for the employment of women or for persons with disabilities are not deemed to be discriminatory, so long as the measures are reasonable and not permanent.¹⁴

21. The participation of individuals or groups representing individuals engenders joint decision-making and ownership by the recipients of public services.¹⁵ This is reflected in article 25 of the International Covenant on Civil and Political Rights and article 3 of the Declaration on the Right to Development, which places emphasis on free, active and meaningful participation of everyone, including by extension, participation in public service provision and decision-making. Obstacles to effective participation can include language barriers, geographical remoteness of communities, poverty, lack of access to basic services, as well as inefficiency on the part of public administration, and corruption. In

⁹ Committee on Economic, Social and Cultural Rights, E/C.12/UZB/CO/1, para. 54.

¹⁰ Special Rapporteur on Toxic Waste, A/HRC/9/22/Add.2, para. 106.

¹¹ Working Group on the Universal Periodic Review, A/HRC/15/14, para. 69.3.

¹² Committee on the Rights of the Child, CRC/C/MYS/CO/1, para. 54.

¹³ See Committee on the Elimination of Racial Discrimination, CERD/C/MAR/CO/17-18; Committee on Migrant Workers, CMW/C/GTM/CO/1; Committee on the Elimination of Discrimination against Women, CEDAW/C/TKM/CO2; and Human Rights Committee, CCPR/C/CHN-HKG/CO/3.

¹⁴ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein, Engel, 2005), Chapter on Article 2, para. 34.

¹⁵ See Committee on the Rights of the Child, CRC/C/15/Add.139; Committee on the Elimination of Discrimination against Women, CEDAW/C/TUV/CO/2; and the report of the Special Rapporteur on the human rights to water and sanitation, A/HRC/18/33/Add.2.

promoting human rights principles and good governance in the context of public services, information and communications technologies can be an effective tool to foster greater participation.¹⁶ 21. As the Committee of Experts on Public Administration noted at its twelfth session, “it is undeniable that a framework enabled by information and communications technologies is essential for public administration, particularly for the effective delivery of public services” (E/2013/44-E/C.16/2013/6, para. 78).

C. Legal framework of human rights in public service

1. Which human rights obligations inform public service?

22. The legal framework of human rights in the context of public service can be briefly summarized as follows: States have core human rights obligations under human rights treaties and pertinent national laws, which are applicable to all public services. These include both positive and negative obligations, and the obligations to guarantee non-discrimination and ensure equality. If rights are violated in the context of public service provision, accountability must be ensured and in particular, remedies must be provided.

23. Article 21 of the Universal Declaration of Human Rights recognizes the importance of a participatory government and article 28 states that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

24. Article 2 of the International Covenant on Civil and Political Rights requires States parties to respect and ensure the rights recognized in the Covenant and to take the necessary steps to give effect to those rights.

25. According to article 2 of the International Covenant on Economic, Social and Cultural Rights, each State party undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures. In its general comment No. 3 (1990) on the nature of States parties’ obligations, the Committee on Economic, Social and Cultural Rights pointed out that “other measures which may also be considered ‘appropriate’ for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures” (para. 7). These measures can be interpreted to include the delivery of public services.

26. In its general comment No. 12 (1999) on the right to adequate food, the Committee on Economic, Social and Cultural Rights stated that good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all (para. 23). Moreover, “on the part of states ... this requires capable public sector institutions, including effective legislative, electoral, regulatory and anti-corruption institutions and an independent judiciary. It also requires oversight over other responsible actors such as the private sector. On the other hand ... rights-holders need to be empowered to participate in decision-making processes and to hold to account those who are responsible for formulating policies and delivering services”.¹⁷ States should also not take steps which may lead to retrogression and minimum core obligations must be met.

¹⁶ Global Thematic Consultation on Governance and the Post-2015 Development Framework: Consultation report, 2013, sect. 4.2.3.

¹⁷ Ibid., sect. 4.1.1.

27. The obligations to ensure equality and non-discrimination are recognized in article 2 of the Universal Declaration of Human Rights and are encountered in many United Nations human rights instruments, such as the International Covenant on Civil and Political Rights (arts. 2 and 26), the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)), the Convention on the Rights of the Child (art. 2), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (art. 7) and the Convention on the Rights of Persons with Disabilities (art. 5). In terms of public services, this means that States have an immediate obligation to ensure that deliberate, targeted measures are put into place to secure substantive equality and that all individuals have an equal opportunity to enjoy their right to access public services.

28. States should also provide an effective remedy to individuals when their rights are violated, and provide a fair and effective judicial or administrative mechanism for the determination of individual rights or the violation thereof. Article 2 (3) of the International Covenant on Civil and Political Rights refers to the right to “an effective remedy”, and paragraph 5 of general comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights and paragraphs 3 and 9 of its general comment No. 9 (1998) on the domestic application of the Covenant refer to the need to provide judicial or other effective remedies.

29. Specific treaties also include obligations that are relevant to public service. According to article 2 of the Convention on the Rights of Persons with Disabilities, “‘reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. Interpreting the Convention on the Rights of the Child, the Committee on the Rights of the Child has addressed the issue of governments’ capacity to coordinate policies for the benefit of the child and the issue of decentralization of services and policymaking. It has also addressed corruption as a major obstacle to the achievement of the objectives of the Convention.

2. Substantive human rights standards relevant to public services

30. Human rights standards require States to provide access to services, including education, health, housing, food and water and sanitation. States are primarily responsible for enforcing human rights standards, but their accountability extends to all levels of government as well as other institutions to which States devolve authority.

31. Article 25 (c) of the International Covenant on Civil and Political Rights provides for the right to equal access to public service and article 25 (a) enshrines the right to take part in the conduct of public affairs. In addition, other provisions of the Covenant, together with the Universal Declaration of Human Rights and the Convention against Torture, suggest that public services may be relevant in the promotion and protection of a number of other civil and political rights, including the rights to life, liberty and security, a fair trial, freedom of expression, freedom of thought, conscience and religion, freedom of peaceful assembly, freedom of association, the rights to vote and to birth registration, as well as the prohibition against torture and other forms of ill-treatment.

32. In the context of public services, a range of economic, social and cultural rights are clearly implicated. This includes economic rights such as freedom from forced labour, the right to favourable working conditions as well as equal pay for work of equal value. Social rights include the right to an adequate standard of living, the right to health, the right to water and sanitation, the right to food, the right to housing, and the right to education. Cultural rights include the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.

33. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.¹⁸ The Special Rapporteur on the human right to safe drinking water and sanitation has also set out a post-2015 agenda with targets that include everyone having water, sanitation and hygiene at home.¹⁹ In order for States to be able to realize this human right, they should allocate funding for the effective dissemination and sanitization of water through their respective geographical jurisdictions, and ensure that effective monitoring of services takes place.

34. The right to health embraces a wide range of socioeconomic factors that promote a healthy life. It extends to food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions as well as a healthy environment.²⁰ The availability, accessibility, acceptability and quality of health-related services should be facilitated and controlled by States. This duty extends to a variety of health-related services ranging from controlling the spread of infectious diseases to ensuring maternal health and adequate facilities for children. On the issue of health systems and financing, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has stated that States should ensure adequate, equitable and sustainable financing for health.²¹

35. The right to education is both a human right in itself and an indispensable means of realizing other human rights.²² Whether education is provided publically or privately, States should adopt a human rights approach to ensure that it is of an adequate standard and does not exclude any child on the basis of race, religion, geographical location or any other defining characteristic.

36. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, has stated that, in addition to legislative measures, administrative, judicial, economic, social and educational steps must also be taken to ensure adequate housing provision.²³

37. Distribution of food across all geographical areas needs to be monitored by States, as well as ensuring that water and sanitation facilities reach everyone and are maintained at a healthy standard. In addition, States need to consider carefully whether the privatization of certain basic services such as water and food would impede access by remote groups of people or those living in extreme poverty. The Special Rapporteur on the right to food has stressed that States must facilitate economic access to adequate food.²⁴ The rights and needs of all communities should be met; even people living in remote geographical locations should, for example, be guaranteed the provision of education and potable water.

¹⁸ Committee on Economic, Social and Cultural Rights, general comment No. 15 (2012) on the right to water, para. 2.

¹⁹ Available from www.ohchr.org/Documents/Issues/Water/eliminatingSheetPost2015.pdf. See also the report of the Special Rapporteur on the human right to safe drinking water and sanitation (A/67/270).

²⁰ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4.

²¹ See the interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/67/302).

²² Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 1.

²³ See www.ohchr.org/en/issues/housing/pages/housingindex.aspx.

²⁴ Interim report of the Special Rapporteur on the right to food (A/63/278), para. 9.

3. Vulnerable and marginalized groups

38. When considering how public services facilitate the realization of human rights, States must bear in mind that there are demographic groups in every society that may be disadvantaged in their access to public services, namely women, children, migrants, persons with disabilities, indigenous persons and older persons.²⁵ States need to ensure that the human rights of these groups are not undermined and that they receive adequate public services.

39. The universal periodic reviews have included several recommendations to States to intensify measures to fully realize the rights of indigenous peoples, in particular their representation in civil service and public institutions.²⁶

40. The participation of women and the effective provision of services to them should also be considered when administering the delivery of public services. It follows that States should also monitor the implementation of those services for quality control purposes on an ongoing basis.

41. Poverty acts as a major barrier in relation to public services. For those individuals living in poverty, it is imperative that access to services is ensured, using multiple delivery channels to ensure the most effective outreach towards and saturation of the relevant beneficiary groups.²⁷ The right to social security is of central importance in guaranteeing human dignity, particularly for those in situations of extreme poverty.²⁸ To ensure that poverty is not a barrier to receiving adequate public services, measures need to be put in place, such as participatory and pro-poor budgeting, which focus more directly on citizens in budget formulation, implementation, monitoring and control.²⁹

D. Public services at the international level

42. International, regional and subregional organizations have grown rapidly in strength and number in recent years. In today's globalized community, they are working with States on an increasingly collaborative basis to improve public service administration, especially in conflict, post-conflict and disaster situations.

43. The achievement of the Millennium Development Goals as a global development agenda is inextricably linked with the provision of effective public services. Many of the Millennium Development Goals, such as achieving universal primary education, aim to improve the delivery of public services. Given the impending target date for the Millennium Development Goals — 2015 — attention is now being focused on post-2015 development, not only within the United Nations,³⁰ but also across States. The Report of the

²⁵ See, for example, the thematic study on the realization of the right to health of older persons by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/18/37).

²⁶ See, for example, the report of the Working Group on the Universal Periodic Review on Argentina (A/HRC/8/34).

²⁷ See the report of the Independent Expert on the question of human rights and extreme poverty (A/HRC/17/34).

²⁸ Committee on Economic, Social and Cultural Rights, general comment No. 19 (2007) on the right to social security, para. 1.

²⁹ E/C.16/2006/4, para. 52.

³⁰ See, for example, UN System Task Team on the Post-2015 UN Development Agenda – Realizing the Future We Want for All: Report to the Secretary-General, June 2012. Available from www.un.org/millenniumgoals/pdf/Post_2015_UNTTreport.pdf.

High-Level Panel of Eminent Persons on the Post-2015 Development Agenda³¹ proposes universal goals and national targets, global accountability and assistance for countries to implement national plans. In articulating the post-2015 development agenda at the intergovernmental level, it will be important to ensure that the delivery and monitoring of public services using a human rights-based approach feature prominently in indicators and targets for measuring achievement, including global partnerships for development, in order to ensure reliable and consistent financing of development and in turn, the provision of public services.

44. The United Nations works at both the regional and global levels, focusing on thematic and country- and region-specific issues. The following bodies work extensively on public service provision issues: UNDP, the United Nations Office on Drugs and Crime (UNODC), the Division for Public Administration and Development Management, the United Nations Children's Fund (UNICEF) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

45. The International Monetary Fund (IMF) provides policy advice and financing to members in economic difficulties and works with developing nations to help them achieve macroeconomic stability and reduce poverty. As the world economy struggles to restore growth and jobs after the recent economic and financial crisis, the IMF has increased its lending, using its cross-country experience to advise members on policy solutions, and has supported global policy coordination. This new role in the crisis has serious implications for countries that are pursuing reforms, especially austerity measures that may have an impact on the effective delivery of public services and the realization of human rights.

46. The World Bank provides financial and technical assistance, low-interest loans, interest-free credit, and grants to support investments in areas such as education, health, public administration, infrastructure, financial and private sector development, agriculture, and environmental and natural resource management.

47. World Bank and IMF lending can influence policy formulation regarding trade liberalization, investment, deregulation and privatization of services and industries. Conditions have sometimes required that borrower States reform the public sector or privatize public services. It is important that the human rights impacts of these reforms or conditions are assessed and potential damage prevented and remedied.

48. The World Trade Organization (WTO) provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field for all. These activities include administering and monitoring the application of WTO rules on trade in goods, trade in services, and trade-related intellectual property rights. The substantive scope of the WTO General Agreement on Trade in Services is determined by article 1 of the Agreement, which precludes the application of the Agreement to "services supplied in the exercise of governmental authority" (para. 3 (b)), which are themselves defined in article 1, paragraph 3 (c) of the Agreement. It is important that any rules for trade in services and related agreements should be assessed for their human rights impacts.

³¹ United Nations (2013), "A new global partnership: eradicate poverty and transform economies through sustainable development". Available from www.un.org/sg/management/pdf/HLP_P2015_Report.pdf.

IV. Major public service challenges that affect human rights

A. Organization of authority in relation to public service

49. Decentralization refers to the structuring or organization of governmental authority in order to establish a system of co-responsibility between institutions at the central, regional and local levels. There are several advantages and disadvantages to decentralization. It can lead to improved access to public services, with the participation of local communities in decision-making and local dispute settlement and remedies. Through decentralization, there may be better grass-roots implementation of services and a more results-driven approach. The disadvantages are that decentralization can increase the likelihood of duplicating public service efforts, with the consequent fiscal loss which could have a direct impact on the funds available for the delivery of public services. There is also less likelihood of maintaining consistent standards and implementation of services, such as staff training. Regardless of whether services are decentralized, it is recognized that strategy is often set at the national level and implementation activities are carried out locally. It is therefore important that centrally formulated policy should take into account the needs of citizens throughout the country.³²

B. Privatization and public-private partnerships

50. Effective accountability mechanisms are needed when privatizing public services or in the case of public-private partnerships. Regardless of whether services are privatized or not, there must be careful monitoring in place for quality control of each service, as well as rigorous and transparent procedures for tendering them out. The public service ethos should attach to the public service, not the status of the service provider.

51. When services are privatized, there can be adverse human rights impacts such as inadequate participation of communities in decision-making processes. A rights-based understanding of governance includes ensuring that private actors comply with human rights standards. It also embodies the view that the delivery of services such as health and education are rights that achieve and secure the dignity of all individuals.³³ The Guiding Principles on Business and Human Rights, adopted in 2011, indicate that States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations and in any public service they deliver.³⁴

C. Corruption

52. The good governance principles of transparency, accountability and integrity in public services act as a preventative mechanism against corruption, which can exist in numerous forms, including nepotism, payment for services that do not require it, bribes, or

³² Report of the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/18/33), para. 83 (d).

³³ Global Thematic Consultation on Governance and the Post-2015 Development Framework: Consultation report, 2013, sect. 4.1.3.

³⁴ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. Annex to the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31), p. 7.

tenders for privatization or third party delivery being given on a non-competitive basis. There have been several regional and international efforts to combat corruption.³⁵ Measures can be implemented to prevent corruption, such as rotating staff in highly influential positions within public service governance, regularly training and assessing staff, and ensuring free access to information concerning contentious issues such as tendering out of services and budgetary records.

D. Conflicts, disasters and countries in transition

53. Conflict, post-conflict situations and disasters pose particular challenges to the effective functioning of any public service, which might be in a state of suspension, fragmented operation, or at worst, complete decimation. Humanitarian agencies can provide invaluable assistance during periods when there might otherwise be nothing in place. In addition, when States enter the post-conflict or post-disaster phase, it can take many years to instil trust in service users when rebuilding administrative functions. Good governance principles are particularly important in these fragile situations, ensuring that the foundation of any emerging government administration is one of integrity, transparency and capacity.³⁶

V. Compilation of good practices based on submissions received

54. Contributions were received from the following Member States: Argentina, Australia, Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Cameroon, Chile, Colombia, the Czech Republic, Egypt, Estonia, France, Georgia, Guatemala, Iraq, Kazakhstan, Latvia, Lithuania, Mauritius, Mexico, Moldova, Montenegro, Morocco, Paraguay, Poland, Qatar, Romania, the Russian Federation, Serbia, Slovenia, Spain, Sri Lanka, Tanzania, Thailand and the United Arab Emirates. The following intergovernmental organizations submitted contributions: the Council of Europe, the Economic Commission for Europe, the Division for Public Administration and Development Management, the Department of Economic and Social Affairs and the World Meteorological Organization. Two NHRIs submitted contributions: Equality and Human Rights Commission (United Kingdom) and the Rwanda National Commission for Human Rights. The NGO SIA Mali submitted a contribution. The Holy See submitted contributions as an observer to the United Nations.³⁷

55. The following is a summary of the good practices described in these contributions.

³⁵ See the summary report of the Human Rights Council panel discussion on the negative impact of corruption on the enjoyment of human rights (A/HRC/23/26). See also UNODC's Action against Corruption and Economic Crime, available from www.unodc.org/unodc/en/corruption/index.html?ref=menuside and UNDP anti-corruption work, available from www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_anti-corruption/.

³⁶ See the draft resolution of the Human Rights Council on the promotion and protection of human rights in post-disaster and post-conflict situations (A/HRC/22/L.23). See also the Planning Toolkit, available from www.un.org/en/peacekeeping/publications/Planning%20Toolkit_Web%20Version.pdf.

³⁷ The full text of all contributions can be consulted at www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/Documents.aspx.

Public service commitment

56. Some States have a publicly stated set of aims which serve to engender a sense of accountability. For example, Morocco has a Charter of Public Service and Sri Lanka has a Citizens' Charter.

Recruitment

57. Nearly all Member States have examinations or open competitions for the recruitment of civil servants, which aids transparency and integrity. This also ensures that the highest possible standards are maintained when employing those who administer services to the public. For example, Moldova stressed that both progress within the civil service and first-time recruitment are based on a meritocratic system that depends on skills and performance.

Training

58. Many Member States incorporate human rights education into the training given to staff working in public services, although this is not always compulsory and the frequency of the training varies. In Montenegro, it is conducted annually. In Qatar, human rights education is a legal requirement and the United Arab Emirates has a system of credit hours for the training of public servants. There are efforts in some States, notably Georgia, for human rights training to be disseminated as widely as possible. Serbia noted that "education on the protection and respect of human rights can be successful only in an environment where human rights are consistently exercised and respected". In many States, such as Australia and Estonia, training is delegated to agency heads, which means that central Government is not responsible for it. In Burkina Faso, the Ministry of Human Rights assists in training. In Mauritius, the National Human Rights Commission gives lectures to the police. Latvia has a school of public administration that provides training. Similarly, Slovenia has an academy dedicated to administration with a compulsory human rights module, and Tanzania has a college dedicated to public service.

Assessing public service employees

59. Some Member States have a system of assessing employees using key performance indicators and taking into account the views of online communities. Latvia has introduced new regulations that allow for a 360-degree performance evaluation for those working in public service.

E-technology

60. Many Member States are modernizing their public service systems with the use of e-technology, given that increasing numbers of people have access to mobile telephones, even in remote and poor areas of Burkina Faso and Morocco. Cameroon has a website (and a radio programme) on public services. Mauritius has introduced a human rights e-portal.

Modernization of public service systems

61. A recurrent theme in the contributions, as highlighted by France and the Russian Federation, was efforts to simplify, modernize and streamline overly bureaucratic processes. In Georgia, "one-stop shops" have been introduced, providing easy access to information and forms, and websites offer similar services. The hope is that this will transform the public service from a bureaucracy to a results-driven organization, delivering on governments' social contracts with citizens, and building credibility and trust, as in Georgia. There was mention of the increasing creation and use of multiple service delivery

systems, such as in Egypt, where public services can be accessed in post offices, call centres and kiosks.

Temporary special measures

62. Many Member States, such as Columbia, employ temporary special measures in order to recruit women into positions in the public service. Sometimes this is extended to persons with disabilities. In some countries, such as Argentina and Sri Lanka, there are quotas for people with disabilities, but not for women. The quotas vary: France has a minimum gender quota of 40 per cent for both genders and applies financial penalties to public bodies that do not adhere to the quota policies.

Respect for equality and diversity in public services

63. Many States have domestic laws to promote and protect equality. With regard to public services, Australia has a workplace diversity programme. Sri Lanka promotes the learning of multiple languages for public servants, as significant portions of the population speak different languages. France has a charter for the promotion of equality in public services.

Corruption

64. Some Member States take measures to prevent corruption, such as the Russian Federation where civil servants are rotated in and out of highly desirable positions, and also by providing training. Georgia has taken steps to rid its public service of corruption, including by introducing a law on conflict of interests and corruption, and is now building its public service on a customer-oriented model. Some States, including Burkina Faso, Chile and Guatemala, publicly disclose costs, and Chile has a legal framework on transparency and good governance as well as a Transparency Board. Guatemala has legislation on access to public information and has set up a working group to address good governance and human rights.

Audits

65. Several States have created supervisory bodies and/or undertake audits. This acts as an accountability mechanism and aids transparency.

International, regional and United Nations assistance

66. Some Member States described their collaboration with regional and international assistance, either in the form of anti-corruption initiatives, assessments, or, in the case of Kazakhstan, training. United Nations agencies play a crucial role in helping to rebuild public services, especially after conflicts, declarations of independence and disasters. In Iraq, intergovernmental organizations have been and still are involved with public services. In situations where public services suffer, such as in Iraq, States will revert directly to the principles set out in international law. Mauritius pointed out that UNDP and UNODC have facilitated police reform in order to achieve a “human rights compliant organization”.

Creating a culture of human rights

67. Some Member States and the Council of Europe highlighted the fact that they take a proactive approach to creating a culture of human rights, as it is called in Columbia, or a “human rights climate” in Mauritius, or a “culture of respect for human rights” in the case of the Council of Europe and France.

Community participation

68. Many Member States, such as Sri Lanka, encourage public and community participation, including joint decision-making processes. In Georgia, during public procurement processes, citizens can participate online, and there is a dispute resolution board on which civil society is represented on an equal footing with public officials.

Bilateral relationships

69. Some Member States utilize bilateral support mechanisms where both countries' public services benefit from the relationship, as is the case with Colombia and Spain.

Complaints processes

70. Multiple avenues exist in many Member States through which complaints about public officials, incidents or tender processes can be pursued, including ombudsmen, the courts and service commissions.

Accountability

71. National Human Rights Commissions play an important role in ensuring the accountability of service providers, as the Commissions monitor the activities of service providers and can raise complaints, as well as offering training. The Division for Public Administration and Development Management recognized that "the overriding purpose of promoting public service is to support peace and security, social rehabilitation and human rights and development". Qatar has outlined its work with not-for-profit organizations and UNDP; some NGOs in Qatar provide some public services.

Human rights education

72. Mauritius is planning on introducing human rights education programmes into high school national curricula in order to help create a national culture of human rights awareness.

Third-party delivery

73. Latvia has a law that sets limits on the delegation of public services to third parties, and creates exceptions in the cases of some public services which may not be delegated. Tanzania has a Public-Private Partnership Act which provides a performance management system and under which non-State actors perform non-core functions of service delivery.

National goals

74. National plans of development that highlight human rights principles are in existence in some States, including Mexico, Moldova, Qatar and Romania.

VI. Conclusions and recommendations

75. The management of public service is a critical link between duty bearers and rights-holders. Delivery institutions such as hospitals and schools and providers of infrastructure and other basic facilities such as energy, water and sanitation are essential to the implementation of human rights. How these services are perceived and actually delivered has a significant impact on how governance is assessed within a State. When a public service is run down, has shortages of staff and basic infrastructure, struggles to provide basic services, is poorly managed in terms of financial and other resources, or when people experience corruption and inefficiency,

there is a resulting lack of confidence in all other aspects of governance. A sustained effort should therefore be made to integrate human rights principles and standards into the public service and into governance more broadly.

76. These principles and standards should be promoted and instilled in the national public service through education and capacity-building programmes that are mandatory for all those delivering or administering public services.

77. Practical measures that can be adopted to further the implementation of a human rights approach to public services include: (a) integrating human rights considerations in the recruitment of personnel; (b) providing human rights training and guidance for all staff; (c) incorporating human rights into codes of conduct and practice; (d) establishing transparent, responsive, inclusive and participatory approaches to public service; (e) providing incentives for achievements in human rights and public services; (f) integrating and applying human rights standards across all services, alongside legal and financial implications; (g) creating adequate grievance mechanisms and effective remedies; and (h) systematically measuring the impacts of service delivery on internationally guaranteed human rights.

78. International efforts relating to public service improvement are fragmented across a number of international treaty regimes and organizations. There is a need for human rights-based policy coherence and coordination to support public service improvements globally.

79. International financial and trade institutions have a significant impact on public service provision through their policies and rules. There is a need for better synergy between international financial institutions and United Nations mechanisms. This may also assist in moving towards a credible and transparent global accountability framework in relation to public service, in a manner consistent with human rights obligations.
