

# FACT SHEETS ON DECENTRALISATION IN AFRICA:

A SHORT-CUT GUIDE

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A growing number of African countries are considering passing or implementing reforms that include some form of decentralisation. There is thus a demand for clear and accessible materials that would assist policymakers, practitioners, students and members of the public to better understand the various concepts and mechanisms associated with decentralisation. A few countries on the continent are considering or implementing federalism, while many more are weighing up or are already implementing decentralised systems of government. Moreover, the African Union has placed decentralisation on the agenda through the adoption of the 'African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development' in 2014. Given that all countries have local authorities, these Fact Sheets will focus primarily on local government.

The concepts that we are unpacking are complex, multifaceted and often start with theory. The aim is to present these topics in such a way that they make sense to a range of audiences. For example, the extent to which local governments have autonomy and how such autonomy can be measured will differ fundamentally from one country to the next. Similarly, the mechanisms that governments adopt to supervise municipalities will vary across countries. The objective is to identify, explain and distinguish key concepts in a way that is relevant to the African context.

The Fact Sheets are written by Professor Jaap de Visser, Professor Nico Steytler and Dr Tinashe Chigwata, all based with the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI) at the University of the Western Cape. We would like to express our gratitude for the support of the Hanns Seidel Foundation, South Africa, which has made this project possible. We would also like to acknowledge Morgan Morris who assisted with the copy edit and Lynne Smit of Conversation Squared, who ensured the lay-out and printing.

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# 1

# DECENTRALISATION

## KEY CONCEPTS

### Definitions of key concepts

There are different forms of decentralisation: federalism, devolution, local governance, delegation, deconcentration, and traditional leaderships. What do these mean?

### Decentralisation

Broadly defined, decentralisation refers to the distribution or delegation of state powers away from the central or national government to subnational governments. This can be done via a constitution or in a statute, provided that these subnational governments have some decision-making autonomy.

The African Union's African 'Charter on the Values and Principles of Decentralisation, Local Governance and Local Development' of 2014 has adopted the following definition of decentralisation: "the transfer of power, responsibilities, capacities and resources from national to all subnational levels of government" (article 1). For more on this Charter, see Fact Sheet #10.

### Decentralisation includes:

1. federations where the division of powers is protected by a constitution;
2. a lesser form of federalism called devolution;
3. local government; and
4. traditional authorities with decision-making powers on issues such as of communal land and personal customary law.

### Why does decentralisation matter?

Subnational governments:

- can ensure inclusive government with regards to religion, language, race or ethnicity, and so foster peace;
- can deepen democracy and allow multi-party democracy to flourish;
- can be more responsive to the needs of local communities;
- can offset and oppose abuse of power by the central government.

See also Fact Sheet #2 on Federalism and Federations and Fact Sheet #3 on Local Government

### Federalism

Federalism is a governance system based on two or more levels of government. It combines elements of 'self-rule' for regional or local governments, and 'shared rule' by the federal and state/provincial governments for nationwide responsibilities. Its basic structure comprises:

- (1) a federal government and (2) states/provinces. Each has powers derived from the constitution; and each is directly elected by and accountable to their electorate;
- division of powers (including taxing powers) between the centre and the states/provinces;
- the participation of states/provinces in the federal parliament through a second house or chamber;
- a system of intergovernmental relations; and
- the protection of the above in a supreme constitution which cannot unilaterally be amended by either the federal government or the states /provinces, and is enforced by an independent judiciary.

The constitutions of Ethiopia, Nigeria, Somalia, and Comoros establish federal systems, as reflected in their official names, eg the Federal Democratic Republic of Ethiopia. The constitutions of South Africa, Kenya and the Democratic Republic of Congo (DRC) contain all the elements of a federation but do not use the word 'federal'.

## Devolution

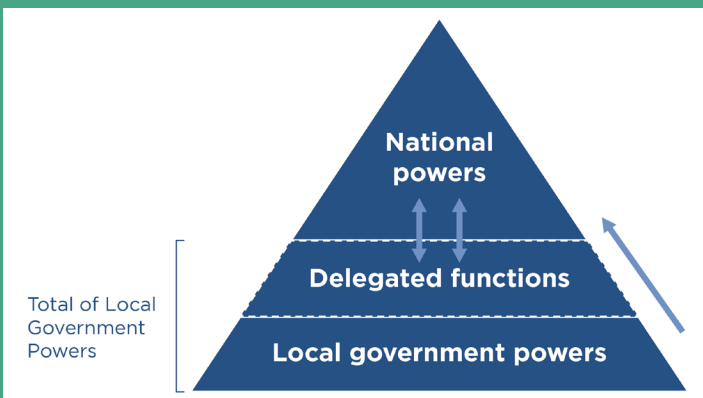
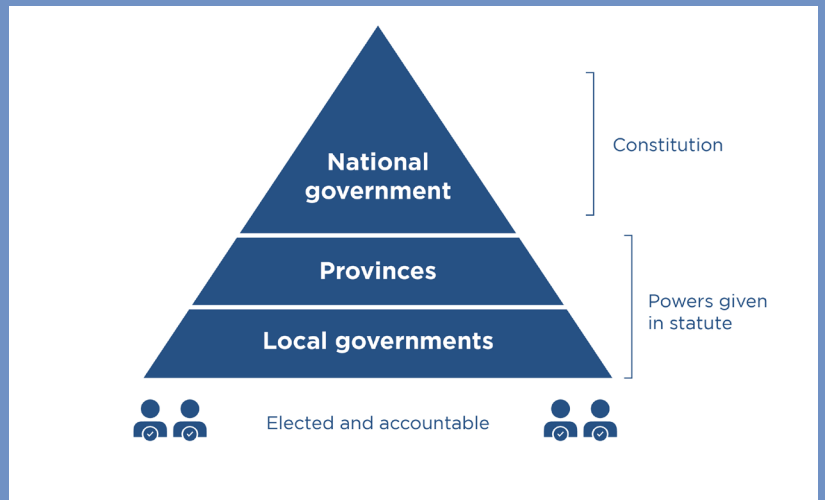
There is no fixed definition of devolution, although it can best be defined as a very centralised federal system. The constitutions of Kenya and Zimbabwe both describe their decentralised systems as 'devolution' but have distinct differences. For example, Kenya has all the characteristics of a federation, such as providing for a second house of Parliament representing its 47 counties, whose powers are also listed. In contrast, Zimbabwe's provincial and local governments have no constitutionally-listed powers and no representation in the national Parliament.

## Local governments

Local governments are regarded as a form of decentralisation if they meet two basic requirements:

1. They must be democratically elected. Local councils appointed by the central government, or councils dominated by central appointees are not accountable to their electorate.
2. They must have a measure of autonomy to make policy decisions on matters of local concern.

Local governments are usually not protected by a constitution, but are often referred to as 'creatures of statute'.



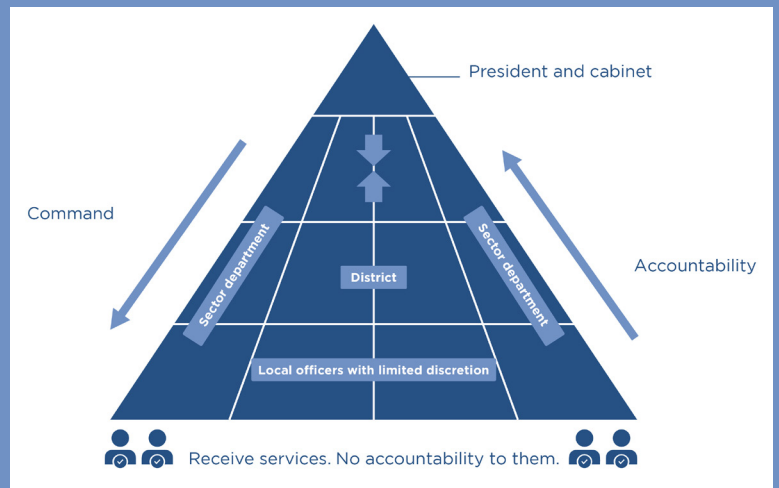
## Delegation of powers

Delegation of powers occurs when a national government transfers some of its own responsibilities to subnational governments, which must then exercise these powers under the control and direction of the national government. A local government receiving delegated authority to provide a service is thus accountable to the national government and not to the people receiving the service. As the national government confers this responsibility, it can also withdraw it.

## Deconcentration of national powers

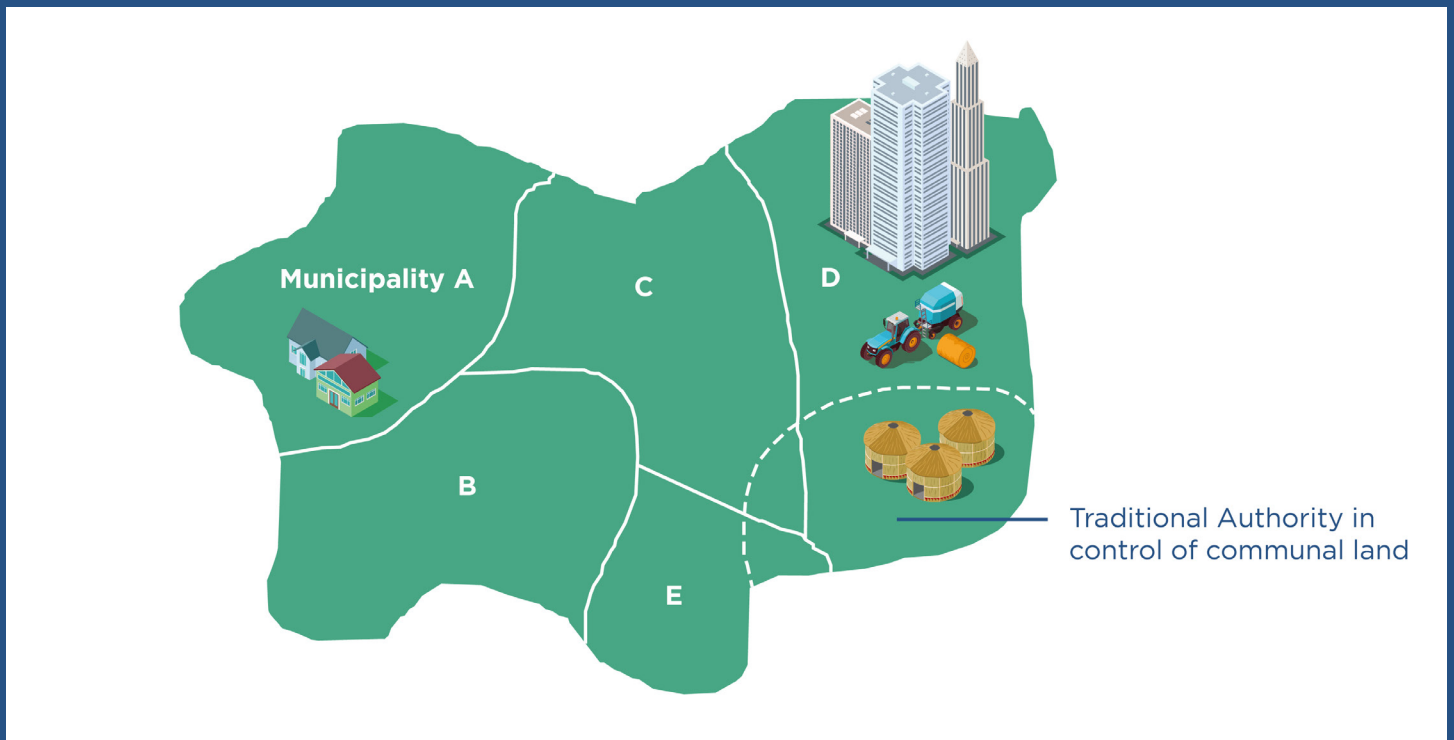
All national governments make use of and can confer some decision-making discretion to their own regional or local offices. As an outcome, the national government's decision-making powers are thus diluted or deconcentrated throughout the country. These regional or local offices are directly accountable to the national government and not to the local electorate. Residents can, however, appeal the decisions of a local office to the national head-office.

Deconcentration is not decentralisation in that the regional or local offices of a national department are not subnational governments. They are not elected by local voters and so are not accountable to them.



## Traditional authorities

The position of traditional authorities arises primarily from custom and usually not from a constitution or legislation. However, they often exercise some governance powers. In many African countries, they make final decisions in respect of communal land and personal customary law.



# 2

# FEDERALISM AND FEDERATIONS

## Introduction

A number of countries in Africa have federal or federal-type constitutions, for example Ethiopia (1991), South Africa (1994), Nigeria (1999, re-establishing earlier federal constitutions), the Democratic Republic of Congo (2006), the Sudan (2005); Kenya (2010); South Sudan (2011), and Somalia (2012). Only in the cases of Nigeria, Ethiopia and Somalia does the word 'Federal' form part of the country's official name, as in the 'Federal Democratic Republic of Ethiopia'. The constitutions of South Africa, Kenya and the Democratic Republic of Congo (DRC) contain all the elements of a federation but avoid using the word 'federal'.

The structures underlying these countries' federal-type arrangements are largely similar. They are all centralised federations as the central government plays a strong role in regulating and controlling sub-national governments (SNGs), referred to as either states in Nigeria, regions in Ethiopia, provinces in South Africa, or counties in Kenya.

## Objectives of federal political systems

Federal systems in Africa have four objectives:



To nurture peace-making and state-building in fragile states. The aim is to unify countries or to settle conflicts by accommodating minorities (often ethnic) and marginalised groups through an inclusive system of government. These were the primary motives in the cases of Nigeria, Ethiopia, South Africa, DRC, Sudan, South Sudan, and Somalia.



To curb the abuse of powers by centralised governments, often concentrated in the hands of authoritarian presidents, by devolving some powers away from the centre in favour of subnational governments (SNGs). This objective featured prominently in Kenya and South Africa.



To enhance development by creating closer ties between government and the people to ensure that development projects reflect regional and local preferences, and resources are spread more equitably across the country, a key issue in Kenya.



To facilitate democracy, enabling communities to have a more direct say in matters of regional or local concern.

## Structures of a federation

To give effect to these goals, a federation is a government system comprised of two or more levels of government, where states (also called regions, provinces or counties) govern themselves on specified matters (self-rule), and govern together with the federal government on other matters (shared rule).

## Self-Rule

One aspect of a federation is that subnational government exercises some measure of autonomy. This is secured by the following features:

### Establishment of at least two levels of government

The constitution must establish at least two levels of government – federal and state – each directly elected by and accountable to their electorate. The number of states vary considerably: 47 counties in Kenya, 36 states in Nigeria, 10 regions in Ethiopia, and 9 provinces in South Africa. Of vital importance is the criteria by which state boundaries are drawn. As a principal aim is establishing peace through accommodating diversity in terms of ethnicity, language, culture and religion, three different approaches to the drawing of boundaries are followed:

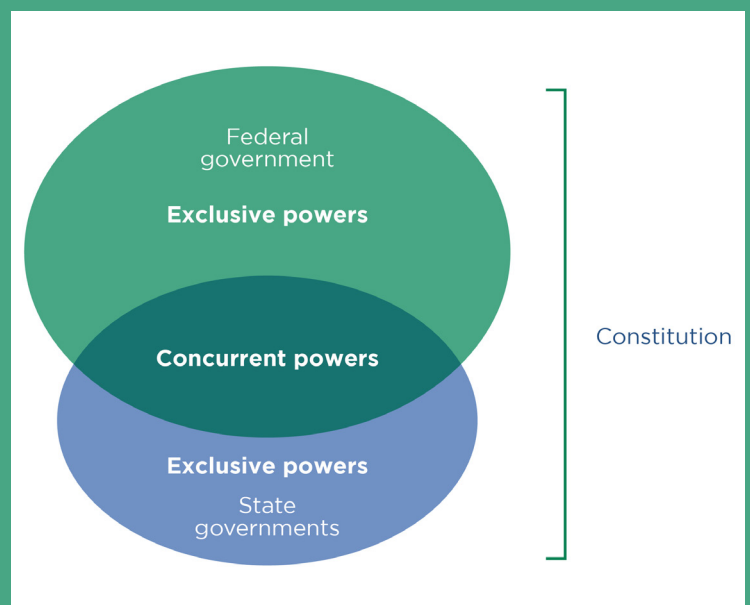
1. the explicit ethnic recognition, as in Ethiopia;
2. the splitting of large ethnic groups into smaller territorial ethnic units, as in Nigeria, the DRC, and Kenya; or
3. using soft ethnic boundaries – accommodating ethnic groups but not making it the main criterion, as in South Africa.

In South Africa, Nigeria, the DRC and Ethiopia, a third level of government is recognised in their respective constitutions – local government.

### The division of powers between the centre and the states / provinces

The central element of a federation is the division of powers over policy areas (or functions) between the centre and the states. There are three main approaches:

1. The first is to divide policy areas neatly between the federal government and the states, each level of government having exclusive power over the policy areas allocated to them.
2. The second is to have a large measure of concurrent and overlapping powers over the same specified policy area. In Nigeria, Kenya and South Africa, there are both exclusive national and subnational powers as well as concurrent powers shared by the two levels of government.
3. In the third approach, each level of government has both exclusive and concurrent powers.





Federal governments undertake a number of functions, including those that:



relate to the nation as a whole (foreign affairs, defence, currency);



require uniform regulation across the nation, such as internal trade, commercial transactions.



States perform functions that address their specific needs and that are thus more appropriately and efficiently performed at this level. Examples are education and health. Where both levels of government have an interest in a particular service, such as education, it is typically made a concurrent function.

## Taxing powers and the division of revenue

In African federations, revenue is raised mainly by the centre for distribution to all levels of government and then divided among states to ensure that public services are more or less equal throughout the country. Subnational governments are often given limited taxing powers which are insufficient to fund their activities, thus making them reliant on transfers from the centre.

## Shared Rule

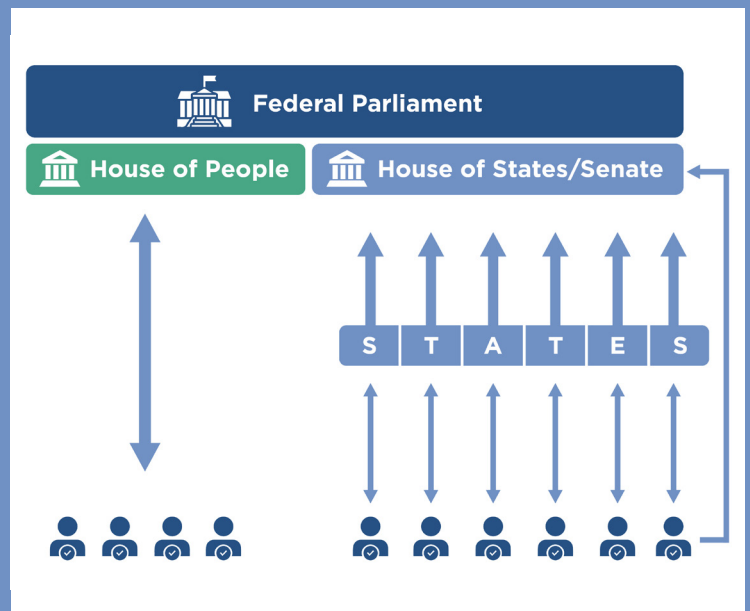
The second, but equally important part of a federation is shared rule. States not only govern their own areas, but also participate in the making of some federal decisions.

## Participation of states in the federal or national parliament through a second house

By participating in the national legislative process through representation in a second house of the federal or national parliament, states can influence federal policy and legislation. This may either be confined to matters affecting only them, or that have broader impact. If federal laws are to bind the regions, it's reasonable that they have a say in its formulation. Nigeria, South Africa, and Kenya have established second houses that represent the subnational units. Representatives of the subnational units can be directly elected or elected/appointed by the states/regions/provinces.

## Inclusive federal executive and administration

In various ways the Presidency, the cabinet and the federal administration should in its composition reflect a country's diversity. Nigeria's constitution requires, for example, that the federal administration must mirror that country's 'federal character' by employing persons from all its states.



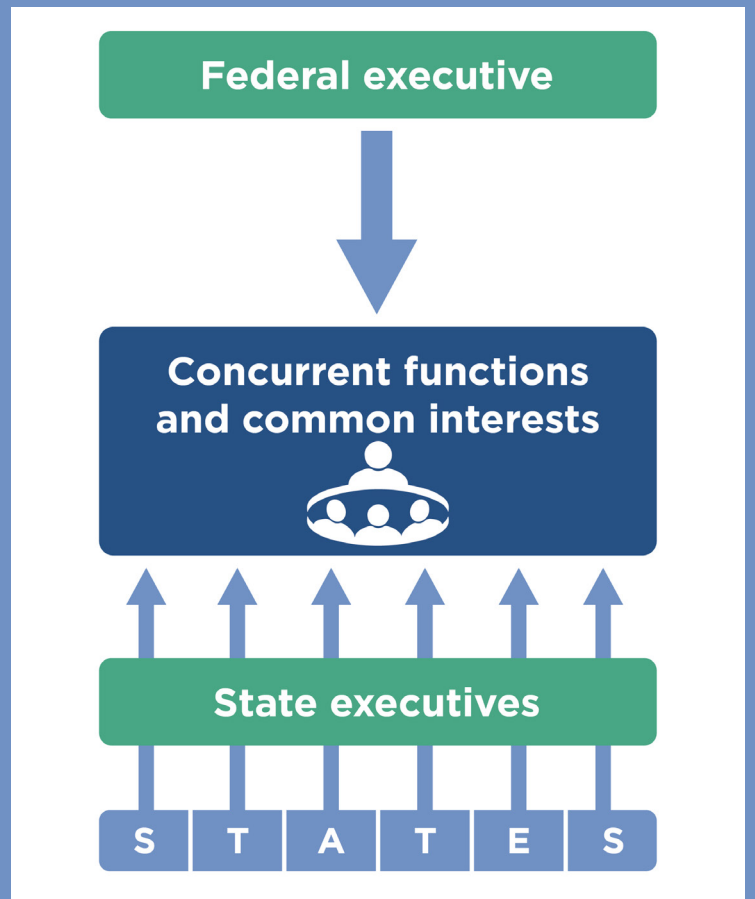


## A cooperative system of intergovernmental relations

In intergovernmental relations between executives of the centre and the states, the aim is often to encourage cooperation on matters of common interest. This objective thus limits self-rule of both the federal and subnational governments because it compels them to consult on matters that may affect the other level of government. For details, see Fact Sheet # 8.

## A supreme constitution enforced by an independent judiciary

A federation is founded on a supreme constitution that cannot unilaterally be amended by either the federal government or the states, whether collectively or individually. It thus protects the division of powers and the other elements of federalism. A supreme constitution is only as good as its enforcement, and this requires an independent court that can review legislation and decisions of the executive against the constitution, and can invalidate such legislation or decisions where there is conflict. Examples of such courts are the Supreme Courts of Nigeria and Kenya, and the Constitutional Court in South Africa.



## Federal practice

Whatever a constitution may dictate, a country becomes a federation in practice only when:

- States actually exercise autonomously legislative and executive powers;
- States have sufficient revenue to exercise their allocated powers;
- The institutions of shared rule function and represent states and their people effectively;
- Intergovernmental relations are based on open bargaining and cooperation is a reality; and
- The courts are independent and are able and willing to enforce a supreme constitution.

# 3

## LOCAL GOVERNMENT:

### FACTORS AND REASONS IN FAVOUR OF DECENTRALISATION

Every country makes its own, distinctive choices on its decentralisation. African countries do, however, have the following considerations and rationales in common:



**Demand for local services.** The existence of local authorities with responsibilities is almost inevitable, because not all services can be delivered by and from the centre. Nearly all countries have local authorities that perform some local services. However, the question is how much power these local governments have, and whether they are locally elected. Depending on the answer, the local governments could merely be performing delegated functions on behalf of the central government, and not as fully decentralised entities (see Fact Sheet #1).



**Conflict resolution.** Countries emerging from conflict sometimes strengthen local governments in order to give ethnic, religious, cultural, regional or political groups regional or local expression. In Ethiopia, for example, the Constitution empowers ethnic groups to establish their own local governments.



**History.** The existence of local government systems is often a function of history. For example, many African countries have inherited local government systems from their colonial past. These were often centralised, and local governments were merely performing delegated functions, rather than having a real measure of autonomy. For example, nations such as Uganda, Zambia and Zimbabwe initially inherited local government administrations that were in place during their times as British colonies, and some elements of there are still present today.



**Demand for local democracy.** The empowerment of local governments is sometimes demanded by civil society or political movements during times of constitutional reform. For example, pressure by civil society and the opposition resulted in the recognition of local government in Zimbabwe's 2013 Constitution. The same can be said of the inclusion of local government in Zambia's 2016 constitutional amendments, and the recognition of local government in Mozambique's 2004 Constitution.

There are also more general reasons that promote or discourage decentralisation to local government:



**More effective public spending.** People living in different localities have different needs. One community may require more roads, while another prefers better clinics. Giving local governments the power to choose may improve the alignment between what people want and how governments spend money.



**Creativity and innovation.** Governments regularly design new programmes and policies. When a new policy works well, they continue with it. If it doesn't, they abandon it. In a centralised system, when the national government tries something new the entire country often participates in the experiment, and as such it is the entire country that either fails or succeeds. This is different with decentralisation: a local authority can try a new programme or policy and if it fails, the failure is contained. If it succeeds, however, other local governments can learn from and copy it.



**Democratic accountability.** Empowering local governments can improve democracy. It is often easier for citizens to identify and reach out to local officials and politicians and ask them to account for their decisions, compared to holding national officials and politicians to account. Local officials should have a closer connection to the citizens of the local government than national officials and politicians.



**Tolerance for political diversity.** If local governments are locally elected, a local authority could be governed by a different party (or coalition) from the one that is in charge nationally. This has been the case, for example, in South Africa and Zimbabwe where urban centres such as Cape Town in South Africa, and Harare and Bulawayo in Zimbabwe have been governed by parties that are in opposition to the central government. Decentralisation will require that both parties accept these possible outcomes. Even more, it will require them to work together. If this process is managed well, it can contribute to greater political tolerance.



**Learning politics.** Empowered local governments can function as 'schools' for political leadership. Politicians can learn the art of politics at local level before moving to regional or national positions.

## ARGUMENTS AGAINST DECENTRALISATION

However, there are also dangers and disadvantages to decentralisation:



**Inequality between geographical areas.** Strong local governments can worsen inequality between geographical areas, particularly if they rely on local funding. If one locality is very poor, it receives poor services because the local government cannot raise much money from local citizens. In contrast, a wealthier locality will likely benefit from better services because the local government can raise more funding from its citizens. See Fact Sheet #8 on how this can be overcome.



**Economies of scale.** Exercising functions locally does not always make sense. It may result in unnecessary duplication. For example, does each town need its own ambulance service?



**Regional or national interests.** Too much localised power can lead to local governments pursuing only their own interests at the expense of regional or national interests. For example, if local governments impose erratic taxes or borrow uncontrollably, it could contribute to inflation or damage macro-economic stability.

**None of these advantages or disadvantages are conclusive on their own. They must all be considered and weighed up, and local circumstances will determine the best outcome. But any system of decentralisation must capitalise on the benefits and minimise the negative effects. This requires careful design and constant adjustment.**

# 4

# LOCAL GOVERNMENT AUTONOMY

## Introduction

Local autonomy can be defined as the extent to which local governments have discretion in carrying out their obligations. This can never be interpreted as absolute freedom for local governments to take whatever decisions they like. The extent of this autonomy differs from country to country. The following features are important to assess the degree of local autonomy:



### Is there protection for the existence of local government?

Does the Constitution (or any other higher law) mention local government and/or instruct Parliament to establish a local government system? Would it be 'illegal' or 'unconstitutional' if there is no system of local government? Many African countries have such general provisions in their constitutions. For example, section 106(1) of Lesotho's Constitution instructs the country's Parliament to establish local authorities.



### Is the leadership of local governments locally elected?

Do voters in a local authority have regular opportunities to elect that local government's political leadership, namely the council and/or the local executive? Or is such local leadership appointed from higher up, for example by the President or a national minister? If the local political leadership comprises or is dominated by politicians appointed by the centre, they will be accountable to the centre and not to local voters. This reduces the autonomy of that local government. There are countless variations on this principle around the continent. In South Africa, all local politicians are locally elected. In Egypt, the executive leadership of local governments are appointed by regional governors or the Prime Minister. Local elections must of course be free and fair but it is also important that they are conducted regularly. Look at Malawi, for example: it held its first local government elections in 2000, but the councils were then suspended from 2004 until 2014.



### Is there protection for local government units, in particular their boundaries?

Does the Constitution (or another higher law) protect local government boundaries? Are there rules to prevent national government from arbitrarily changing boundaries, merging or abolishing local governments? South Africa has been the most explicit in this regard, establishing a Municipal Demarcation Board that determines boundaries, and whose independence is guaranteed in the Constitution.



### Are local powers identified and protected?

Does the Constitution (or another higher law) set out local government powers? There are two dimensions, namely:

- Are local matters and responsibilities specified in the Constitution? For example, the Constitution of Zambia contains a list of exclusive local government matters. Or is there a general open-ended power to deal with local matters? Article 189 of the Constitution of Uganda, for example, lists national powers and allocates all remaining powers to local government. Generally, the more specific the powers are, the stronger and more secure is local government's autonomy.
- Are local governments permitted to adopt local policies or by-laws with regard to those matters? If they are not, it means they only implement national or regional laws, which diminishes their autonomy. For example, article 134 of the Constitution of Tunisia provides that local governments have "regulatory power in exercising their mandates".



### Are local governments protected against interference with or removal of their powers?

Often, the law will provide that (1) the central (or regional) government may regulate local government and (2) monitor and evaluate their performance. In cases of abject failure or illegality, the powers may even be removed or the leadership dismissed. These frameworks are needed, but can also be abused. The question is thus: are there checks and balances in place to protect local governments against such abuse? (Also see Fact Sheet #7).



### Do local governments adopt their own budgets?

Local governments may only spend money if it is authorised in a budget. The budget prioritises scarce resources to respond to local needs. But who decides on those local priorities? Is it the local government itself, or another level of government? Does the local government have the final say over the budget or does it require the prior approval of another level of government? In many African countries, budget autonomy is limited. (see also Fact Sheet # 6). In Egypt, for example, local budgets must be sent for approval to the central government. The same rule applies to Zimbabwe, where the national Minister approves all local government budgets.



### Do local governments have access to local revenue?

The more local governments depend on grants from the central government, the more they are accountable to the centre and their autonomy is reduced. No local authority is completely self-sufficient, and grants are necessary. (See Fact Sheet #6.) However, such funding often comes 'with strings attached'. If local governments can levy certain taxes and/or charge fees for services, they can decide for themselves how to use that revenue, and will be more accountable to local residents. This strengthens their autonomy.



### Do local governments control their own bureaucracies?

Local politicians cannot do much without officials. (Also see Fact Sheet #7.) Two questions are important in this regard:

- a. Can a local government determine its own organisational structure? Or is this imposed from above?
- b. Does the local government have the power to appoint its own staff? Or are staff members appointed by institutions outside of the local government?



### Can local governments turn to the courts if the central government disregards the rules?

Questions 1-8 will be answered in a country's constitution and/or its local government laws. But what happens when the national (or regional) government breaks those rules? Can local government(s) ask a court to determine whether the national government acted lawfully? If they can't, the rules to protect autonomy may ring hollow and the national government will be tempted to break them to centralise power. Furthermore, will the courts entertain such cases and decide on them without fear or favour? And will the national government implement any judgments that rule against them? In South Africa, for example, the courts regularly adjudicate conflicts over these issues, and the government always implement their decisions.

**Each country navigates these questions differently, depending on local factors and considerations. (See Fact Sheet #3).**

# 5

# LOCAL GOVERNMENT POWERS

## Introduction

The powers of local government are an important indicator of the degree of local autonomy. How then are local governments empowered and their powers protected and ensured?



### Is there constitutional protection? If so, what is the nature of that protection?

Constitutional protection of local government powers is an important feature of decentralisation. If the Constitution does not deal with the powers of local governments, these powers are likely to be determined by ordinary law and can thus easily be removed or curtailed.

Below are three common examples of how constitutions in Africa deal with local government powers.

1. General instruction to Parliament to make a law with local government powers. For example, section 106(1) of the Constitution of Lesotho provides that local authorities will “perform such functions as may be assigned by Parliament”. Section 276 of the Constitution of Zimbabwe contains a similar instruction to Parliament. These types of provisions generally do not guarantee much power for local governments, however, because it is left to Parliament to decide the extent of local government powers.
2. A general empowering provision. Sometimes, the Constitution includes a broad principle or general empowering provision. For example, section 276 of the Constitution of Zimbabwe provides that local governments have “the right to govern, on its own initiative, the local affairs”. While this does not contain much clarity, it may add some momentum to decentralisation and help local governments in claiming powers.
3. A list system. The strongest protection comes when the Constitution contains one or more lists that specifies matters over which local governments have authority. Both the South African and the Zambian constitutions are examples of this. These two constitutions list matters such as planning, electricity, water, and refuse removal specifically as local government functions. Uganda takes a contrasting approach: its constitution lists all national powers, and assigns all other responsibilities to local governments.



### Are the powers of local government clearly defined?

The rule of thumb is: the clearer the law defines the powers of local government, the stronger local government’s autonomy. If the power of a local government depends on how other levels of government interpret it, it is almost always interpreted narrowly.



### Are the powers of local government relevant and substantial?

Local powers may have strong constitutional protection and may be clearly defined, but the content of the powers determines how important local government really is. Are they responsible for ‘big’ functions, such as local health services, primary education, electricity, water, roads and so on? Or are they responsible for lesser issues such as the licencing of pets, noise pollution and abattoirs?





## Are the powers of local government static or does the law expect them to grow? If the latter, how would this happen, and is there protection against unfunded mandates?

The downside of precise definitions is that they can be rigid and do not allow local governments to adapt and grow in influence. National governments must therefore be able to transfer additional functions to local government. In some cases, the constitution contains rules that make this compulsory. For example, section 156(4) of the South African Constitution compels the national and provincial governments to assign additional powers to municipalities, over and above those allocated in the Constitution. This is provided that (1) they are best suited for that function and (2) have the required capacity. Section 134 of the Tunisian Constitution expects national government to distribute powers based on the principle of subsidiarity – the central government performs only those functions local authorities cannot do on their own.

If these additional functions become unfunded mandates (duties are imposed but without the necessary funding to perform them), they can cripple local governments. Therefore, rules must be in place to ensure that functions are transferred with adequate financing or revenue-raising powers. Section 135 of the Constitution of Tunisia, for example provides that new powers for local governments must be coupled with resources. (See also Fact Sheet # 6.)



## What are the rules for the national regulation of local matters?

Local governments hardly ever have full autonomy over matters that the constitution or a law assigns to them. There will always be national rules within which they must operate. For example, if local governments deliver electricity, there will be national rules for the setting of electricity tariffs. If local governments are responsible for preventive health care, there will be national rules on health care standards and protocols. If local governments deliver water, there will be national water quality standards, and so on.

The existence of these national rules does not contradict local government autonomy, provided they are focused on minimum standards and don't deny local governments the right to make local policy choices.



## Do local authorities have the power to adopt their own budget?

Local governments may only spend money if it is authorised in a budget. The budget prioritises scarce resources to respond to local needs. But who decides on those local priorities? Is it the local government itself, or another level of government? (Also see Fact Sheet #4.)



## Do local authorities have the power to control their own bureaucracies?

Local politicians cannot achieve much if they do not have officials in place. Two questions are important:

1. Can a local government determine its own organisational structure? For a local authority to respond effectively to local circumstances and local challenges, it is important that they design their own organisational structure. By designing an organisational structure, the local government equips itself to implement its own strategy. This includes formulating mandates for municipal departments, but also for establishing ring-fenced business units or public utilities. If the organisational structure is imposed from above, the municipality will have less autonomy.
2. Does the local government have the power to appoint its own staff? Or are staff members appointed by institutions outside of the local government? The more power a local government has to appoint its own staff, the more autonomous it will be. The downside of local autonomy to appoint its own staff is that it is difficult to move staff across levels of government in response to capacity gaps. It also becomes more difficult for national government to combat corrupt employment practices. Often there are different rules for senior staff as compared to junior staff. In Uganda, for example, the central government appoints the Chief Administrative Officers of local governments but other officials are appointed by district service commission. In Zambia, the same principle applies: the national Local Government Service Commission appoints town clerks and council secretaries, while local authorities appoint other staff. Sometimes, local governments have full discretion to appoint all their own staff. For example, municipalities in South Africa make their own appointments.



# 6

# LOCAL GOVERNMENT FINANCES

Finances lie at the core of effective and autonomous local government. If denied sufficient funding, local authorities cannot perform their functions. Local finances typically centre around four main matters: (1) the revenue of local authorities; (2) the budget; (3) expenditure; and (4) internal and external controls to prevent and correct poor financial management, including corruption.



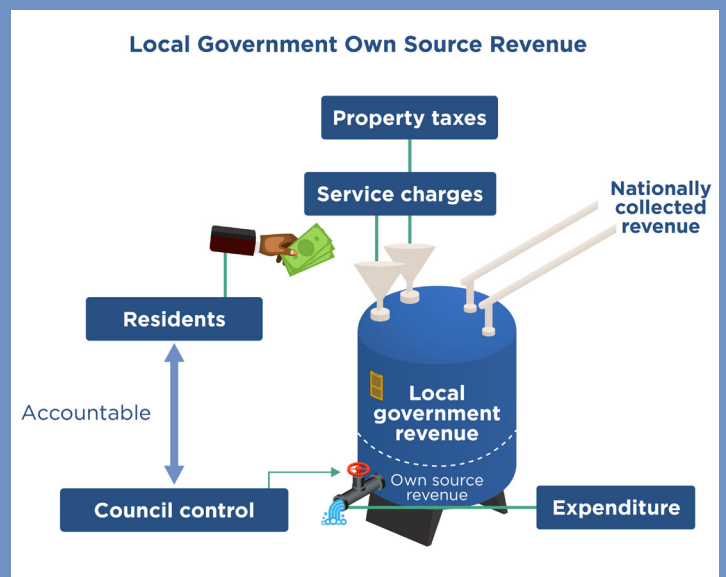
## The Revenue of Local Authorities

In the light of the responsibilities allocated to local government (see Fact Sheet #4), the basic principle is that 'funds follow functions'. Local authorities collect taxes and service charges, and also receive transfers from the central government. Ideally, local authorities should as far as is possible raise, by themselves, the necessary revenue to finance its functions. This promotes self-reliance, which in turn is essential for accountability and good financial management. However, all local authorities do not have access to the same economic resources from which they can raise tax revenue. At the same time, all citizens of a country are entitled to a similar level of services, or at least a similar 'minimum floor'. Revenues raised nationally should then also be shared among local authorities according to their respective needs.

## Raising own revenue

As local democracy is aimed at allowing local citizens to express their preferences with regard to the services they receive, they will hold the politicians and administrators accountable for the taxes they pay and the services they demanded and received. But when a local authority receives the bulk of its revenue from the central government, there is no accountability to the local community, and wastage occurs and resources squandered. In Nigeria, for example, local authorities, which receive almost all their revenue through federal transfers, have often been accused of reckless and corrupt spending.

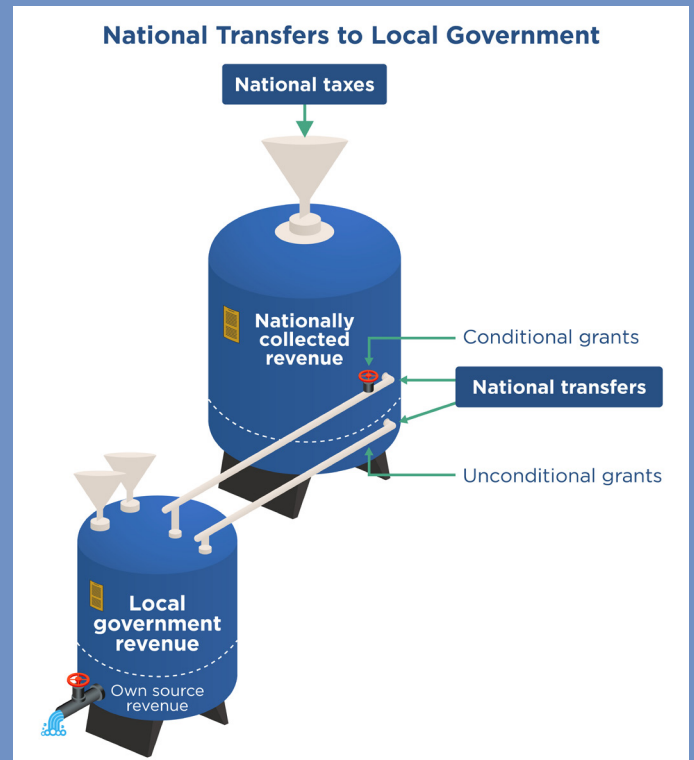
Property taxes are the primary local tax used across Africa. Other taxes include entertainment taxes (on movie or sports tickets, for instance), while further revenue is earned on the issue of various licences, such as vehicle licenses. Where a local authority provides electricity, water, sanitation and refuse removal, the user charges for these services can bring in substantial revenues. In South Africa, most municipalities raise the bulk of their income through user charges on electricity and water.



## Transfers from central government

The revenue that local governments can raise is usually too little to cover all the expenditure for the services and functions they must provide. There is thus a big funding gap between own revenue and expenditure obligations, the size of which depends on the amount of revenue that each local authority can raise from its economic base. The central government thus fills the funding gap, ensuring that there is a minimum floor of services that all local authorities must deliver. The central government may also give conditional grants with the aim of implementing national programmes, such as road construction.

The decision as to the amount of money that should be transferred to all local governments, and how that amount of money divided between the different local governments, is often difficult to make. In Zimbabwe, a minimum of 5 per cent of the national budget must be transferred to all the provinces, metropolitan councils and local authorities. The usual approach is that the central government determines the amount, often with some input about their needs from the local government. The fairest method of distributing transfers among local governments uses a number of factors, captured in a formula. This ensures that the amount each local authority receives is not subject to political manipulation, but determined according to their needs.

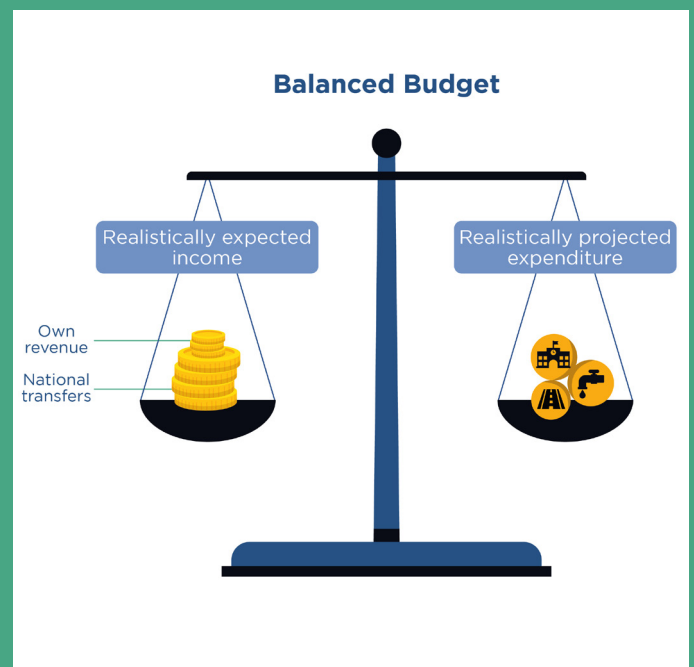


## Budget

The adoption of the annual budget is the most important decision that the elected council of a local authority makes every year. It sets out its spending priorities (which services and at what level they will be delivered), and how they will be funded.

In countries like South Africa, where local authorities enjoy a measure of autonomy, the council makes the final decision. In others, such as Botswana, the budget must be approved by the Ministry responsible for local government, a process that undercuts local accountability.

As a general rule, local authorities may not run deficit budgets, meaning that they must be balanced and that their realistically expected income must match their foreseen and planned expenditures. But this raises the question of a council's borrowing powers: can they borrow money to balance the budget? In this regard a distinction is often made: money may not be borrowed to cover current expenditures, but loans can be made to pay for long-term infrastructure projects. In most countries very strict conditions are set by the central government about when a local authority may borrow.





## Expenditure

In most African countries, the scourge of mismanagement of finances and corruption is ever present, and it mostly revolves around expenditure decisions. How is this problem addressed? Governments' hard earned revenue must be spent according to following principles:

- Expenditure must implement the budget. Expenditures may not be incurred for purposes other than that specified in the budget, and only for those amounts allocated in the budget.
- Expenditure decisions must follow the correct process, and must comply with the prescribed rules and regulations relating to procurement of goods and services in particular. Expenditures may thus not be irregular.
- Expenditure must be used for productive ends; hence the rule against fruitless and wasteful expenditure.

Where local government has a measure of autonomy, the council makes the final decisions about expenditure. In some countries, local governments are not trusted to make these decisions, requiring that the central government must approve large-item expenditures.



## Controls over expenditure

The democratically elected council is the primary body mandated to ensure that a local authority's finances are properly managed. They must ensure that all the taxes and fees due, are collected; that expenditure is carried out according to general rules on procurement; and that the basic rules of balanced budgets are followed. However, this body could fail to execute this task properly because officials lack the necessary skills and capacity, or municipal revenues are misspent because of corruption. This can be remedied in the following ways:

- The finances of a local authority must be transparent, so that civil society may question and hold the council accountable.
- An important institution that has been put in place to ensure transparency and accountability is the Auditor-General. This office checks whether revenue was collected according to the law, and how it was spent. It reports to both the council and the central government, both of which should act upon its recommendations.
- The central government may take supervisory action, as outlined in Fact Sheet #7.
- There may also be other constitutional bodies, such as an ombudsman or an anti-corruption commission, that can investigate complaints of maladministration and corruption.

# 7

# SUPERVISION OF LOCAL GOVERNMENT

## Introduction

Local governments require some form of autonomy if they are to be effective in delivering on their functions. Equally important is the need for higher levels of governments to supervise local governments to ensure the promotion and protection of both local and national goals. Supervision is also important to deal with the ills often associated with decentralisation such as incapacity, corruption and resource wastage.

## Who supervises local government?

Three trends have emerged:

- In federal countries such as **Ethiopia** and **Nigeria**, local government is supervised by the states and regions.
- In **South Africa**, provinces are the primary supervisors of municipalities but the national government also plays a role.
- In unitary countries, local government is directly supervised by the central government.

## What are the main forms of supervision?

Supervision generally takes four main forms: regulation, monitoring, support and intervention. The regulatory framework for local government is often established by a constitution and/or legislation, and in some cases policies may provide further details.



### 1. Monitoring

Once the regulatory and policy framework is in place, senior governments must monitor how local governments are complying with it. There are various ways of monitoring: requiring regular reports, auditing of financial statements, requesting specific information, and appointing investigators. There are two principles that should guide monitoring mechanisms:

- the autonomy of local government must be respected;
- the administrative burden of complying with monitoring mechanisms must not overwhelm local governments and distract them from their core mandate to provide services.



### 2. Support

Monitoring may reveal problems that hamper effective governance by a local authority, but which are beyond its capacity to solve itself. The local authority may need external support to address these issues. In such cases, the senior government should provide relevant support. Support may also be necessary in circumstances where there are no specific local problems. In this context, the objective is to ensure that the necessary level of capacity is maintained so that local government can perform its duties and obligations. Support can take several forms: the provision of financial resources, technological resources, training of staff, and secondment of staff to a local authority. Even though higher levels of government may be required to provide support, this does not mean that they must then meet a local government's obligations, for instance, to service its debts. This would encourage irresponsible fiscal behaviour to the detriment of macro-economic stability.



### 3. Intervention

Even if support is provided, it is still possible that a local problem remains unresolved. In such cases, the relevant senior government can consider whether to intervene directly to get the local authority back on its feet. However, the power of higher levels of government to intervene should not necessarily be tied to the prior provision of the necessary support. In emergencies, intervention is warranted even when the senior government has not rendered some form of support.

#### Guiding principles for intervention measures

Intervention is the most intrusive form of supervision. It involves a senior authority acting or taking decisions on behalf of a local authority. It thus ought to be exercised under very limited and clearly stipulated conditions, and must also be subject to oversight. Intervention measures must be temporary and corrective in nature, so that the local authority resumes its duties as soon as possible.

There are several forms of intervention but the common forms, in order of their encroachment on local autonomy, are:

- a) the power to issue directives to a local authority,
- b) the assumption of a local responsibility, and
- c) the power to suspend and/or dismiss an elected council.



In many countries, interventions take the form of **directives** that are issued to a local authority, and which detail the problem and the expected action(s) to address it. When the relevant entity fails to comply with these directives and/or continues to fail to deliver a function, the senior government is often empowered **to assume performance of the relevant local obligation or function**. For instance, if the local authority is failing to supply potable water, a senior government may assume the delivery of water until such time that the local government is in a position to carry out this function. There should then be control mechanisms in place to prevent the senior government from overstepping or abusing this power. For example, in Uganda the President may only assume executive and legislative power of a district council after securing the approval of two-thirds of Parliament. Such oversight mechanisms are necessary to put a check on the possible abuse of intervention power.



In many counties, the law makes provision for a senior government to **suspend and/or dismiss an elected council** under certain circumstances. This form of intervention is the most intrusive as it enables a senior government to override the democratic will of the people. It speaks to the core of local democracy and, thus, should be exercised under very limited circumstances, in particular when the council itself is the cause of the problem. An administrator or commission is usually appointed to act in place of the council until a new one is elected. There are a number of mechanisms in place in different countries to ensure that local democracy is not unjustifiably limited.

In Zimbabwe, for instance, the grounds upon which councillors may be dismissed from office are stipulated in the Constitution and such dismissal can only be carried out by an independent body. In South Africa, the removal of a council must be approved by the second house of Parliament and the national Minister responsible for local government.



In a nutshell, supervision of local government is necessary. But such supervisory powers should be regulated and limited so that their (mis)use does not undermine local autonomy. This depends again on, among other things, an independent judiciary and respect for the rule of law to effectively protect the autonomy of local governments.

# 8

# LOCAL GOVERNMENT AND COOPERATIVE GOVERNMENT



## Why cooperative government?

A decentralised system of government is defined as a system made up of two or more levels of government, with each level having powers over different functions and responsibilities.

Different governments within one level (e.g. different local authorities) or governments across two or more levels, are engaged in combined and individual efforts to meet citizens' needs and preferences. They have to work together on matters of common concern to ensure that government as a whole delivers on its mandates. Thus, sound relations within one level of government and between different levels of government are critical for effective governance; these will develop when governments cooperate rather than compete with one another.



## What is cooperative government?

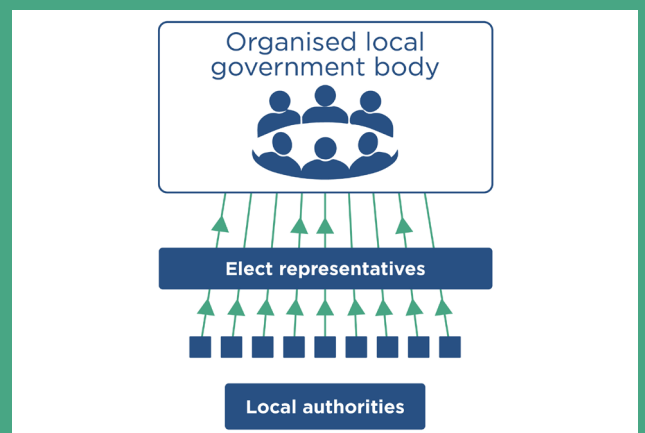
Cooperation can be distinguished from supervision. With supervision, the central government instructs local government what to do (See Fact Sheet #7]. Cooperation, on the other hand, is where the two levels are regarded as equals, and they discuss matters of common interest. They can make joint decisions by consensus and consultation. Cooperation is guided by a core set of principles. The South African Constitution expresses this as follows – all spheres of government must “co-operate with one another in mutual trust and good faith by :

- fostering friendly relations;
- assisting and supporting one another;
- informing one another of, and consulting one another on, matters of common interest;
- co-ordinating their actions and legislation with one another;
- adhering to agreed procedures; and
- avoiding legal proceedings against one another.” (s 41)

## Who are the parties involved in cooperative government?

- a. Local government as a collective through organised local government

Local governments in a country engage best with their central governments as a collective through organised local government structures. Various forms of associations have been established to represent the interests of local authorities. The associations are usually voluntary in nature. In some countries there is more than one association, while in others there is a single body for all local authorities. Having more than one association often results in the fragmentation of local government's voice.





Organised local government engages with the central government on issues that affect local authorities: including laws and regulations, policies, finances, and local boundary demarcation. They are also involved in initiatives that seek to develop the capacity of their members, such as training programmes. Organised local government also promote cooperation among its members as well as with other actors, including local authorities from other countries.

While organised local government plays an important role, most of the associations on the continent are institutionally weak and not in a position to effectively represent the voice of local authorities. This is partially the result of the lack of constitutional and/or legislative recognition. The associations often do not have sufficient resources as most of them rely on member fees for their operations.

b. Participation in cooperative government as individual local authorities

Local authorities are also involved in cooperative governance individually. Unlike smaller local authorities, many big cities have the muscle to engage directly with the central government and its agencies. These big cities are of strategic importance to the country, and are thus often given an audience by central governments that is not usually afforded to smaller local authorities.

**How does local government engage in cooperative government?**

Local authorities engage in cooperative governance in formal and less formal ways. South Africa has extensively formalised, in law, the participation of local authorities in cooperative governance. The Constitution sets out principles of cooperative government. It requires that intergovernmental structures be established and that legislation is adopted to give further content to cooperative government. Legislation makes provision for the establishment of several formal platforms where different tiers of government engage on matters of common interest.

Zimbabwe and Zambia have also included the key principles of cooperative governance in their constitutions. In most other African countries cooperative government is largely an informal process or absent altogether.

**What are the mechanisms for cooperative government?**

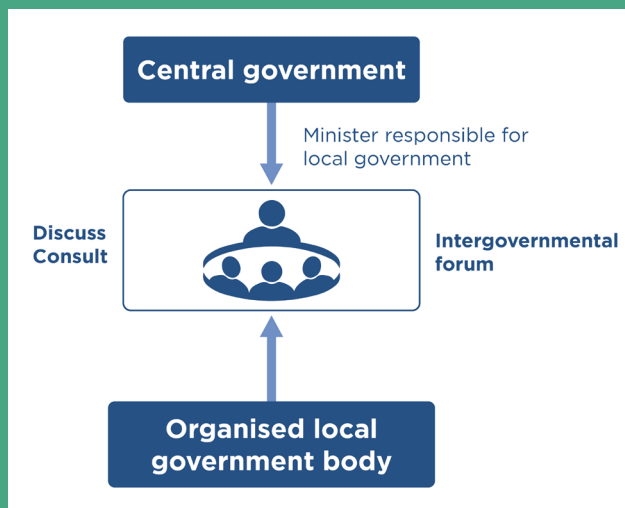
There are a number of mechanisms that have been put in place to promote cooperative government. Generally, local authorities engage in cooperative government in four main ways:

a. Executive forms of consultation

The executive branch of government often establishes platforms to consult with local government on matters of common interest. Some of these platforms are dedicated to specific policy areas, for example finance, water, transport and health issues. Others deal with local government in general. Local authorities make use of these platforms to influence decision-making at the national level, including on issues such as the sharing of nationally raised revenue across the levels of government.

b. Legislative forums

Sometimes, there are opportunities for organised local government to influence the law-making process at the national level. In South Africa, organised local government has a non-voting seat in the second House of Parliament. Moreover, legislation that affects local government may not be passed without consulting organised local government. In other countries, organised local government is invited on a case by case basis to provide input and comment on draft legislation.





c. Agreements between levels of governments and among local authorities

Another means of fostering cooperative governance takes the form of agreements between levels of government and among local authorities. These agreements are designed to facilitate better coordination of government functions and to provide ways of resolving potential disputes between governments at different levels.

d. Role of a national ministry responsible for local government

Most countries have a national ministry or agency that is responsible for local government. The ministry is often charged with facilitating the involvement of local government in cooperative governance. In some countries, this ministry has officials stationed at provincial/regional and local levels of government to coordinate central government's response towards local authorities, and vice versa.



### The practice of cooperative government

In practice, local authorities usually do not participate in cooperative governance as equals with other levels of government. This is irrespective of how the state is structured, that is, whether federal, quasi-federal or unitary. The relationship with local government is often largely top-down and defined by the main objective, which is to ensure the effective implementation of national laws and policies at local level. The political environment often makes it difficult to foster a culture of mutual respect, tolerance, equality, information sharing, consultation and transparency among all levels of government.

# 9

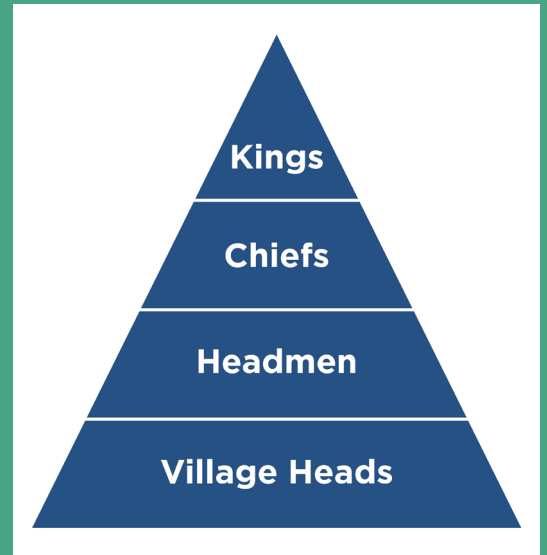
# THE ROLE OF TRADITIONAL AUTHORITIES IN LOCAL GOVERNANCE

## Introduction

Almost all countries in Africa have traditional authorities in some form. The most common structures of the institution of traditional leadership are, in order of power and authority, kings, chiefs, headmen and village heads. Because of how they are organised, traditional authorities are the most immediate form of governance in many rural parts of the continent. They perform roles, such as:

- land allocation/management;
- dispute resolution;
- environmental preservation; and
- promotion and preservation of culture and heritage.

With such functions, traditional leaders tend to have more interaction with citizens in rural areas than the modern state institutions. Thus, defining decentralisation within an African context often includes recognising their role that they play at local government level.



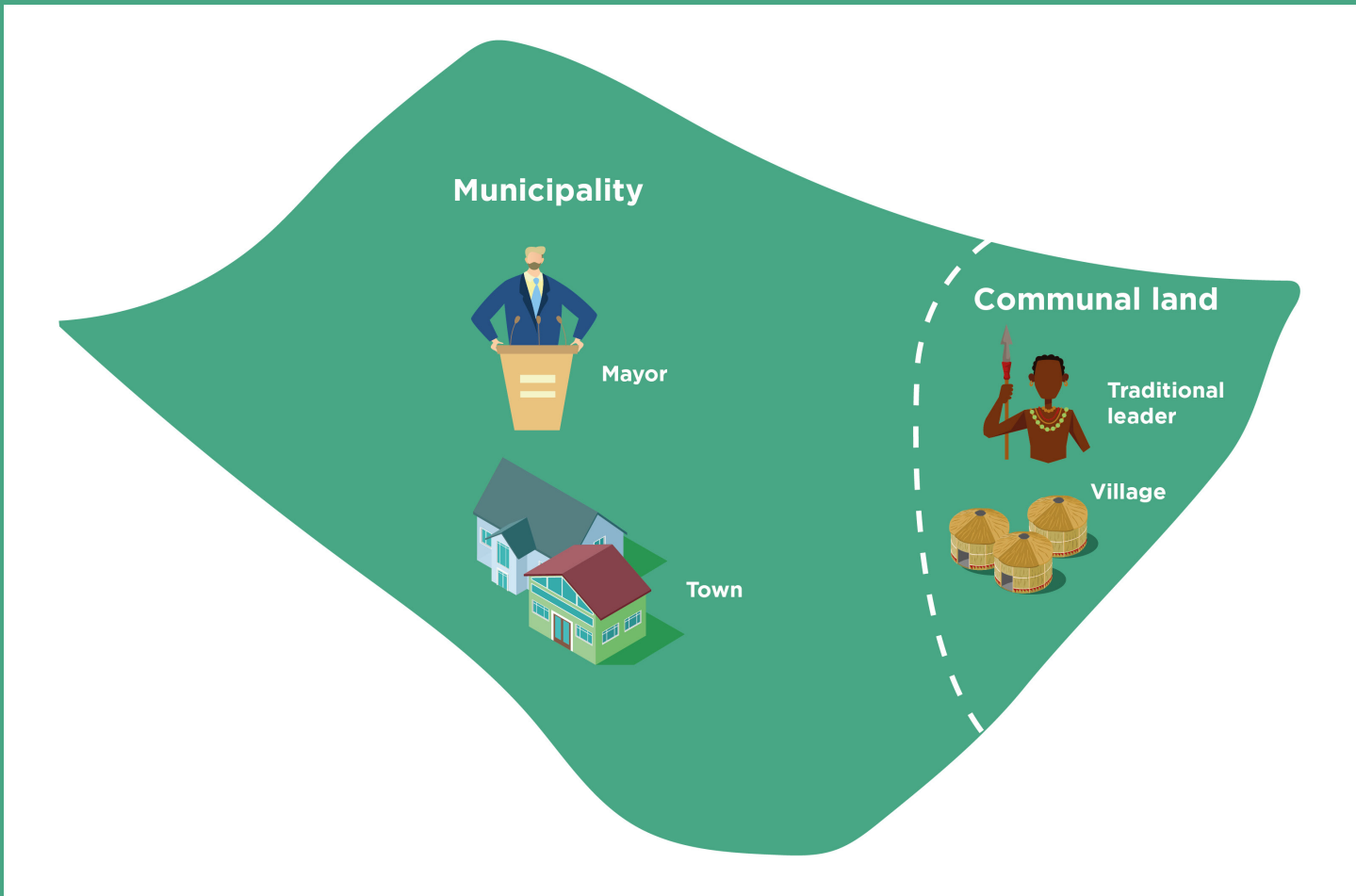
## Traditional authorities during colonial rule

In Africa, traditional authorities were transformed during and after the transition from traditional to modern state institutions. Before colonisation, traditional authorities were the only governance structure. With the coming of colonial regimes, their roles changed and varied across regions. While establishing modern state institutions, the colonial empires governed conquered territories in different ways. For instance, the British adopted indirect-rule in countries such as Nigeria. This involved the use of traditional authorities to govern local communities. The French, on the other hand, adopted direct-rule in countries such as Senegal.

Colonial regimes modified and corrupted the institution of traditional leadership. Fearing the loss of power and/or bought off lured by the colonial regimes, many traditional authorities implemented colonial policies. As a result, some traditional authorities no longer enjoyed the support of their communities when countries won independence. They were particularly resented by liberation movements, who accused them of working with the colonial regimes to oppress the black population. This explains why liberation movements such as the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and FRELIMO in Mozambique, both of which gained political power after independence, initially chose to marginalise the countries' traditional authorities.

## Traditional leaders today

Traditional authorities have remained powerful and relevant, particularly in the absence of the formal state. They thus serve as alternative centres of power in many rural areas. This uncomfortable situation forced many governments to bring them to the governance table.



The compatibility of traditional authorities with modern democratic norms remains a subject of debate all over the continent. Their vulnerability to corruption and propensity for autocracy, as well as for the continued marginalisation of women are some of the concerns. However, in many parts of the continent, traditional authorities still command respect and support, and have retained considerable legitimacy because they perform key governance functions in the absence of the modern state. Thus, they can play a role in development and in fostering peace, particularly in rural areas. These considerations demand that they be acknowledged and accommodated within government structures. The question as to how remains a thorny issue, however.

### Recognition and role of traditional authorities



Countries have accommodated the role of traditional authorities differently. In Zambia, traditional leadership is recognised in the Constitution, which also grants traditional leaders voting powers in local councils. In Zimbabwe, their role is recognised in the Constitution and a selected number of traditional leaders serve as *ex-officio* members of local councils with no voting powers. A similar approach has been adopted in South Africa.



Whether or not their roles have been formally acknowledged, traditional leaders often continue to serve as an important link between the state, particularly local government, and the citizens. They provide services such as dispute resolution, land management and the coordination of response to natural disasters, which the modern state often fails to do due to its limited capacity. In short, in the absence of the state, they effectively become the state.

## Traditional authorities and democratic local government



In many counties there is deep contestation for power and resources between formal local governments and traditional authorities. The allocation and management of land is perhaps the major bone of contention. This is often the result of a lack of clear demarcation of responsibilities between the two structures. The absence of mechanisms that would ensure that the two structures cooperate can be the cause of conflict. However, sometimes it is just that neither the formal local governments, nor the traditional leaders are comfortable with having a 'competitor' in their respective jurisdictions. Traditional leaders also fight amongst themselves for territory as they seek to increase their scope of influence.

Traditional leaders are the bearers of culture and tradition, and this role is more effectively exercised if they are politically neutral. However, many traditional leaders openly advance the cause of certain political parties, particularly ruling parties of the day. Like their colonial predecessors, ruling regimes also do not hesitate to corrupt and use traditional leaderships for political ends.

There is no doubt that there are several challenges associated with traditional authorities. However, traditional forms of governance cannot simply be wished away, given their continued relevance in modern day Africa. Traditional authorities have been around for millennia and are likely to stay in place well into the future. Thus, it is important that decentralisation laws and policies include ways of accommodating traditional leaders – particularly at local level – for the benefit of communities.

# 10

# AFRICAN CHARTER ON DECENTRALISATION, LOCAL GOVERNANCE AND LOCAL DEVELOPMENT

## Introduction



The African Union (AU) adopted the 'African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development' in 2014. The Charter is the first real effort of the AU to promote decentralised systems of governance on the continent. It provides a framework for local governance, which parties to the Charter are required to implement in their respective countries.



The Charter is a response to the many problems linked to centralised governance in Africa, such as poor service delivery, and unaccountable and unresponsive governance. The Charter aims to improve the livelihoods of people on the continent through effective decentralisation. The potential of the Charter to realise this goal hinges on three factors:

- i. AU members signing it, and ratifying it (i.e. adopting a national law to bring the content of the Charter into domestic law)
- ii. the subsequent effective implementation by member countries, and
- iii. the nature of the decentralisation framework.

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Similar to most international instruments, member states of the AU will be legally bound by the Charter once they have ratified it. As of the end of 2019, only 17 of the AU's 55 member countries had signed the Charter, while only a further six have ratified it.

## What are the Charter's strengths and weaknesses?



### Democratic local government

The Charter has several promising provisions that seek to promote democratic local governance. It requires that local governments be managed by democratically elected councils and executive bodies. It also directs central governments to enact legislation that recognises the right and duty of communities to participate in local governance.



### Existence of local government

The Charter requires that member states recognise the institution of local government in ordinary national legislation, as opposed to national constitutions. So it does not offer strong protection for the existence of the institution of local governments (see also Factsheets #4 and #5). The Charter does, however, afford sound protection for the existence of individual local governments by, among other things, requiring consultation with such local governments before they are disestablished, merged or have their boundaries altered. (See Fact Sheet #4.)



### Powers and functions

The Charter allows member states the discretion to decide the powers of local governments. Some member countries may thus not decentralise functions that are important to local governments' development mandate, even after ratifying it. However, once a central government makes the decision to decentralise powers and functions, the Charter requires that they be full and exclusive, which suggests an element of final decision-making powers.



### Revenue raising

The Charter recognises that it is important that local governments raise a significant part of their revenues on their own, which requires the decentralisation of taxing powers. It is, however, silent on either the types of taxes or the tax rates that they can levy, which impacts how much of their own revenue local governments can raise. The Charter also requires that member states allow local governments to borrow money, albeit in a responsible way. Lastly, the Charter encourages the adoption of other methods to raise the revenue necessary for local economic development, such as public-private partnerships.



### Intergovernmental transfers

The Charter provides a sound framework with regard the transfer of funds from the central government to local government as a whole, as well as to each local authority. It states that a percentage of revenue raised by the national level must be transferred to local governments. It also states that conditional and non-conditional grants must be in keeping with the principles of sustainability, adequacy, transparency and predictability.



### Natural resources

The Charter mandates central governments to put in place mechanisms that would ensure that communities benefit from the exploitation of local natural resources. Central governments are further required to equitably redistribute such proceeds across local governments and communities.



### Financial autonomy

The Charter requires that central governments enact legislation that gives local authorities 'the full responsibility to manage financial resources at the local level' – article 16(5)(a). While the role of central governments to oversee the expenditure of revenue at the local level is recognised, the Charter states that such a role should be exercised without undermining local financial autonomy.



### Administrative autonomy

The Charter directs member states to give local governments the power over their administrations, including the hiring, promoting and firing of personnel (see Fact Sheets #4 and #5).



### Supervision of local government

The Charter requires that central government have oversight over local government finances, and over the establishment of mechanisms to monitor the compliance and performance of local government in its financial duties. It recognises different forms of support that should be provided to local authorities: financial, administrative and technological. Central governments are also encouraged to capacitate local governments through various forms of capacity building programmes.

While the Charter's monitoring and support regime is progressive, the regime on national intervention into local government is not. The Charter does not expressly mention the need to regulate or limit senior governments' intervention powers over local governments. It also does not call for oversight mechanisms when such intervention powers are invoked. These omissions present a danger to local autonomy, as defined in Fact Sheet #4.



### Intergovernmental cooperation:

The Charter provides a framework for intergovernmental cooperation to ensure viable and effective local governments. Among other things, it recognises the need for senior governments (central and provincial) to consult local governments on matters that affect them. The right of local governments to form associations is also recognised, as well as the need for central governments to support these associations.



## Local Development

The Charter seeks to promote the role of local government in local development. It requires central governments to work closely with local authorities in the development of legislative, financial and institutional frameworks that enable and promote private sector and community development investments or initiatives. The Charter states that local authorities should be accountable to local communities for the adoption and implementation of local development decisions and policies, as well as for the management of financial resources. It also requires that local authorities develop pro-poor initiatives and pay particular attention to marginalised and vulnerable groups.



## Traditional leaders

As explained in Fact Sheet #9, traditional leaders remain relevant in many parts of Africa. Unfortunately, the Charter fails to expressly recognise their role or provide guidance on their relationship with local governments. It only requires that, in exercising their powers, local authorities take into account and show regard for local realities, values, and customs – which in the African context includes the role of traditional leaders.

## In summary

The Charter's framework for decentralisation puts local government at the centre of service delivery and local development by committing its members to bottom-up democratic governance. It offers a foundation on which to build decentralisation for development.







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