

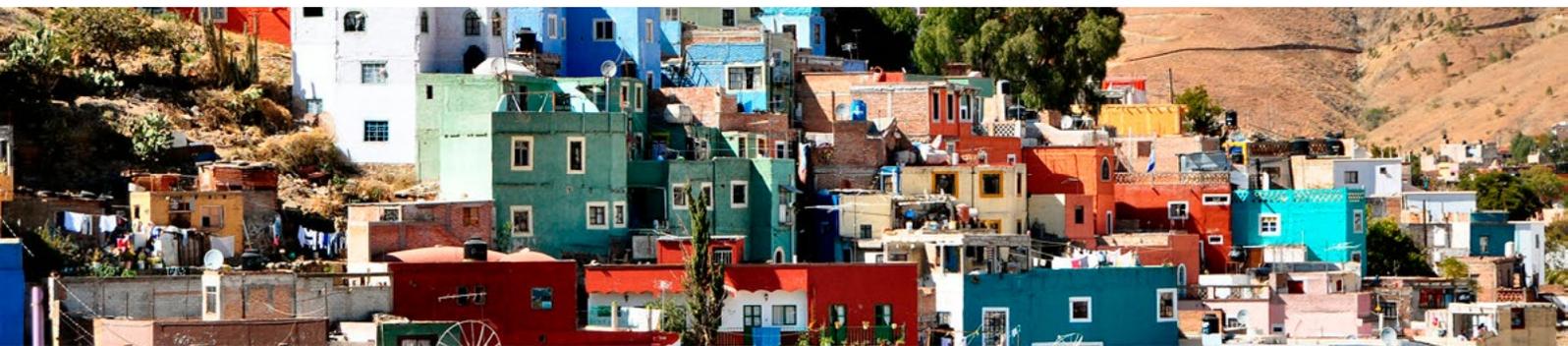


Local Responsibilities and Public Services

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Foreword

LoGov aims to form a global research and training network and to provide **solutions for local governments** in order to address the **changing urban-rural interplay** and to manage its impacts. As a consortium composed of 10 European and 8 non-European partners, we seek to achieve the following specific objectives:

- to identify, evaluate, compare and share practices in five major local government areas: local responsibilities and public services, local financial arrangements, structure of local government, intergovernmental relations of local governments and people's participation in local decision-making;
- to encourage the effective application of these practices by local governments;
- to strengthen international and intersectoral collaborative research on local government;
- to enhance the skills and career perspectives of the staff exchanged between the project partners.

LoGov's methodological approach relies on a comprehensive comparative analysis that draws on findings from **15 countries** or wider regions on six continents, the extensive **involvement of local policy-makers** through local government associations and a multi- and interdisciplinary approach that is facilitated by the Consortium's expertise in four disciplines: public law, political science, public administration and economics.

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The LoGov consortium is pleased to present this document which summarises the output of the research conducted regarding the identification, evaluation, and comparison of practices in the local government area of local responsibilities and public services.



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1. Summary of the Evaluation of Practices on Local Responsibilities and Public Services

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1.1 The Differentiation of Local Public Services in LoGov Countries

A frequently recurring topic in the country reports for Work Package 1 was the issue of housing (see the practices “Social Housing – The Case of Vienna” [Austria], “Municipal housing companies” [Germany], “Planning, Housing Development, and the Ethnic-Preference System” [Malaysia], “Lack of Effective Housing Management in Communes and Attempts to Recover from the Crisis” [Poland], “The Accreditation of Municipalities to Administer Housing Programmes” [South Africa], “Public-Private Partnerships and Social Housing” [Italy]). The housing situation can vary significantly from one municipality to another, even within the same region. Nonetheless, in general, the socio-economic context differs between RLGs and ULGs. As ULGs typically face a significant quantitative shortage of affordable housing, this issue has regularly been ranked as one of the most urgent concerns of ULGs in the LoGov country workshops and interviews. Although there is a wide variety of approaches to social housing, the need for public housing does not seem to be met. The example of PPP in Turin was thus criticized during the evaluation phase for qualifying as social housing, even though only 20% of the units were earmarked for low-income families. Housing activities in RLGs, on the other hand, are responding to declining populations by trying to keep the living environment attractive (e.g. by maintaining the quality of individual buildings and by providing the necessary infrastructure or cultural offers) or dealing with empty buildings. Therefore, a reasonable strategy that addresses these problems must be adapted to the specific local needs. Still, there is too little differentiation. Housing policy is very focused on growth regions, but not on the challenges in rural areas. In the country interviews it was mentioned that projects which give apartments at a fixed cheap price to young people, who help other inhabitants like elder people with volunteering activities in return, would have a great impact there. The issue of housing is not only one of Work Package 1 (WP 1) but a transversal topic: Providing the population with adequate housing opportunities also raises the question of how to finance such projects (WP 2), or how especially smaller municipalities with low financial and personnel capacities can meet their responsibilities, for example through inter-municipal cooperation or transferring the task to larger units (WP 3). Housing activities of local governments can become a question of mandatory state supervision (WP 4) or a subject of direct democracy (WP 5), as shown by the referendum of the initiative "Deutsche Wohnen & Co. enteignen" (expropriate



Deutsche Wohnen & Co.) in Berlin, which dealt with the socialization of private housing companies.

Also practices around public transport were frequently addressed (see the practices “Organization of Public Transport in Austria Focusing on Functional Urban Regions (City Regions)” [Austria], “Governing the Construction of Transit Infrastructure in Toronto and Vancouver” [Canada], “The Provision of Local Public Transport” [Poland], “‘A Re Yeng’ Bus Rapid Transit Project, City of Tshwane” [South Africa], “Promoting and Implementing Mobility Schemes in the Agglomeration of Fribourg” [Switzerland]). In general, the pressure on public sector infrastructure due to a population inflow has been mentioned as a significant challenge for ULGs. The mobility behavior depends a lot on the size of the municipality. While rural areas often suffer from insufficient transport connections, which leads to a high rate of individual transport by car, urban areas, agglomerations and metropolitan areas have to organize a common transport network across administrative boundaries due to strong commuter flow. The provision of public transport in ULGs and RLGs is not only a financial challenge. Shared competencies and multiple actors from different governmental levels and from the private sector coming together make the implementation of an efficient public transport system at the local level a major challenge. But for the development of municipalities, that are settled far away from job opportunities, creating a more inclusive city is crucial. The practice “‘A Re Yeng’ Bus Rapid Transit Project, City of Tshwane” [South Africa] was introduced to address the urban-rural linkage. It turns out, that it may be useful for moving large numbers of people quickly through densely populated or densely trafficked areas/corridors. But the chosen technology is not suitable for the transport challenge that Tshwane faces, which is to transport large numbers of people from its rural spaces/sections into the urban center. This practice shows, that the different demands on public transport require different, adjusted technologies to solve them. The provision of public transport is another issue that potentially touches on all work packages. It is related to the financial situation of self-governments and many projects are financed by government funds or private resources are acquired through PPP (WP 2), it often requires cooperation between several municipalities or cooperation with private entities to be able to provide public transport, that meets the needs of the population (WP 3). The question to what extent the provision of public transport is subject to the control of the upper levels of government also appears (WP 4). Finally, the construction of new infrastructure regularly involves citizen participation in decision-making (WP 5).

The topic of land use planning was discussed in several practices (see “City-Planning Agreements in Córdoba” [Argentina], “Responsibilities for and Practices of Urban Land Use Planning in the City of Adama” [Ethiopia], “Land Use Planning and the Struggle over Competencies: When the Judicial Power Comes into Play, the Recent Case of Fribourg” [Switzerland]). City planning agreements, for example, are tools to favor the development of the city, promoting private investment, in accordance with plans, programs, works and actions



of public interest without using only public resources. The example of “City-Planning Agreements in Córdoba” [Argentina] showed, that on the one hand, lots of rural land on the periphery of the city, which until then had been barely built on, can be used for construction by using this tool. On the other hand, the private investors’ properties increased significantly in value because the formerly rural land ended up being part of the residential urban land market, which limited the access to affordable housing for vast sectors of the population. In the end, city planning agreements do not necessarily favor the development of urban areas but can also promote private investment without obtaining land for social and community purposes. This topic is linked to WP 2 as land use planning can be an important source of municipal revenue, as reflected in the practices.

Four practices focus on internet infrastructure and digitalization (see “Córdoba Connectivity Plan: Government Deployment of Infrastructure to Equalize Territorial Opportunities” [Argentina], “Bridging the Urban-Rural Digital Divide” [Italy], “Provision of Internet Infrastructure by Local Government. A Step Towards Smart Villages” [Poland], “Digitalization of Rural Areas in Castilla y León” [Spain]). It becomes apparent here that there is not only a gap between RLGs and ULGs regarding the access to new technologies due to a lack of infrastructure, but also concerning the use and appropriation of technologies. So, solutions that aim to reduce the digital divide should not just implement new technologies, but also train local populations on how to make use of them.

Furthermore, issues concerning educational services were discussed in three of the practices (see “Decentralized Early Childhood Education in Albania” [Albania], “School, Educational Services and their Delivery Mechanisms” [India], “The Regulation and Financing of Local Responsibilities in the Education Sector in Moldova” [Moldova]). Educational services are characterized by multilevel governance, which is why ULGs and RLGs are confronted with overlapping responsibilities and control from higher levels of government. There are major disparities in terms of access and quality of education between RLGs and ULGs. In general, RLGs suffer from a lack of proper infrastructure and underutilized facilities, whereas ULG have too many pupils but too few teachers, classrooms etc. The practices show that successful adaptation of the school system to social and demographic changes also requires a financing system that is adapted to these urban-rural differences (WP 2).

Another recurring topic was the issue of social services including healthcare (see “Provision of Services in Regional and Rural Areas [Australia], “Public Health Care” [Germany], “Nursing Homes for the Elderly” [Spain], “The Allocation of Social Assistance by the Municipalities” [Switzerland]). The demand for different kinds of social services differs a lot between ULGs and RLGs. Due to demographic development and especially young people moving to urban areas, the average number of older people is higher in rural areas. Those people have a higher and more differentiated need for care. At the same time, urban and peri-urban cities might be more concerned with social aid because the rate of social assistance is higher than in rural



regions. The practices demonstrate the need for both, ULGs and RLGs to adapt these public services to the changes in the demographic structure of their populations. Since many municipalities (especially smaller ones) are unable to provide their residents with necessary public health or social services on their own, due to limited financial and human resources, and therefore need to find financial solutions and enter into cooperation, the issues are also relevant to WP 2 and WP 3.

On March 11, 2020, WHO officially declared the global outbreak of COVID-19 a global pandemic. The impact of and response to the Covid-19 pandemic has been addressed in a number of practices (for example “Procurement” [South Africa]), however two practices have had their main focus on this issue (see “Fighting Covid-19 on the Local Level” [Germany], “eThekwin Municipality Expanded Public Services during the Covid-19 Emergency” [South Africa]). In the course of the pandemic, it was not only national governments that faced challenges in the fight against the virus. Local governments, in particular, faced massive challenges in finding appropriate measures to overcome the pandemic. This exceptional situation and its impact on the provision of public services is an issue that can affect all work packages. Since many practices were researched at a time before the pandemic situation, it would be interesting for future comparative studies to further explore this topic.

The other practices addressed further basic services of general interest (see “Access to Public Services in Two Patagonian Oil Towns” [Argentina], “Municipal Water and Wastewater Management in Austria”, “Firefighting” [Croatia], “Sanitation and Hygiene Service Delivery in Urban Local Governments: A Federally Integrated Practice in Ethiopia” and “Solid Waste Management in the City of Bahir Dar: A Matter of Capacity and Public Awareness” [Ethiopia], “Tragsa as an Instrument of Providing Essential Services in Rural Areas” [Spain]) or the structure of local government (see “Autonomy of Local Governments” [Ethiopia], “Strategic Planning in Geographically Heterogeneous Metropolises” [Italy]).

1.2 Questions Common to Several Practices

1. What are the criteria for the allocation of responsibilities regarding the above-mentioned policy fields between local governments and other government levels? Is there a uniform scheme of responsibilities or are they distributed according to the capabilities of particular local governments, taking into account differences between ULGs and RLGs?

When it comes to local governments responsibilities, it is beneficial to allocate them in accordance with the principle of subsidiarity, to perform them as close as possible to the citizens and according to the specific local needs. Therefore, the differentiated decentralization according to how much a municipality is affected by the concrete



responsibility and able to discharge them is an important factor for a successful provision of public services.

A possible criterion for the distribution of responsibilities among local governments, taking into account the differences between ULG and RLG, is the number of inhabitants (see for example “Thematic Introduction to Local Responsibilities and Public Services in Croatia” and “Thematic Introduction to Local Responsibilities and Public Services in Spain”).

However, in many cases law doesn’t distinguish categories of tasks for ULG or RLG. In general, both ULGs and RLGs are de jure responsible for a wide range of public services but de facto public services vary because they are determined by different needs and demands across RLGs and ULGs and change due to factors such as demographic ageing in rural areas, climate change and internal and international migration. In many rural areas, local governments provide services that are not economically viable, whereas in urban areas with a stronger demand, those services are offered by the market. In rural areas the focus tends to be on maintaining basic services, whereas in (especially fast growing) urban areas, the adaptation of urban infrastructure is a main challenge. Those differences have impacts on the ways, how public services are provided in ULGs and RLGs.

2. Do local governments enjoy autonomy from higher levels of government in fulfilling their responsibilities?

The practices and their evaluation in the workshops and interviews showed that autonomy is very important in the implementation of both ULGs and RLGs own functions. There is a correlation between the degree of control by higher levels of government and the ability to adequately respond to the challenges they face. Although local governments are endowed with responsibilities which are within autonomous scope of local governance, the higher-level legislation can limit the extent to which local governments are autonomous in carrying out those functions for example by making them obtain approval from other levels of governments. (see for example “Thematic Introduction to Local Responsibilities and Public Services in Croatia” and “Autonomy of Local Governments” [Ethiopia]).

3. Is there a gap between the scope of the autonomous functions of local governments and their actual role in performing them and, if so, why does this gap exist?

At the same time, autonomy also refers to the financial situation: To provide public services efficiently, local governments must be financially empowered. Even if they are equipped with sufficient competencies to meet the needs of their residents, their success rate depends on their financial capacity. Since small municipalities in particular usually have limited financial capacities, this might be another reason why there may be a gap between the scope of the autonomous functions of local governments and their actual role in performing them. Poor fiscal resources are usually further accompanied by limited staff resources that would be



needed in order to receive and administer funding. In contrast, ULGs usually have more experience especially in accessing and managing EU funding.

4. What is the role of dialogue and coordination in the successful provision of public services that involve multi-level governance?

Many municipal responsibilities are characterized by multi-level governance, which requires the collaboration with various stakeholders (for example the European, national and regional level). In other cases, the service is fulfilled through public-private cooperation (see for example “Digitalization of Rural Areas in Castilla y León” [Spain]). The evaluation of these practices shows the importance of intergovernmental dialogue and coordination between different levels of government. An open and inclusive dialogue is crucial for the success of such projects. In this context, it can be helpful for smaller municipalities to form an association that plays a coordinating role between the (private and) public actors involved (see for example, the role of the National Union of Mountain Towns and Communities (UNCEM) in “Bridging the Urban-Rural Digital Divide” [Italy] or the practice “Governing the Construction of Transit Infrastructure in Toronto and Vancouver” [Canada], which shows by means of two examples how important regional cooperation and the establishment of a coordinating institution is for the establishment of large-scale urban transit infrastructure).

5. Do local governments provide services by themselves or through local enterprises? If both forms of service provision exist, which services are covered by which form. If local enterprises exist, are they owned and run by the local authority?

Local governments provide public services both themselves and through local enterprises. Which services tend to be provided in what form varies from country to country. In general, enterprises play an active role in the field of housing. The practice “Social Housing – The Case of Vienna” [Austria] shows, that in Vienna municipal housing units are managed and maintained in direct public management through an enterprise of the city and from a German perspective, housing construction by municipal enterprises is seen as one of many (and most important) instruments of local governments to ensure adequate housing opportunities for their population (see “Municipal Housing Companies” [Germany]). The trend is that the housing sector (for example in Germany) has shifted from being an almost purely private sector to one in which many public and private actors are involved. Therefore, private legal forms of companies offer a basis for involving private cooperation partners. However, it would be interesting to research the extent to which joint enterprises are attractive to smaller communities, or whether smaller communities have too little to contribute to such a cooperative structure. Apart from that, in many countries, (local government owned) enterprises mostly perform utility services such as water supply, maintenance of roads and (technical, social and cultural) infrastructure. In addition, public enterprises also provide a basis for cooperation between different public entities (for example Tragsa Group in Spain, which is one of the most important public groups of companies in the country, responsible for



delivering a wide range of services mainly in rural settings under the control of 52 different public entities).

6. To what extent do local governments involve the private sector in fulfilling their responsibilities? What is the role of local governments in awarding concessions and entering into public contracts with private companies?

A variety of practices indicate that Public-Private-Partnership plays an important role in the delivery of public services. Rapid changes and special challenges, for example technological ones, may make it necessary to mobilize significant private resources for the fulfillment of certain tasks. Particularly in the areas of digitalization, internet infrastructure and public transport, many of the countries' practices involve some form of PPP (see for example “Córdoba Connectivity Plan: Government Deployment of Infrastructure to Equalize Territorial Opportunities” [Argentina], “Bridging the Urban-Rural-Divide” and “Public-Private-Partnerships and Social Housing” [Italy], “Digitalization of Rural Areas in Castilla y León” [Spain]). Because of a better cost-benefit-ratio compared to rural areas, PPP might be more likely in urban areas, so it would be interesting to see if there are more case studies in rural settings. Especially for smaller municipalities, the transaction costs may be far too high.

The provision of public services may also be entrusted to private operators by awarding concessions or entering public contracts with private companies (see for example “City-Planning Agreements in Córdoba” [Argentina], “Procurement” [South Africa]). From the available practices, it is revealed that ULGs and RLGs are subject to the same [extensive] legal requirements in this regard (see “Thematic Introduction to Local Responsibilities and Public Services in South Africa”, “Thematic Introduction to Local Responsibilities and Public Services in Spain”). Public procurement contracts and concessions tend to be used for example for infrastructure construction and maintenance, waste management or public transport. One of the main objectives of procurement is to ensure, that municipalities are able to perform their obligations through contractual agreements with private entities, achieving value for money and contributing towards efficient and effective service delivery. Especially for RLGs, which may not have enough capacities and expertise to perform complex services, procurement can be an alternative through which they can provide public services for the local people. However, a complex procurement process may exceed the capacity of a small municipality, meaning that small municipalities may have to rely on the support of, for example, a centralized procurement system (see, for example, “Thematic Introduction to Local Responsibilities and Public Services in Spain”). This, in turn, would take away the small municipality's control over the contract awarding procedure. In the course of the Covid-19 pandemic, procurement procedures were shortened partially (“emergency procurement”) in order to procure large quantities of, for example, FFP2 masks in a short time. The resulting loss of transparency and accountability may lead to new problems (see “Procurement” [South Africa]). It would be



interesting to further research the impact of the Covid-19 pandemic on the procurement of services by RLGs and ULGs.

7. How do ULGs and RLGs adapt their provision of public services to changes in the demographic structure of their populations (share of immigrant population, age structure, etc.)?

In the face of the growing urban-rural divide, demographic changes and migration movements the responsibilities of ULGs and RLGs are undergoing profound change. Many RLG are affected by a population decline, which means higher costs for the services they provide and lower revenues in their budgets. They have to handle almost the same workload but with less money, fewer staff and less equipment. In contrast, ULGs face pressure on public sector infrastructure and services because of a population inflow from rural areas. Handling this growth in an environmentally and socially sustainable way is a significant challenge for ULGs. Because especially young people move to urban areas, the average age of people in rural and urban areas changes. Therefore, RLGs might have a higher need for nursing homes for the elderly and different needs when it comes to public health care, whereas the demand for primary schools and kindergartens increases in ULGs. At the same time, when it comes to demographic structure, it might be interesting to take a closer look at the role that different ethnicities in the composition of the population play in the provision of public services (see for example “Thematic Introduction to Local Responsibilities and Public Services in Ethiopia”, which shows that there are ethnic local governments in Ethiopia and “Planning, Housing Development, and the Ethnic-Preference System” [Malaysia], describing a quota system in favor of the native population).

There are attempts and innovations to cope with the mentioned challenges. For example, RLGs join forces and cooperate with neighboring municipalities to create adequate capacities by joint service provisions, new financing systems are introduced, which are adapted to the social and demographic changes and initiatives in rural areas are promoted from a multilevel perspective, to contribute to their development, improve the quality of life of people living in rural areas and to some extent, alleviate the depopulation trend. ULG, for example, develop transit infrastructure, establish new autonomous entities like the Metropolitan Cities in Italy, which are made up of a principal city and surrounding municipalities to better tackle the challenges of increasing urbanization and metropolitan growth, mobilize private resources by creating PPPs and found municipal housing companies. The success of all these measures still depends to great extent on the financial conditions.

1.3 Conclusion

The country reports on WP1 have recurrently addressed various topics which would be suitable for comparative research (Stage 3 of LoGov). Among these topics are: housing, public



transport, land use planning, internet infrastructure and digitalization, educational services, social services including healthcare, impact of and response to the Covid-19 pandemic as an emerging topic for the next stage. Among them are topics worth comparing on a cross-work package basis, as they often also touch on other (or even all) work packages.

Behind several of these practices are guiding questions that were extracted during the identification and evaluation phases (Stage 1 and 2 of LoGov). These include the criteria of distribution of responsibilities, the degree of autonomy of local governments in fulfilling tasks, the gap between the scope of the autonomous functions of local governments and their actual role in performing them, the role of coordination and dialogue, the different forms in which services are provided (own authorities, companies, ...), to what extent private parties are involved in the performance of tasks (e.g. through PPP, awarding of contracts and concessions), and finally, the strategies used to adapt the delivery of public services to changes in the demographic structure of the population.



2. Local Responsibilities and Public Services in Italy

2.1 The System of Local Government in Italy

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Types of Local Governments

In Italy, there are three main types of local governments which are recognized under Article 114 of the Constitution as making up, together with the 20 regions¹ and the State, the Italian Republic. These are the municipalities (*comuni*), 14 metropolitan cities (*città metropolitane*) and 83 provinces (*province*). The basic units of local government throughout the country are the 7,914 municipalities (*comuni*). However, in order to facilitate the social and economic integration of urban agglomerations, there are the metropolitan cities (*città metropolitane*). While their establishment had been discussed time and again at least since the 1950s, fierce resistance, especially from the regions, had made their actual creation impossible. Only the constitutional reform of 2001 introduced the metropolitan cities into the Constitution. Then it took over a decade to clarify how they would actually operate and to overcome resistance from other government levels. The Ordinary Law no 56/2014 ('Delrio Law') finally established the metropolitan cities.² The third type of local governments that is recognized under Article 114 as a constituent unit of the Italian Republic are the provinces. They are umbrella entities between the regions and municipalities. Similar to second-tier local governments in other countries the main function of the provinces is the coordination of policies and public services.

Apart from these three main types enshrined in the Constitution, the Legislative Decree no 267/2000 mentioned some more types of local governments. The unions of municipalities (*unioni di comuni*) are composed of two or more municipalities and are an institutional form of cooperation in order to jointly exercise certain functions.³ A similar rationale is behind specific local government entities for particular geographical areas, namely the mountain communities (*comunità montane*) and the island communities (*comunità isolane*).

Legal Status of Local Governments

According to the above-mentioned Article 114 of the Constitution, '[t]he Republic is composed of the Municipalities, the Provinces, the metropolitan cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their

¹ There are 15 regions with ordinary statute and five regions with special statute, recognized under Article 116 of the Constitution, namely Sardinia, Sicily, Trentino-South Tyrol, Aosta Valley and Friuli-Venezia Giulia.

² Giovanni Boggero, 'The Establishment of Metropolitan Cities in Italy: An Advance or a Setback for Italian Regionalism?' (2016) 8 Perspectives on Federalism E-1, E-5.

³ Italian Constitutional Court, Judgment no 50/2015.



own statutes, powers and functions in accordance with the principles laid down in the Constitution'. Even if this provision seems to suggest that the constituent parts of the Italian Republic are on an equal footing, the Constitutional Court soon emphasized the special role of the state vis-à-vis the other government levels.⁴ While Article 114 ensures that the three main types of local government enjoy autonomy within constitutional principles, it does not go any further in regulating them.

Article 117(2)(p), however, determines that national government shall establish the rules regarding the 'electoral legislation, governing bodies and fundamental functions of the municipalities, provinces and metropolitan cities'. The relevant law consolidating pre-existing rules is the above-mentioned Legislative Decree no 267/2000. The regional legislator can only become active in a complementary manner on the basis of the residuary power under Article 117(6). This is true, however, only for the 15 regions with ordinary statute (hereinafter, ordinary regions). The five regions with special statute (hereinafter special regions) are allowed to regulate their local governments in their autonomy statutes (e.g. Article 4(3) and Article 61-65 of the Statute of Trentino-South Tyrol) and, more in details, through ordinary regional legislation.

(A) Symmetry of the Local Government System

There are certain types of local government with special status that take into account different realities in urban and rural areas, like the above-mentioned metropolitan cities, unions of municipalities, mountain communities and island communities. Certain variations follow from Italy's system of asymmetrical regionalism, more concretely, from the different regulatory regimes concerning ordinary regions and each of the five special regions.

Nonetheless, the local government system is quite symmetrical. This is because the system is rooted in ideas of municipal organization from the French Revolution and Napoleonic times. These ideas were supported by the House of Savoy and after their founding of the Kingdom of Italy in 1861 extended to the whole country by enacting the laws of administrative unification in 1865. This explains adherence, in principle, to the French model of uniform municipalities, which are supposed to carry out the same functions irrespective of territorial size, demography, economic power, as well as urban or rural character.

Political and Social Context in Italy

The political situation at the national government level and, to a lesser extent, in the regions has in recent years witnessed profound changes of the party system. At the national level, a coalition government formed by the Five Star Movement and the League came to power in 2018 and was replaced by a coalition between the Five Star Movement and the Social Democratic Party (PD) in 2019. As for the regions, candidates from the League over the last decade have been elected Presidents in Veneto, Lombardy and Friuli-Venezia Giulia, while

⁴ Italian Constitutional Court, Judgment no 274/2003.



Brothers of Italy, another right-wing party, took power in the Abruzzo region in 2019. At the local level, there is a similar tendency. When about half of Italy's municipalities were called to vote in 2019, the center-right block led by the League won, from among those with over 15,000 inhabitants, in 75 municipalities (up from 36).

A good indicator for the social and demographic context of local governments is the OECD definition of functional urban areas as composed of a densely inhabited city and a surrounding area (commuting zone) whose labor market is highly integrated with the city. Following this definition, only 30 per cent of Italy's population live in metropolitan areas (more than 500,000 inhabitants), 20 per cent in small- and medium-sized urban agglomerations (50,000 to 500,000 inhabitants), compared to an OECD average of 49 per cent and 18 per cent, respectively.

As for the structure of municipalities, only 144 of them have more than 50,000 inhabitants, while 70 per cent have less than 5,000 inhabitants and are thus, according to the Italian classification, 'small municipalities'. The average population size is 7,653. But this, of course, says little in view of an extremely wide spectrum ranging from Rome's almost 2.9 million inhabitants to 33 in the municipality of Morterone in the Region of Lombardy.

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2.2 Local Responsibilities and Public Services in Italy: An Introduction

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According to Article 5 of the Italian Constitution, '[the Republic] implements the fullest measure of administrative decentralization in those services which depend on the State'. Article 118, indeed, attributes all administrative functions to the most decentralized level of government, i.e. the municipalities, 'unless they are attributed to the provinces, metropolitan cities and regions or to the State, pursuant to the principles of subsidiarity, differentiation and proportionality'. Furthermore, according to Article 117, the fundamental functions of Italian local government (i.e. municipalities, provinces and metropolitan cities) are to be determined by the State, that has exclusive legislative powers in this matter.

The Fiscal Federalism Law no 42/2009 gives the most comprehensive overview over these fundamental functions assigned by the State. Accordingly, it considers municipalities to be in charge of their own general administration, management and control; local police; public education (including early childhood education and care from 0-3 years, educational support, meals, and construction); transport and roads; territorial and environmental management; and social services (Article 21(3)). According to Law no 56/2014 'Delrio', the provinces are in charge of, among others, territorial planning and environmental protection; provincial public transport and provincial streets; the provincial school network and the management of school buildings; providing technical-administrative assistance to local entities; the promotion of equal opportunity, their own strategic development and institutional relations with other territorial entities (Articles 85-86).

On top of these provincial functions, the state has assigned additional tasks to the relatively young metropolitan cities, most of which are linked to specific urban challenges, such as adopting a strategic plan for the metropolitan territory; general spatial planning including infrastructure and communication networks; the structuring and coordination of metropolitan public services; mobility and roads, especially ensuring the compatibility and coherence of municipal urban planning on the metropolitan territory; economic and social development; as well as the promotion and coordination of digitalization and information technologies (Law no 56/2014 'Delrio').

As the regions have (concurrent) legislative powers in many matters (e.g. social welfare, education, culture, town planning, housing, regional transport, maintenance of roads and the public transport net, economic development, commerce, waste management, policing; Article 117 of the Italian Constitution), they may also attribute functions to the local entities on their territory. Because of certain historical legacies, size or political cultures, some regions might favor greater administrative decentralization than others and recent structural reforms have led to the up-scaling of formerly provincial functions to the regional level.⁵ Overall, this leads

⁵ For an overview over how the 15 regions with ordinary statute have re-allocated provincial functions, see Tab. 2 of Silvia Bolgherini, Andrea Lippi and Sergio Maset, 'In mezzo al guado: La governance subregionale tra "vecchie" province e "nuove" aree vaste' (2016) 3 *Rivista Italiana di Politiche Pubbliche* 341, 39. 4



to a highly differentiated, complex and evolving picture of local – i.e. municipal, provincial and metropolitan – functions in Italy.

Overall, the fragmented legislation regarding municipal functions has led to strong bottom-up dynamics in the interpretation of municipal responsibilities and instruments for service delivery. Indeed, Italian municipalities can revert to a wide variety of instruments for the delivery of their services, which range from public institutions entirely dependent on the municipality to public companies that are simultaneously employed by multiple municipalities to private non-profit organizations or public-private partnerships.⁶

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Bolgherini S, Lippi A and Maset S, 'In mezzo al guado: La governance subregionale tra "vecchie" province e "nuove" aree vaste' (2016) 3 *Rivista Italiana di Politiche Pubbliche* 341

Lippi A and Profeti S, 'Where is Politics in Corporatisation? Local Public Services from Policy to Politics in Continental Europe' (2014) 1 *Rivista Italiana di Politiche Pubbliche* 5

⁶ Andrea Lippi and Stefania Profeti, 'Where is Politics in Corporatisation? Local Public Services from Policy to Politics in Continental Europe' (2014) 1 *Rivista Italiana di Politiche Pubbliche* 5, 14f.



2.3 Public-Private Partnerships and Social Housing

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Relevance of the Practice

Italy's housing market is dominated by homeownership with only one fifth of all households living in private or public rental dwellings. Although these numbers have remained relatively stable over the past 25 years, overall, they change considerably when zooming into the low-income demographic. While 20 years ago about half of all low-income households lived in properties they owned, this number had declined to around a third by 2014.⁷ The biggest shift occurred around the 2008 financial crisis, with a decline in homeownership of more than 10 percentage points among this demographic. While the number of dwellers in public housing has also remained relatively stable at around 4-5 per cent of households, the number of families who qualify for public housing and are waiting to access it lies at 650,000.

Like other Southern European nations, these numbers would be even higher were it not for strong family networks who step in to help out family members in need.⁸ In fact, 66 per cent of the Italian population between 18 and 34 years live with their parents,⁹ which is one of the highest percentages in Europe and in many other cases, families support family members economically. After decades of different government programs regarding public housing, Caruso furthermore holds that 'there has been no continuity in financing housing, but only fragmentary interventions'.¹⁰ She predicts that the pressure on the (social) housing market will further increase especially in northern and central Italy and the biggest cities and their surroundings.¹¹ Indeed, the impact of the system of local regional funds on southern Italy is described as limited only.¹²

Description of the Practice

Housing in Italy is a very concurrent policy issue. While Article 117 of the Italian Constitution lists the concurrent legislative powers of state and regions without explicitly mentioning housing, the Italian Constitutional Court has clarified that housing falls into the category of land-use planning, which is, indeed, listed among the concurrent legislative powers in Article 117 (Constitutional Court judgment no 303/2003). In large parts, the approach to social

⁷ Teresio Poggio and Dmitri Boreiko, 'Social Housing in Italy: Old Problems, Older Vices, and some New Virtues?' (2017) 4 *Critical Housing Analysis* 1, 115.

⁸ Nadia Caruso, *Policies and Practices in Italian Welfare Housing: Turin, up to the Current Neo-Liberal Approach and Social Innovation Practices* (Springer 2017) 34.

⁹ *ibid* 43.

¹⁰ *ibid* 37.

¹¹ *ibid* 44.

¹² Poggio and Boreiko, 'Social Housing in Italy', above, 120.



housing policy still follows the distribution of administrative competences outlined in Legislative Decree no 112/1998. The national government defines the housing programs of national interest, as well as the general criteria and principles regarding public housing. Regions and local governments take on the more specific role of determining the actual interventions and the administration thereof. The role of municipalities is largely that of owning social rental dwellings and dealing with the administration relating to public and private housing projects within their territories, which makes them an important player in housing issues.

The current picture of social housing in Italy is characterized by a wide variety of approaches that range from publicly owned and managed social housing complexes to local experiments including collaborations with non-profit NGOs and public-private partnerships. Public-private partnerships in the field were promoted as early as the 1990s but really started to be incentivized in the late 2000s as one of the interventions outlined in the 2008 National Housing Plan of the Berlusconi IV Government.¹³ They were further promoted in the new Housing Plan of the Renzi Government in 2014 (Legislative Decree no 47/2014 and State Law no 80/2014). Nevertheless, as it is, the public housing market does not meet the public housing needs and municipalities together with private entities are looking for innovative ways to offer adequate housing solutions to citizens.

The following example is a case study of one such innovative approach in the City of Turin.

In 2019, the World Bank published summaries of 100 projects of municipal public-private partnerships from around the world, including the example of Sustainable Housing Projects in Turin.¹⁴ In these projects, the Municipality of Turin issued tenders regarding abandoned buildings that were to be renovated and re-furnished for temporary social housing. The particular case described by the World Bank is that of two nine-story buildings that had been abandoned for over 20 years in a Turinese suburb with 3,000 inhabitants largely made up of public housing and subject to an Urban Recovery Program.¹⁵ Local planning regulations restricted the use of the properties to public housing purposes.

In 2008, the municipality leased the building to a consortium of private entities, granting the consortium the right to develop the property during the period of the lease for social housing aims. The municipality furthermore stipulated environmental impact requirements and energy efficiency measures. The consortium eventually converted the abandoned buildings into a multi-purpose edifice with '182 flats and 470 beds, kitchen and other ancillary services such as a bar, restaurant, laundry, grocery store, a medical and dental clinic with controlled prices, employment office, after-school activity center, and car/bike-sharing system'.¹⁶ The majority

¹³ *ibid* 118.

¹⁴ The World Bank, 'Municipal Public-Private Partnership: Framework – Project Summaries Part 2' (2019) <<https://ppp.worldbank.org/public-private-partnership/library/municipal-public-private-partnership-framework-project-summaries>>.

¹⁵ Sergio Copiello, 'Achieving Affordable Housing through Energy Efficiency Strategy' (2015) 85 *Energy Policy* 288.

¹⁶ The World Bank, 'Municipal Public-Private Partnership', above, 41.



of the dwellings are rented out to university students, but around 22 per cent are protected tenancies reserved for temporary social housing and subsidized by the Municipality of Turin.¹⁷

The inclusion of ancillary services, such as price-controlled clinics, an employment office and an after-school activity center, adds a community aspect to the building that goes beyond single households to benefit the wider area around the developments themselves.

Assessment of the Practice

From a national perspective, while the renovation of the two buildings in Turin can be considered a good practice of municipal-level public-private partnerships, in general, the public-private partnership approach to public housing cannot be the single solution to such a vast problem but can only complement other measures taken by the different levels of government. As a market-based solution, this kind of public-private approach depends on the financial interests of private funders. As Copiello puts it ‘the hypothesis to fund social housing settlements by means of PPP requires to devise profitable transactions for private partners’.¹⁸ In the Turin case study, the energy efficient refurbishment of the building enabled the private consortium to ‘break-even’ only six years after the initial issuing of the tender by the Municipality of Turin, while at the same time ameliorating the problem of what others have called ‘fuel poverty’.¹⁹ In other words, the consortium could increase rents while keeping them below market-rates, as dwellers would save on high utility costs that would intensify the financial burden on low-income families in less energy-efficient buildings. While the project’s objectives regarding the requalification of a certain area and environmental protection have been realized, this is highly doubtful concerning the aim to offer accessible social housing.²⁰ After all, only 22 per cent of the dwellings are reserved for this social housing only at 22 per cent and financial sustainability depends to a large degree on university students renting the remaining flats. In the end, this sustainability depends in case of any PPP, especially in times of economic crises, on who ultimately bears the financial risk, i.e. whether in case of project failure the financial damage end up with the public sector partner.²¹ Whether such an approach is, however, a practicable solution in cities beyond the economically powerful, industrial hubs in northern Italy, remains questionable. In less prosperous cities, private actors might be more hesitant to enter into public-private partnerships that require large initial investments that potentially bear higher economic risks in economically weaker contexts. It is questionable whether Turin’s approach is equally feasible in rural municipalities, as private partner investment is usually more likely in urban areas due to a better cost-benefit ratio compared to

¹⁷ Copiello, ‘Achieving Affordable Housing’, above, 293; The World Bank, ‘Municipal Public-Private Partnership’, above, 42.

¹⁸ Copiello, ‘Achieving Affordable Housing’, above, 289.

¹⁹ The World Bank, ‘Municipal Public-Private Partnership’, above; Poggio and Boreiko, ‘Social Housing in Italy’, above, 117.

²⁰ Interview with Emanuele Padovani, Associate Professor, Department of Management, University of Bologna (7 May 2021).

²¹ Statement by Emanuele Padovani, Associate Professor, Department of Management, University of Bologna (LoGov Country Workshop, Local Responsibilities and Public Services, 28 April 2021).



peripheral territories.²² Another caveat regarding the exportability of this practice from Turin to other contexts is linked to the fact that much of its positive aspects were arguably enabled by the special role played by the city's public officials.²³ Civil servants at the urban planning department in charge of the project had previously been employed by the Piemonte region and therefore had extensive background knowledge plus direct contacts at the regional level which facilitated smoother implementation.

Despite these specificities of the Turin case, public-private partnerships generally offer the possibility of an asymmetric, decentralized approach and give municipalities that are hard-pressed for accommodation in public housing the opportunity to individually address the need to alleviate at least some of the burden. For local governments to ensure adequate and accessible public housing is particularly important against the background of the past and present economic crises which have increasingly challenged the traditional Italian housing model based on home ownership.²⁴

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²² Statement by Emanuele Padovani, Associate Professor, Department of Management, University of Bologna (LoGov Country Workshop, Local Responsibilities and Public Services, 28 April 2021).

²³ Interview with anonymous expert, Department of Political Science, University of Milan (21 June 2021).

²⁴ Statement by Marco di Giulio, Research Associate, Department of Political Science, University of Genova (LoGov Country Workshop, Local Responsibilities and Public Services, 28 April 2021).



2.4 Bridging the Urban-Rural Digital Divide

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Relevance of the Practice

The recent trend towards e-government at local level has been greatly accelerated by the onset of the Covid-19 pandemic. Social distancing requirements have pushed local administrations to enhance digitalization processes and to broaden the scope of services offered online, from administrative services to e-education and e-health services. This pressure to go online poses significant challenges for local governments in rural and remote areas where adequate, high-speed internet infrastructure is oftentimes absent.²⁵ Digital inclusion is indeed not only a matter of citizens' digital capabilities and literacy (so-called second-order digital divide related to internet use), but poor infrastructure prevents citizens from using digital tools in the first place (so-called first-order digital divide related to internet access).²⁶ The pandemic has highlighted this digital divide between urban and rural areas and exacerbated already existing disparities in a host of countries, among which Italy.

Italy ranks only 23rd among the EU-Member States in terms of fixed high-speed broadband connectivity, based on the 2020 edition of the European Commission's DESI-Index. With a score of 49.6 out of 100 it lies well below the EU-average of 58/100.²⁷ Low connectivity rates are predominantly recorded in small and mountain territories that account for more than 50 per cent of the Italian territory, 8 million citizens and 10 per cent of the national GDP.²⁸ In three out of four mountain municipalities less than 40 per cent of housing units have, on average, access to high-speed broadband internet. The problem of poor infrastructure is most pressing in the Alpine territories, followed by the northern-central Apennine regions, while southern mountain regions are slightly better off. Low-speed internet infrastructure renders telework and access to digital public services difficult and therefore reduces the economic competitiveness of the affected rural and mountain territories.²⁹ In view of this urban-rural digital divide, it is key for Italy's recent strategy for universal broadband coverage to succeed.

²⁵ Dorothee Allain-Dupré and others, 'The Territorial Impact of Covid-19: Managing the Crisis across Levels of Government' (OECD 2020) 46ff.

²⁶ On the digital divide as a barrier to e-government use in Europe, see Sanja Seljan, Ivan Miloloža and Mirjana Pejić Bach, 'E-Government in European Countries: Gender and Ageing Digital Divide' (2020) 16 *Interdisciplinary Management Research* 1563.

²⁷ As compared to Spain (89.3), Poland (65.5), Croatia (57.3), Germany (52.5); and Austria (37.2). Malta scores highest (100), Greece lowest (31.6). See European Commission, 'The Digital Economy and Society Index (DESI)' (*European Commission*, 2020) <<https://ec.europa.eu/digital-single-market/en/digital-economy-and-society-index-desi>> accessed 26 February 2021.

²⁸ Letter from Marco Bussone (President UNCEM) to several ministers, on the digital divide and implementation of the National Ultra-Broadband Plan (5 May 2020).

²⁹ Other than high-speed internet, the urban-rural digital divide in Italy concerns poor to dysfunctional mobile phone networks and TV signal, both most felt in mountain municipalities. This threefold digital divide negatively



Description of the Practice

The Italian strategy to overcome the urban-rural digital divide involves all levels of government, from the supranational EU level down to the national, regional and local level. Reference point for the national strategy is the 2010 European Digital Agenda that sets out basic strategic tenets to ensure universal broadband coverage in high- as well as low-density areas by 2020, through a combination of incentivized private and ‘carefully targeted’ public investment in networks.³⁰ In its national-level response, the Italian Government adopted the ‘Italian Ultra-Broadband Strategy’ and a correlated investment plan (BUL Plan)³¹ in 2015. The BUL Plan as main instrument to meet European objectives aims at closing infrastructural and market gaps in the provision of high-speed broadband internet and to thereby guarantee greater social and territorial cohesion.

The Italian broadband strategy can be seen as an example of multi-level policy-making which includes and entangles the national, regional and local levels. The strategy is coordinated by the Presidency of the Council of Ministers (i.e. the Prime Minister) via a multi-body committee (COBUL).³² Main responsibility for implementation and the coordination of all private and public actors involved lies with the Ministry of Economic Development (MISE) and its in-house company Infratel. Regional involvement is guaranteed by a 2016 framework agreement elaborated within the Conference of the State, Regions and Autonomous Provinces,³³ and stipulated region by region with the MISE in order to allow for in-detail planning agreements tailored to the local context.³⁴ The regions, in turn, are committed to promote agreements and conventions with local governments in order to accelerate the issuing of authorizations and permits to open construction sites (Article 5(2)(a.1) of the framework agreement). Formal involvement of the municipal level is therefore rather limited and revolves around those latter

affects local administrations, citizens and companies and threatens to further exacerbate social and economic inequalities within the pandemic context. See Marco Bussone and Giampiero Lupatelli (eds), ‘La montagna in rete’ (dossier, UNCEM 2020) 17-25; UNCEM, ‘Il digital divide alimenta divari sociali ed economici, anche in tempi di emergenza coronavirus. “Svegliamo il piano BUL”’ (UNCEM, 27 February 2020) <<https://uncem.it/smart-working-uncem-senza-banda-ultralarga-e-impossibile-il-digital-divide-alimenta-divari-sociali-ed-economici-anche-in-tempi-di-emergenza-coronavirus-svegliamo-il-piano-bul/>> accessed 23 February 2021.

³⁰ European Commission, ‘A Digital Agenda for Europe’ (Communication) COM (2010) 245 final, 4f and 18ff.

³¹ Presidency of the Council of Ministers, ‘Strategia italiana per la banda ultralarga: Piano di investimenti per la diffusione della banda ultralarga’ (2015); in the following referred to as the ‘BUL Plan’. The right of small and undeveloped municipalities to benefit from the measures provided for by the Ultra-Broadband Strategy and the correlated investment plan as a means to reach the objectives enshrined in the European Digital Agenda was further cemented in 2017 by Article 8(1) of the State Law no 158/2017 on Small Municipalities.

³² COBUL includes the Prime Minister, several ministries (Ministry of Economic Development, of Public Administration, of Regional Affairs, of Territorial Cohesion, of Agriculture, Food and Forestry), the President of the Conference of the State, Regions and Autonomous Provinces, as well as Infratel Italia. Technical support is provided by the Agency for Digital Italy (AGID) and the Agency for Territorial Cohesion.

³³ For more information on Italy’s Multilevel Conference System, see report section 5.1. on Intergovernmental Relations of Local Governments in Italy, and report section 5.2. on the Inclusion of Local Governments in Italy’s Multilevel Conference System of Intergovernmental Relations.

³⁴ Framework Agreement for the Development of Ultra-Broadband on the National Territory toward the EU2020 Objectives, 11 February 2016; Ministry of Economic Development, ‘Governance’ (*Strategic Plan Banda Ultralarga*, undated) <<https://bandaultralarga.italia.it/en/strategia-bul/governance/>> accessed 20 February 2021.



administrative tasks in the implementation process, while the regions clearly are the more influential players when it comes to the representation of local administrations within the national BUL framework.

The BUL Plan roughly subdivides the Italian territory into three areas for public intervention, to be targeted in two phases. Phase I is most relevant to rural local governments and envisages the construction of a publicly owned broadband infrastructure in so-called ‘white’ areas of market failure where private investments are limited or absent.³⁵ This public infrastructure will in a second step be made available to private service providers, and is financed with EUR 3 billion stemming from national and European funds.³⁶ Phase II targets quality and speed improvements in ‘grey’ and ‘black’ competition areas in which one or more broadband networks are present already. These areas thus largely correspond to higher-density and urban territories. Other than direct intervention in the style of Phase I, public intervention, as envisaged by the BUL Plan, can take the form of public contributions and private-public partnerships, depending on the specific territorial context and degree of market competitiveness.³⁷

Within 2020, the BUL Plan originally aimed at a 100 per cent broadband connectivity rate at a speed of at least 30 Mbps, and at a 85 per cent coverage with higher speed networks of at least 100 Mbps.³⁸ There have, however, been repeated slowdowns in the implementation of the plan so that finalization is currently envisaged by the end of 2023. A major reason for lagging implementation is attributed to local-level delays in the issuing of authorizations. This is mainly due to the large number of actors involved, as several public entities (besides the municipalities in charge of the bureaucratic process also provinces, for example) and publicly-owned companies (in charge of managing strategic infrastructure such as roads) have to give their clearance for the authorizations to proceed.³⁹ As repeatedly pointed out by the National Union of Mountain Towns and Communities (UNCCEM), this slowdown is a particularly bitter pill for mountain municipalities as they are predominantly located in the white areas individuated by the plan.⁴⁰

³⁵ For public-private partnerships as another form of intervention given difficult market contexts, see report section 2.2. on Public-Private Partnerships in Social Housing.

³⁶ The European financial sources, drawn from the European Funds for Regional Development (FESR) and the European Rural Development Funds (ERDF), are managed independently by the regions on the basis of the above-mentioned framework agreements between MISE and each region.

³⁷ For a concise overview over the contents of the BUL Plan, and for details on the financial sources, governance and the implementation process, see the MISE’s dedicated website <<https://bandaultralarga.italia.it/>>.

³⁸ See BUL Plan, above, 11.

³⁹ Ministry for Economic Development, ‘Piano Banda Ultralarga – completamento dell’intervento nelle “aree bianche” e avvio della Fase II’; UNCCEM, ‘Digital Divide: I ministri Pisano e Provenzano rispondono a UNCCEM’ (UNCCEM, 15 May 2020) <<https://uncem.it/digital-divide-i-ministri-pisano-e-provenzano-rispondono-a-uncem-bussone-azzeriamo-i-tempi-del-piano-bul/>>.

⁴⁰ UNCCEM, ‘Banda ultralarga, piano troppo lento’ (UNCCEM, 28 January 2020) <<https://uncem.it/banda-ultralarga-piano-troppo-lento-bussone-uncem-patuanelli-preoccupato-come-noi-comuni-in-attesa-arrabbiati-per-i-ritardi-per-montagna-e-gravissimo/>> accessed 23 February 2021.



Interestingly, limited formal involvement of municipalities in the national broadband strategy is contrasted by a lot of LGA activity. Firstly, UNCEM⁴¹ engages in continuous dialogue and meetings with public actors involved in the coordination and implementation of the BUL Plan, especially with the Ministries of Economic Development and Digitalization, but also with the Ministries of Regional Affairs and Territorial Cohesion. Given the accumulating delays, these actions are designed to pressurize government into resolute political interventions to unlock and accelerate the implementation process. More specifically, UNCEM's appeals to the various public actors (besides the ministries, COBUL and Infratel also Parliament and the regions) include repeated demands for enhanced coordination with the municipal level, a re-definition of the implementation process with fixed, transparent deadlines and calls to simplify bureaucratic processes.⁴²

Secondly, UNCEM directly entered into contact with private operators involved in the implementation process and in the telecommunications sector at large. In 2019, it signed a Memorandum of Understanding with Open Fiber, the concessionaire tasked with building the public broadband infrastructure in white areas, in order to establish closer collaboration with local administrations. UNCEM further sought intermediate solutions with other telecommunications providers to bridge the gap until full implementation of the plan by Open Fiber. For instance, an agreement with Eolo aimed at quickly providing fixed wireless (FWA) solutions in low-density areas, and TIM started integrating its own developing optic fiber network with the one under construction by Open Fiber in order to accelerate capillary coverage of white areas.⁴³

Thirdly, UNCEM engages in formation activities on the Digital Agenda and BUL Plan, and actively collects and disseminates information on the digital divide in mountain territories. For instance, information on the digital divide was recently gathered in a comprehensive dossier,

⁴¹ UNCEM is a private non-profit association on the basis of the civil law, enjoying statutory and financial autonomy. Its members consist of municipalities, unions of municipalities, municipal associations, consortia, and provinces, as well as national parks, in mountain territories (Art 5 of UNCEM's statute) and therefore at least in part also of public-law entities. UNCEM, according to its statute, represents the interests of its member organizations vis-à-vis, and collaborates with, public bodies, unions and international organizations. In promoting the interests of mountain territories it subscribes conventions and agreements with public as well as private entities (Art 2). See the statute of UNCEM, approved by the 15th Congress (2020) <https://uncem.it/wp-content/uploads/2021/06/Statuto-UNCEM_XVCongresso.pdf>.

⁴² Letter from Marco Bussone (President UNCEM) to several ministers, on the digital divide and implementation of the National Ultra-Broadband Plan (5 May 2020).

⁴³ Such intervention outside the BUL framework was possible on the legal basis of Article 82 of the 'Cure Italy' Law Decree no 18/2020 that calls on telecommunications providers to potentiate their networks in order to cushion some of the negative socio-economic repercussions of the pandemic. During and beyond the months of the 2020 spring lockdown, TIM connected 1,500 municipalities, corresponding to half the amount of municipalities Open Fiber should have connected since 2018. See UNCEM, 'Banda ultralarga nei comuni italiani' (UNCEM, 16 September 2019) <<https://uncem.it/banda-ultralarga-nei-comuni-italiani-tutti-gli-aggiornamenti-e-lo-stato-del-piano-comune-per-comune-aggiornamento-settembre-2019/>> accessed 23 February 2021; and — 'Montagna – "Rete unica con TIM per vincere digital divide"' (QC, 13 August 2020) <<https://www.quotidianocanavese.it/politica/montagna-rete-unica-con-tim-per-vincere-digital-divide-la-proposta-di-uncem-per-la-fibra-28483>> accessed 26 February 2021.



including statistical data, outcomes of political meetings, expert opinions and reports on the state of advancement of the BUL Plan.⁴⁴

Assessment of the Practice

The Italian broadband strategy originally envisaged universal coverage with high-speed internet by 2020. In early 2021, the rate of implementation of the BUL Plan lies at 59 per cent.⁴⁵ Slowly, the urban-rural broadband divide *is* closing, but at a rate far slower than anticipated. The lagging pace of implementation ended up further penalizing mountain localities during the pandemic and resulted in mayors of mountain municipalities and UNCEM as the LGA of their representation feeling alienated.⁴⁶ While it is difficult to isolate the impact of UNCEM's interventions, it should be noted that some re-adjustment measures adopted by the national government to tackle implementation delays actually respond to the demands brought forward by the LGA. For instance, measures include stronger oversight over the implementation process and greater transparency, as well as proposals for simplification to accelerate bureaucratic processes (e.g. the limitation of veto rights).⁴⁷ Even though it could not entirely prevent the slowdown in the implementation process, UNCEM is seen altogether as having played a highly strategic and important role as representative of the small municipalities⁴⁸ and facilitator between public and private actors.⁴⁹ It seems difficult to say with certainty what caused this slowdown. But one should caution against always (only) blaming bureaucratic inertia as collaboration with private actors is often as much prone to delays.⁵⁰

A tangible achievement that formally enshrines collaboration with the national government in overcoming the digital divide is a Protocol of Understanding signed between UNCEM and the former Digitalization Minister Paola Pisano. Collaboration under the Protocol comes in the form of information exchange and confers on UNCEM the role of intermediary between the national government and municipalities. In this role, UNCEM is tasked with the collection of any data that may facilitate the implementation process of the Digital Agenda (Article 2(1) of the Protocol). Furthermore, dialogue between UNCEM, Open Fiber and Infratel resulted in the latter enacting a series of technological simplification measures, with UNCEM acting as an intermediary in tackling delays in authorization processes by sensitizing local governments to technological details.⁵¹ These examples hint at UNCEM being able to carve out an intermediary

⁴⁴ Bussone and Lupatelli (eds), 'La montagna in rete', above.

⁴⁵ Infratel, 'Stato di avanzamento del Piano strategico per la banda ultralarga' (Infratel Italia SpA 2021) 22.

⁴⁶ UNCEM, 'Banda ultralarga nei comuni italiani', above.

⁴⁷ See Bussone and Lupatelli (eds), 'La montagna in rete', above, 98-103.

⁴⁸ Interview with Emanuele Padovani, Associate Professor, Department of Management, University of Bologna (7 May 2021).

⁴⁹ Statement by Emanuele Padovani, Associate Professor, Department of Management, University of Bologna (LoGov Country Workshop, Local Responsibilities and Public Services, 28 April 2021).

⁵⁰ Statement by Marco di Giulio, Research Associate, Department of Political Science, University of Genova (LoGov Country Workshop, Local Responsibilities and Public Services, 28 April 2021).

⁵¹ Infratel, 'Banda ultralarga nei comuni montani', above, 8.



role for itself in addressing the Italian broadband divide. This mediating position does not only concern the traditional, vertical relations between (mountain) municipalities and higher-level public bodies, but also extends to the relations between local governments and private service providers. As for the role of the national government vis-à-vis private companies, it has been suggested that better use could have been made of its bargaining power, i.e. by exerting pressure on companies to not only provide infrastructure in big cities where this is profitable but also in mountain municipalities where there is less of a market incentive for doing so.⁵² Overall, however, there seems to be a broad consensus that the initiative's objective to remove the 'white or grey areas' not covered by the market has been achieved.⁵³

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Website on the BUL Plan, <<https://bandaultralarga.italia.it/>>

⁵² Interview with Walter Tortorella, Head of Department of Studies of Territorial Economics, IFEL Foundation (21 May 2021).

⁵³ Interview with anonymous expert, ANCI (18 May 2021); Interview with Walter Tortorella, Head of Department of Studies of Territorial Economics, IFEL Foundation (21 May 2021).



3. Local Responsibilities and Public Services in Germany

3.1 The System of Local Government in Germany

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Types of Local Governments

In Germany, government at the local level is administered through municipalities (*Gemeinden*) as well as second-tier local governments such as counties (*Kreise*). Larger municipalities with more than 100,000 citizens are often assigned the status of independent city or county-free city (*kreisfreie Stadt*); in addition to their municipality responsibilities, these cities also carry out (second-tier) county responsibilities. In some of the German *Länder*, there are even third-tier local governments, for example districts (*Bezirke*) in Bavaria.⁵⁴ There are no areas that fall directly under federal or *Länder* rule, as the system of local government extends to the entire territory of the country. However, as jurisdiction over the organizational powers of local authorities lies with each of the 16 *Länder*, 'local government' may come in different shapes. This is particularly true for its internal organization, but may equally be said of its precise powers and responsibilities. Nevertheless, there are several common features of local government.

The German concept of local self-government, as enshrined in Article 28(2) of the Basic Law, implies that local government entities have a general competence (*Allzuständigkeit*) to carry out all responsibilities that are relevant to the local community. Since this general competence is comprehensive, there is, as a result, no such thing as single purpose local governments in Germany. This means that local governments in Germany may, for instance, run public libraries, museums, theaters, opera houses or concert halls, that they can provide airport facilities, energy/water supply, waste/sewage disposal, run hospitals, kindergarten facilities or homes for the elderly. Of course, these vast competences do not go unchecked; local authorities may engage in such activities only within their financial capacity and, in all their activities, local authorities have to abide by the laws and limitations of federal and *Länder* legislation. Nevertheless, contrary to the Anglo-Saxon concept of 'ultra-vires'⁵⁵, local authorities do not act illegally if they take measures in areas that do not fall within responsibilities explicitly transferred to them by federal or state legislation. In view of their general competence, they just need not to be empowered specifically to take action at the local level.

⁵⁴ For these and the following considerations see Martin Burgi, 'Federal Republic of Germany' in Nico Steytler (ed), *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press 2009) 140-142.

⁵⁵ See Veith Mehde, 'Steering, Supporting, Enabling: The Role of Law in Local Government Reforms' (2006) 28 *Law & Policy* 164, 165.



Legal Status of Local Governments

The right of local governments to self-government (i.e. to carry out all responsibilities falling within their ‘general competence’) is constitutionally enshrined at the federal level in Article 28(2) of the Basic Law (BL).⁵⁶ This provision reads as follows: ‘Within the limits prescribed by law, municipalities shall be guaranteed the right to regulate all local affairs in their own responsibility. Within the limits of their responsibilities as defined by law, associations of municipalities shall equally have the right of self-government according to the laws. The guarantee of self-government shall include the basis of financial autonomy; it shall comprise the right of municipalities to a source of tax revenues that corresponds with the economic ability of the tax debtors (e.g. business tax – *Gewerbesteuer*), and the right to fix the rates at which these sources shall be taxed.’ Provisions similar to Article 28(2) BL are also contained in the constitutions of the 16 *Länder* which thus reinforce the constitutional recognition of local authorities and their right to self-government. The constitutional recognition of local government is generally the same for all municipalities, regardless of size or socio-economic importance.

In contrast, the constitutional standing of counties and districts is weaker. Compared to the comprehensive self-government of their constituent municipalities, these second- and third-tier local government entities may not carry out all responsibilities of local importance but are granted the right to self-government only ‘within the limits of their responsibilities as defined by law’ (Article 28(2) BL).

It is important to stress that Article 28(2) BL as well as the corresponding constitutional provisions at *Länder* level do not grant local autonomy as an absolute right. Local autonomy is only guaranteed in principle, while its precise scope is subject to legislation. Thus, it is the lawmakers at federal and *Länder* level that define the precise extent and limitations of local self-government. In practice, the sheer volume of (sometimes very detailed) federal and *Länder* statutes has considerably limited local autonomy. However, as local autonomy is constitutionally guaranteed in principle, local governments are protected by virtue of Article 28(2) BL against excessive and immoderate restrictions of local autonomy and preserves a ‘core sphere’ (*Kernbereich*) of responsibilities that must remain with municipalities (i.e. finances, local planning, personnel matters, organizational autonomy and the freedom to engage in joint administration with neighboring communities). In addition to that, Article 28(2) BL protects local authorities, to some extent, against the revocation of responsibilities (*Aufgabenentzug*) e.g. by reallocating them at a higher (more centralized) administrative level (*Hochzonung*). As a result, only *very substantial* gains in cost-efficiency, for instance, may justify that responsibilities are taken away from local governments.

(A)Symmetry of the Local Government System

⁵⁶ See Burgi, *Federal Republic of Germany*, above, 143-146.



As pointed out, the legal status is primarily the same for all municipalities regardless of their size and socio-economic importance, although larger municipalities (and especially independent cities) have, with no doubt, more political bearing. As a general principle, the German system follows a symmetrical approach towards the legal status of local governments. However, this symmetry of responsibilities *de jure* can be modified in various ways which may result, *de facto*, in an asymmetrical allocation of responsibilities.

Local authorities may, for example, agree among themselves to join forces and create joint administrative units to carry out specific responsibilities in forms of what is called inter-municipal cooperation (*interkommunale Zusammenarbeit*). For instance, they may, with regard to capacity and cost-effectiveness, share their resources and establish a joint inter-municipal corporation (*Zweckverband*) which is assigned to take care of sewage and/or waste disposal. Such cooperation is particularly common between smaller municipalities but are equally practiced within larger conurbations and between counties and independent cities.

Because of their size, independent cities are capable of carrying out both municipal and county responsibilities through their city administration as a single unit. In rural areas, by contrast, county responsibilities are carried out by counties along with their constituent (smaller) municipalities. The precise division of duties between counties and their municipalities is laid down in *Länder* statutes and may therefore vary. As a general rule, the allocation of responsibilities depends on the capacities of the individual local unit. This means that for reasons of administrative efficiency, counties will regularly assume the execution of duties that cannot be effectively handled by their constituent municipalities. For instance, hospitals will usually be run at county (or even district) level while minor administrative duties such as citizen registration may remain with the constituent municipalities.

Political and Social Context in Germany

Despite the recent turbulences in the course of the financial and migration crises, the political system established under the Basic Law has proven to be relatively stable. In the overall perspective, two parties, the Christian Democrats (CDU/CSU) and the Social Democrats (SPD) still each win between 20 to 40 per cent of total votes while four smaller parties, the Liberal Free Democrats (FDP), the Greens (*Bündnis 90/Die Grünen*), the Left Party (*Die Linke*) and the Alternative for Germany (AfD), attract between 5 and 20 per cent of all voters. In the East German 'new' *Länder*, *Die Linke* and AfD are usually stronger in elections than in West Germany. On the *Länder* level and on the local level, the landscape of political parties is more diverse. In addition to the aforementioned parties, there are several parties which are particularly active in certain regions and municipalities, taking account of political issues with specific relevance for the respective region or municipality. In Bavaria, for example, the Independent Voters (Freie Wähler) are usually quite strong in the elections – they won 11,6 per cent of the votes during the 2018 elections for the Bavarian *Landtag* and are hence currently part of the Bavarian government, and they are represented in numerous municipal councils.

The spatial distribution of the population still reflects, to a certain extent, the decentralized structure of the Federal Republic of Germany. 27 per cent of the population (i.e. around 22



million people) live in smaller municipalities with 5,000 – 20,000 inhabitants. Another 27 per cent live in medium sized cities (*Mittelstädte*) with 20,000 – 100,000 inhabitants. 31 per cent of the German population live in major cities (*Großstädte*) with more than 100,000 inhabitants. The largest cities with more than 1,000,000 inhabitants each are Berlin (3,700,000), Hamburg (1,890,000), Munich (1,470,000) and Cologne (1,080,000). Of course, many smaller municipalities and medium sized cities are part of a metropolitan area (*Ballungsraum*). Together with Böblingen (50,000), Waiblingen (55,000), Sindelfingen (64,000), Tübingen (89,000), Ludwigsburg (93,000) and Esslingen (93,000), for instance, Reutlingen (115,000), Heilbronn (123,000) and Stuttgart (634,000) as well as all surrounding municipalities form the Stuttgart metropolitan area (total population: 5,300,000). In this perspective, around 77 per cent of the German population nowadays live in metropolitan regions.

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3.2 Local Responsibilities and Public Services in Germany: An Introduction

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Urban local governments and rural local governments (hereinafter: ULGs and RLGs) traditionally have a wide range of responsibilities and, in particular, offer numerous public services. In the face of the growing urban-rural divide, these responsibilities are undergoing profound change. This change is influenced by other factors such as demographic changes and migration movements, and it can affect both the scopes of the responsibilities and the modalities of carrying them out.

While certain material responsibilities might be pushed into the background or released in their entirety (by way of a 'material privatization'), new challenges can become the focus of local government. At first glance, this applies above all to rural areas, many of which are typically affected by a significant population decline, with all its negative economic and social consequences as well as certain positive impacts, including more favorable housing conditions and a better natural environment. However, it is also the large cities and metropolitan regions that are subject to substantial segregation processes and difficulties, for example, in maintaining an efficient public transportation service, in providing sufficient housing opportunities and in dealing with the tensions following from a growing cultural and ethnic diversity. As a result, the scopes of the responsibilities carried out by ULGs and RLGs are de facto increasingly divergent and differentiated, as opposed to a de jure symmetrical approach towards responsibilities.

As regards the modalities of carrying out the responsibilities and offering the services, the changes mainly (but not exclusively) affect organizational and structural aspects. For reasons of efficiency and effectiveness, rapid changes and specific challenges may, for example, make it necessary to mobilize significant private resources in order to fulfil particularly pressing tasks through the award of public contracts or concessions as well as public private partnership undertakings. Also, local government entities might decide to provide certain public services through commercial (instead of sovereign) activities. In addition to these forms of commercialization, privatization and public private partnership, smaller local governments in particular may be forced to join forces and to cooperate with each other for the purpose of carrying out their respective responsibilities with pooled resources. Similar to their diverging substantial scopes, the different organizations and structures of responsibilities of ULGs and RLGs show more and more asymmetries.

These upheavals of local governance often necessitate policy changes – be it for the financial support of certain types of projects, be it for the (re-)definition of responsibilities, be it be it for the (re-)structuring of local government. Such structural reforms may include the reallocation of responsibilities (e.g. a transfer upon umbrella entities), the creation of new cooperative structures (e.g. inter-municipal corporations) or – as a last resort – amalgamations



of smaller local government entities (e.g. by way of a comprehensive territorial reform).⁵⁷ In many jurisdictions, these and other policy changes are triggered and coordinated (or blocked and restricted) by powerful single local government entities or local government associations.

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⁵⁷ See for these different structures of local government Francesco Palermo and Karl Kössler, *Comparative Federalism – Constitutional Arrangements and Case Law* (Hart Publishing 2019) 305-314.



3.3 Municipal Housing Companies

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Relevance of the Practice

One of the crucial challenges of our time for local governments is the ensuring of adequate housing opportunities. In principle, both urban local governments (ULGs) and rural local governments (RLGs) bear core responsibilities in this field. As a result of the urban-rural divide, however, the socio-economic context and (subsequently) the political objectives of providing housing opportunities vary considerably in urban and rural areas respectively. This results in an increasing divergence of ULG and RLG responsibilities which can be perfectly illustrated by the example of the activities of municipal housing companies. The activities of these companies can serve as one of the top practices for the comparison of ULGs and RLGs with respect to all report sections.

Description of the Practice

Housing construction by municipal enterprises is one of the many (and most important) instruments of local governments to ensure adequate housing opportunities for their populations. In principle, the responsibility of local governments under Article 28(2) of the Basic Law (BL) to provide adequate housing, including the establishment and operation of municipal housing companies, is comprehensive and relates, de jure, to both ULGs and RLGs in a symmetrical manner.

Despite this uniform (symmetrical) legal starting point, however, the socio-economic contexts of ensuring adequate housing opportunities by ULGs and RLGs are quite different. In rural areas, housing activities must take account of the situation of the respective municipality against the backdrop of the urban-rural cleavage, and they need to address, in particular, the increased social and economic attractiveness of larger metropolitan regions and – as a result thereof – the possible population decline. For RLGs, future-oriented sustainable housing construction does therefore not mean building up all accessible spaces. For them, quality in individual buildings and in local planning (along with other quality services such as culture and infrastructure) seems to be of utmost importance in order to create an attractive living environment. Hence, each municipality must determine its specific needs, for example for young families, employees of local companies (and companies in cities nearby) or those in need of social assistance.

In contrast, ULGs typically face a significant quantitative shortage of affordable housing. According to recent studies, there is a total lack of almost 2 million apartments and houses in German urban municipalities. While the quality of urban housing, including the consideration of demographic aspects (such as age, gender and ethnic origin of the population), must not be neglected either, these figures illustrate that in mere quantitative terms the public providing of affordable housing is a much more urgent task in urban areas than in rural areas.



From this perspective, the activities of municipal housing companies seem very suitable for a comparison of the effects of the urban-rural divide on local responsibilities and public services (report section 2 on local responsibilities). Almost all of the relevant research parameters are addressed: With regard to organization, housing activities are not only carried out at the lowest level of local government, i.e. the municipal level, but also at the level of the German *Länder* and within forms of inter-municipal cooperation. Furthermore, they are an example of carrying out local responsibilities and providing public services by public enterprises, as an alternative to other instruments of local government (such as the conclusion of contracts with private actors). Moreover, local governments must pay particular attention to the demographic structures of their populations when providing housing services. And finally, the issue of housing is high on the agenda of municipal lobby organization with substantial influence on policy makers.

The activities of municipal housing companies are also highly relevant for the other WPs. They are among the most capital-intensive responsibilities and services provided by local governments, and they quickly raise questions about financing (report section 3 on local finances). Moreover, especially smaller local governments can quickly reach their financial and performative limits in carrying out housing responsibilities; this can require changes in the structure of local government, ranging from simple inter-municipal cooperation to the transfer of tasks to larger governments and amalgamations of local governments (report section 4 on local government structure). From this perspective, excessive housing activities of local governments and their municipal housing companies might quickly become a question of mandatory state supervision (report section 5 on intergovernmental relations). And finally, the issue of public housing is also highly relevant for forms of direct democracy, as illustrated, for example, by the referendum in Berlin on the naturalization of large private housing companies (report section 6 on people's participation).

Assessment of the Practice

The objective of municipal housing companies is to contribute to adequate local housing opportunities. On a preliminary basis, municipal housing companies in both ULGs and RLGs have considerable difficulties in achieving this goal. Quite obviously and despite ULGs' and RLGs' qualitative and quantitative housing efforts, urban areas continue to detract people from rural areas while housing shortage is worsening dramatically in certain areas. While the City of Munich, for example, does not even get close to meeting its target of building 8,000 new living units per year (which could accommodate about 20,000 inhabitants), it still attracts around 30,000 persons per year. In view of these difficulties in carrying out their responsibilities through single undertakings, ULGs and RLGs should consider creating joint ULG-RLG housing companies. It appears, however, that ULGs and RLGs are rather reluctant when it comes to joining forces in this field. In general, relevant factors for successful housing activities include – above all – political willingness as well as sufficient financial resources and real estate available to the respective local governments.



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3.4 Public Health Care

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Relevance of the Practice

The principle of the welfare state (Article 20(1) of the Basic Law [BL]) obliges the federal government, the *Länder* and the local governments to ensure a functional and efficient health infrastructure within the scope of their respective responsibilities. The urban local government's (ULG's) and as well rural local government's (RLG's) task is not to guarantee health care (in terms of planning and funding), but rather to provide services, especially the actual medical treatment.⁵⁸ Regarding this medical treatment, it is important to differentiate between inpatient and outpatient treatment.⁵⁹ The satisfactory fulfilment of this commitment is faced with a number of challenges: The demographic development not only changes the clinical pictures of patients, but at the same time an above-average number of older people live in rural areas which have a higher and more differentiated need for care than younger people who tend to move to urban areas. In addition, the average age of general practitioners in particular is very high.⁶⁰ This leads to the danger of considerable gaps in rural care and overprovision in the urban region.⁶¹ The problem is not an undersupply in itself but an unequal distribution. Health insurance in Germany is a compulsory insurance and is conceived as a dual insurance system. Instead of statutory health insurance, citizens have the option – and for various occupational groups even the obligation – of choosing private health insurance. The dual health insurance system also favours the development because the different remuneration levels provide incentives to settle in affluent urban areas where many privately insured people live.⁶² The Federal Statistical Office has calculated that almost 90 per cent of the population living in urban regions in Germany reach the nearest hospital with a basic supply

⁵⁸ In Bavaria the municipalities have according to Art 11 of the Bavarian Constitution (following up Art 28 BL) the right to organize and administer their own affairs. In addition, Art 83 of the Bavarian Constitution lists numerous individual tasks of the municipalities in a non-exhaustive list which includes amongst others 'local health care'.

⁵⁹ Unlike in the past, it is no longer always possible to draw a clear dividing line between outpatient and inpatient treatment. On the contrary, due to some relaxation it is now also possible to provide outpatient care within the framework of a hospital. The extent to which this can be softened in the future in order to guarantee nationwide care has to be observed, but cannot be further developed at this point.

⁶⁰ In Bavaria for example every third GP is over 60 years old and will therefore retire in the foreseeable future.

⁶¹ See Thorsten Kingreen and Jürgen Kuehling, 'Municipalities as Responsible Body of Medical Care Centers - Social Security, Municipal and Commercial Law Requirements' (2018) 21 DÖV 890.

⁶² Council of Experts for the Assessment of Developments in the Health Care Sector, 'Bedarfsgerechte Versorgung

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within 15 minutes while in rural regions only 64 per cent of the population are able to reach this.⁶³

Description of the Practice

In oversupplied urban areas is only a limited number of approvals for panel doctors (*Kassenarzt*), whereby for private medical activities no approval restrictions are made. The reason for this is that it would constitute a constitutionally justifiable encroachment on the fundamental right to freedom of occupation (Article 12 BL), and such restrictions would overall not automatically lead to more settlement in underserved rural areas. Rather should options be taken into consideration which tie in earlier, e.g. to allocate a place to study only on the condition that the student will later be established as a practitioner in rural areas. However, this is a political and legislative question and not a responsibility of local governments. Due to demographic change, the greatest challenge local governments are facing is in the area of health care, especially in structurally weak rural regions. Various measures must therefore be taken to prevent the threat of a shortage of doctors and to ensure that care is provided close to where people live and in line with their needs in the future. The lack of doctors in rural areas can be divided into two manifestations. Regarding the inpatient sector hospitals in rural areas have shortage of skilled personnel, whereas in the outpatient sector a lack of general practitioners and specialists in the form of individual practices can be located. Potential solutions can be created by RLGs either as the responsible body of a hospital or of a medical care center⁶⁴ (paragraph 95 SGB V). The provision of services as an individual doctor by a local government is essentially excluded.⁶⁵

The right of local governments to self-government in Article 28(2) BL guarantees the right to handle all affairs of the local community on their own responsibility. This is sufficient only insofar as the definition is fulfilled, what means that larger tasks have to be split up into subtasks. One example to illustrate such a situation is the area of health care: the financing of nationwide health insurance is not a local task, but the operation of a hospital is. It is recognized that the guarantee of self-government includes (also) the economic activity of the local government. In 2017, 37.1 per cent of the hospitals in Germany were privately owned, 34.1 per cent by non-profit organizations and 28.8 per cent by public authorities.⁶⁶ If one

⁶³ See therefore the press release from 29 April 2019: ‘Wie lange brauche ich bis zum nächsten Krankenhaus’

https://www.destatis.de/DE/Presse/Pressemitteilungen/2019/04/PD19_163_91.html;jsessionid=FB87075D2D825969E260232728B9AC04.internet721.

⁶⁴ In German: *Medizinisches Versorgungszentrum* (MVZ).

⁶⁵ Illustrated by Martin Burgi, ‘Distribution of Responsibilities between the Federal Government, the *Länder*, Local Governments and Social Administration Bodies in the Health Sector’ in Hans-Günter Henneke (ed), *Local Responsibility for Health Care* (Boorberg 2012) 36-38.

⁶⁶ But it has to be taken into account: Because private institutions are usually equipped with fewer beds and are therefore smaller hospitals while public hospitals are usually three times as large, nearly every second bed (48.0%) was in a public hospital, a third of the hospital beds (33.2%) were in a non-profit hospital and only a good sixth



considers the distribution of hospital ownership between local governments and private individuals, a decline in public ownership and an increase in private hospitals can be noted. The assumption of the ownership of a hospital and its termination are not subject to free local government's policy decisions. The legal basis is rather the local government's obligatory responsibility to subsidiary guarantee a basic supply laid down in the respective *Länder* hospital laws. In contrast to the outpatient sector here is no lack of the legal basis of competence for local government's participation, but rather of the political will and financial strength of RLGs.⁶⁷ Regarding hospital ownership, municipalities or more likely counties and districts can be owner of the hospital, a public company can be set up to run the hospital or as a third option the task can be given away to a private company.⁶⁸ When setting up a public company local governments are subject to certain regulations which vary in each of the *Länder*. What most Local Codes⁶⁹ have in common is the need for a public purpose, an appropriate balance between performance and expected needs and a subsidiarity clause. Some of the *Länder* declare local government's economic activity admissible if the public purpose pursued can be fulfilled 'just as well and economically' by the local government as by private companies. In other – stricter – *Länder* it is required that the public purpose 'is not or cannot be fulfilled just as well and economically by another', i.e. that the local government must be able to fulfil the purpose concerned better and more economically.

Outpatient medical care is largely provided by private contract physicians. In the recent past it can be observed that young doctors no longer want to take on the economic risk of having their own practice, but rather strive for a separation between the medical profession and the entrepreneurial side. With regard to rural undersupply in the outpatient sector (individual GP practices), however, there is as already mentioned a competence problem. As one step to face the challenges, local governments have been allowed to set up Medical Care Centers (MCC) since 2015.⁷⁰ This makes it easier for local governments to operate an MCC, as they can now set up such an MCC in the form of a private company, a public-law administration, an institution under public law or in the form of a public company. They will thus be provided with an instrument for ensuring medical care, especially in rural areas, which is a novelty in the form of contract physician law that has hitherto been characterized by the provision of private law

(18.7%) in a private hospital. See Statistisches Bundesamt, 'Gesundheit. Grunddaten der Krankenhäuser' (subject-matter series 12, Destatis 2018) <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Krankenhaeuser/Publikationen/Downloads-Krankenhaeuser/grunddaten-krankenhaeuser-2120611177004.pdf?__blob=publicationFile> 8.

⁶⁷ See for a clear description Martin Burgi, *Local Responsibility and Regionalization of Structural Elements in Health Care* (Nomos 2013) 72-74.

⁶⁸ Details of the various possibilities and forms of privatization of a hospital and its limits cannot be discussed at this point, but see for further information: Martin Burgi, *Kommunalrecht* (6th edn, CH Beck 2019) para 17 - Economic Activity and Privatization.

⁶⁹ i.e. Municipal Codes (*Gemeindeordnungen*), County Codes (*Kreisordnungen*) as well as District Codes (*Bezirksordnungen*).

⁷⁰ According to the earlier legal situation, an MCC owner could only be an actor who was himself a service provider, for example a hospital. Since the last amendment, local governments can now themselves be the owners of a MCC.



services.⁷¹ The strengthening of local MCC ownership is to be welcomed, especially with regard to underserved areas, and will lead to an increase in public run MCCs in the future. This correlates well with the legislator's vision of mastering rural undersupply by involving local governments more closely.⁷² But with new possibilities, also legal challenges have to be taken into account. Local governments are only allowed to operate economically to a certain extent, especially with regard to MCC the problem of how to deal with the profits generated from it. If RLGs decide to operate an MCC under their own management, they must of course also comply with EU state aid law.

Since many municipalities are not financially able to run a hospital or MCC on their own, the issue also affects other report sections like changing the present financial arrangements (report section 3 on local finances), establishing inter-municipal cooperation or even amalgamations (report section 4 on local government structure) or enabling more intergovernmental relations and support (report section 5 on intergovernmental relations). As the dissatisfaction of the rural population rises, they will want to play an increasingly important role in decision-making processes or even think about ways of forcing universal health care (report section 6 on people's participation).

Assessment of the Practice

The influence of local governments on policy decisions in the context of health care is not particularly great. Rather decisions to ensure nationwide coverage are made at federal level, as shown recently by the Federal Ministry of the Interior's 'Plan for Germany – Equivalent Living Conditions'.⁷³ As stated there, one of the goals for the future is to ensure the provision of good medical and nursing care and local elder care services for everyone.⁷⁴ This is a major challenge, in particular as a result of future demographic developments. At this point, some suggestions and recommendations for action can be made for the future: a cross-sectoral approach to health care, better coordination of emergency care, the promotion and expansion of telemedicine and the promotion of young doctors in the regions.⁷⁵ Another effort to respond to the shortage of skilled workers in German hospitals was the creation of a new health profession which enables doctors to delegate medical services. The 'physician assistant' starts at the interface between nurse and physician.⁷⁶ Health care in rural and underdeveloped areas

⁷¹ For the social insurance, municipal and economic law conditions for the MCC founded by municipalities see Kingreen and Kühling, *Municipalities as Responsible Body of Medical Care Centers*, above.

⁷² This conclusion is drawn by Florian Plagemann and Ole Ziegler, 'Kommunale Trägerschaft von MVZ' (2016) 131 DVBl 1432, 1442.

⁷³ 'Unser Plan für Deutschland – gleichwertige Lebensverhältnisse überall' (Federal Ministry of the Interior 2019) <[https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/heimat-integration/gleichwertige-lebensverhaeltnisse/unser-plan-fuer-deutschland-langversion-kom-gl.pdf;jsessionid=4FEE6DA8F5956740EEF8A5CDCFE87FD0.2_cid287? blob=publicationFile&v=4](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/heimat-integration/gleichwertige-lebensverhaeltnisse/unser-plan-fuer-deutschland-langversion-kom-gl.pdf;jsessionid=4FEE6DA8F5956740EEF8A5CDCFE87FD0.2_cid287?blob=publicationFile&v=4)>.

⁷⁴ See *ibid* 102-104.

⁷⁵ As outlined in the above-mentioned 'Plan for Germany – Equivalent Living Conditions' 103-104.

⁷⁶ The studies at the Baden-Wuerttemberg Cooperative State University in Karlsruhe take three years and alternate between lecture hall and hospital. See, for more information, <<https://www.karlsruhe.dhbw.de/pa/studieninhalte-profil.html>>.



will need to focus more on health care across sectors with regional development aspects such as mobility and accessibility, digital networking and empowerment in an overall context. This can and must be achieved above all through a more regional and flexible approach. The lack of general practitioners in rural areas is a symptom behind the challenge of more regionalized health care. The guiding idea is to open up scope for local and state-related design within the fields of prevention, curative medicine (with the sectors of medical care and hospital care), rehabilitation and care de lege lata and de lege ferenda. The allocation of specific responsibilities to the local level proves to be functional if the requirements for high-quality and economic health care can be better met there. Field-wide, the structural interlocking is described as a future task of coordinating character and it is proposed to entrust this task to the local governments.

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3.5 Fighting Covid-19 on the Local Level

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Relevance of the Practice

When the SARS-CoV-2 virus broke out in Wuhan, China, in December 2019/January 2020 and the entire Hubei province was sealed off with strict curfews on January 23, 2020, Europe still considered itself safe. On March 12, 2020, the World Health Organization declared the Covid-19 outbreak a pandemic.⁷⁷ Almost all countries are affected by the exponential increase of infections since February/March 2020. Lockdowns, curfews and travel bans have been implemented in most of them. German Chancellor Angela Merkel described Covid-19 as the most severe crisis Germany is facing since the Second World War.⁷⁸ Nonetheless, the German Basic Law (BL) does not contain constitutional instruments to deal with a health-related crisis. The announcement of a state of emergency is confined to attacks by foreign states (Article 115(a) BL).⁷⁹ The BL does however empower the federal legislature to enact laws to deal with infectious diseases.⁸⁰ On this basis, the legislature had (already in the year 2000) enacted a federal law called infection protection law (*Infektionsschutzgesetz*, hereinafter: IfSG) that plays a central role in the German way of handling Covid-19. As the implementation of federal laws is generally the task of the *Länder* (Article 83 BL), the IfSG empowers the *Länder* and municipalities to enact (precautionary) measures against infectious diseases to prevent infection and to protect the people's health and public health system.⁸¹ Therefore, the municipal authorities play a crucial role in the combat against Covid-19. This entry will lay out in more detail the allocation of responsibilities by looking at measures enacted in reaction to Covid-19 in Bavaria.

Description of the Practice

The general clause of paragraph 28(1) IfSG obliges the responsible authorities to implement the necessary measures, especially those mentioned in the following paragraphs. Paragraphs

⁷⁷ 'WHO announces Covid-19 outbreak a pandemic' (*WHO Regional Office for Europe*, 12 March 2020) <<http://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic>> accessed 2 April 2020.

⁷⁸ The Chancellor's speech with English subtitles can be found here: <https://www.youtube.com/watch?v=WLxryk_wYo> accessed 15 April 2020.

⁷⁹ Furthermore, there is Art 35 (especially para 3) BL, which however has very limited legal consequences, therefore see Pierre Thielbörger and Benedikt Behlert, 'Covid-19 und das Grundgesetz' (*Verfassungsblog*, 19 March 2020) <<https://verfassungsblog.de/covid-19-und-das-grundgesetz/>> accessed 9 April 2020.

⁸⁰ Art 74(1)(19) BL.

⁸¹ The IfSG foresees three different groups of measures: monitoring measures (paras 6ff IfSG); preventative measures (paras 16ff IfSG) and measures combating infectious diseases (paras 24ff IfSG). For Covid-19, i.e. a disease already spreading, the last group of measures is the most relevant.



29 to 31 IfSG regulate special measures like observation, quarantine and the prohibition of professional activity. The authorities enjoy discretion in the selection of the specific measures, given that the envisaged measures are suitable and necessary to prevent spreading of communicable diseases.⁸² The current measures, in particular wide-ranging curfews, are not explicitly foreseen by the IfSG. Whether they are nonetheless covered by paragraph 28(1) IfSG (which has been invoked as a legal basis by the authorities) has triggered a heated academic debate.⁸³

As is the case in various federal laws, the IfSG grants the *Länder* the authority to designate the competent authorities within the *Land* (paragraph 54 IfSG). In Bavaria, the allocation of competences foreseen in paragraph 54 IfSG is regulated in paragraphs 65ff. of the Bavarian regulation of competence (*Zuständigkeitsverordnungen*, hereinafter: ZustV). Thereunder, the counties' administration authorities (*Kreisverwaltungsbehörden*)⁸⁴ as second-tier local governments are responsible for the implementation and enforcement of measures. Hence, the enforcement occurs on the level of local governments, with rural local governments (RLGs) and urban local governments (ULGs) being subject to the same legal conditions⁸⁵. Since each LG decides independently, this can however lead to very different regulations. The following example of the municipal Mitterteich in the County of Tirschenreuth shows this clearly.⁸⁶

As Mitterteich is a small-town in Upper Palatinate, not an independent town or city, the decision about precautionary measures for Mitterteich remained with the county office of Tirschenreuth. The county office was the first in Germany to prescribe a curfew specifically for and limited to the municipal of Mitterteich, as this municipality showed a significantly higher number of Covid-19 cases in comparison with other municipals in the state. The curfew began March 18, 2020 and ended April 02, 2020. Local citizens have been informed by applications on smartphones, newspapers, notes in every mailbox and announcements by firefighters driving the streets. Police reports show acceptance of the measures and few offences.⁸⁷ While such a lockdown might be more acceptable to the population in RLGs, as less people live in

⁸² Georg Erbs, Max Kohlhaas and Peter Häberle (eds), 'Strafrechtliche Nebengesetze' in *Beck'sche Kurz-Kommentare* (231 EL, July 2020) 228. EL Januar 2020, IfSG para 28 Rn. 1; BVerwGE 142, 205.

⁸³ See for a critical perspective e.g. Thorsten Kingreen, 'Vom Schutz der Gesundheit' (*Verfassungsblog*, 20 March 2020) <<https://verfassungsblog.de/whatever-it-takes/>> or Anika Klafki, 'Corona-Pandemie: Ausgangssperre bald auch in Deutschland?' (*Junge Wissenschaft im Öffentlichen Recht*, 18 March 2020) <<https://www.juwiss.de/27-2020/>>; advocating in favor of the possibility to enact these measures under para 28 IfSG: Johannes Bethge, 'Ausgangssperre' (*Verfassungsblog*, 24 March 2020) <<https://verfassungsblog.de/ausgangssperre/>> all accessed 15 March 2020.

⁸⁴ Counties' administrative authorities in Bavaria are the 71 county offices (*Landratsämter*) as lower state administrative authorities (RLG) and the 25 independent towns and cities (ULG), as far as they fulfil state tasks in the transferred sphere of activity, which are otherwise to be performed by the county office as the lower state administrative authority (see also General Introduction to the System of Local Government in Germany).

⁸⁵ As the measures are allocated to the second-tier LGs, small municipalities themselves do not play a role in this field (big municipalities like independent towns and cities may however issue measures as described in FN 8).

⁸⁶ Elisabeth Kargermeier, 'Erst die Ausgangssperre, dann die Schuldzuweisungen' (*Zeit Online*, 19 March 2020) <<https://www.zeit.de/gesellschaft/zeitgeschehen/2020-03/mitterteich-ausgangssperre-coronavirus-quarantaene-ansteckungsgefahr-deutschland>> accessed 2 April 2020.

⁸⁷ Johann Osel, "'Mitterteich, wir halten zam'" (*Süddeutsche Zeitung*, 19 March 2020) <<https://www.sueddeutsche.de/bayern/coronavirus-mitterteich-wunsiedel-ausgangssperre-1.4850942>> accessed 2 April 2020.



(crammed) small flats, the enforcement in RLGs is made more difficult by the lack of enforcement officers and the more spread-out territorial structure of RLG areas.

In addition to these competences on municipal level, paragraph 65 of the Bavarian ZustV (in conjunction with the IfSG) also allows the Bavarian State Government to enforce precautionary measures for the whole state. When infection rates in Bavaria further increased, the Bavarian State Ministry of Health and Care decided to make use of this competence. Hence, state-wide (partial) curfews (*Ausgangsbeschränkungen*) and other precautionary measures have been prescribed by a decree (*Rechtsverordnung*) issued by the ministry (*Bayerische Infektionsschutzmaßnahmenverordnung*). The decree entered into force on 31 March and was at first due to expire on 19 April 2020. Since then, the precautionary measures have been prolonged or adapted to the ongoing development based on the government's assessment of the situation. Under the decree, (public) institutions and companies are obliged to ensure compliance with hygiene standards and physical distances on their premises. The possibility to immediately comply with (and effectively monitor) these rules of social distancing may vary from case to case, but cannot be generalized for urban or rural areas. The other *Länder* have not enforced similarly strict measures such as curfews, but have implemented (partial) shutdowns of severely affected regions⁸⁸ and general no-contact rules, also called mandatory social distancing rules (*Kontaktverbote*)⁸⁹. Besides these general rules, the local health authorities (*Gesundheitsämter*) also issue quarantine orders to individuals tested positive for Covid-19, persons that have been in close contact with these individuals, and returning travelers.⁹⁰

Assessment of the Practice

During the still lasting Covid-19 crisis, it is not possible to assess the practice fully. Measures in Germany vary to some extent as the measures are implemented and enforced independently by the *Länder* and on the LG level.⁹¹ Nonetheless, the Federal Ministry of Health as well as the Chancellor work very closely with the state authorities to standardize precautionary measures

⁸⁸ e.g. in the County of Heinsberg, 'Quarantäne im Kreis Heinsberg teils beendet' (*tagesschau.de*, 1 March 2020) <<https://www.tagesschau.de/inland/coronavirus-heinsberg-101.html>> accessed 16 April 2020.

⁸⁹ These rules have been agreed upon (therefore working as a kind of minimum standard) by the federal government and the *Länder*: 'Besprechung der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder' (*Die Bundesregierung*, 22 March 2020) <<https://www.bundesregierung.de/breg-de/themen/coronavirus/besprechung-der-bundeskanzlerin-mit-den-regierungschefinnen-und-regierungschefs-der-laender-1733248>> accessed 16 April 2020.

⁹⁰ Such orders are based on para 30 IfSG. The main issue the health authorities are facing in this regard is the enforcement of the quarantine orders, as they are not able to surveil every single quarantined individual. Enforcement is however made more effective by the possibility to work together with the police, under the so-called administrative assistance mechanism (*Amtshilfe*).

⁹¹ Gigi Deppe, 'Wie sich die Länder unterscheiden' (*tagesschau.de*, 24 March 2020) <<https://www.tagesschau.de/inland/corona-bundeslaender-101.html>> accessed 9 April 2020.



throughout the whole territory of Germany by agreeing on certain common rules.⁹² Calls for a reform of federalism are becoming louder, but should be postponed carefully until after the crisis.⁹³

When assessing the Bavarian measures, one encounters a factual problem between ULGs and RLGs relating to the curfews: Even though walks, sports and excursions in the fresh air with people of the same household are not forbidden, RLGs and even the State Government of Bavaria ask citizens of urban regions not to leave the ULG-area to visit local recreation areas.⁹⁴ However, a closer look at the population figures shows that the mandatory distance of at least 1.5 m from others on streets and green spaces cannot be met in urban areas, especially the City of Munich, if many city residents go outside (especially to public parks) at the same time. The almost unlimited public green space available in the nearby rural areas could provide a solution thereto. The current RLG strategy of preventing visitors from further away⁹⁵ is however in line with the general isolationist character of most measures taken in the fight against Covid-19.

As an ending of the pandemic is not yet in sight, LGs will be challenged continuously. Both the on-going enforcement and the (constitutionally mandated⁹⁶) continuous evaluation and adaptation of the above-mentioned measures to the current local circumstances will take up significant resources.

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⁹³ Nonetheless, the federal legislature already acted upon the crisis and amended the IfSG to enable the federal government to announce a national epidemic emergency (*Epidemische Lage von nationaler Tragweite*), this would enable the federal government (especially the Federal Minister of Health) to enact and implement more measures on the federal level. See for comments thereto: Andrea Kießling, 'Rechtssicherheit und Rechtsklarheit bei Ausgangssperren & Co? Zur geplanten minimalinvasiven Änderung des § 28 I IfSG' (*Junge Wissenschaft im Öffentlichen Recht*, 24 March 2020) <<https://www.juwiss.de/33-2020/>> and Anika Klafki, 'Neue Rechtsgrundlagen im Kampf gegen Covid-19' (*Verfassungsblog*, 25 March 2020) <<https://verfassungsblog.de/neue-rechtsgrundlagen-im-kampf-gegen-covid-19/>> both accessed 15 April 2020.

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⁹⁵ dpa, 'Bürgermeister am Tegernsee: Striktere Ausgangsbeschränkung' (*Süddeutsche Zeitung*, 23 March 2020) <<https://www.sueddeutsche.de/gesundheit/gesundheits-tgernsee-buergermeister-am-tegernsee-striktere-ausgangsbeschaenkung-dpa.urn-newsml-dpa-com-20090101-200323-99-439863>> accessed 2 April.

⁹⁶ As has been emphasized by the Federal Constitutional Court, see BVerfG, Beschluss der 2. Kammer des Ersten Senats vom 10. April 2020 - 1 BvQ 31/20 -, Rn. 16.



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4. Local Responsibilities and Public Services in Spain

4.1 The System of Local Government in Spain

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Types of Local Government

The Spanish Constitution assigns public authority to four levels of government: the central state, autonomous communities, provinces and municipalities. Spain consists of 17 autonomous communities, two autonomous cities (Ceuta and Melilla), and two types of local bodies: 50 provinces and 8,131 municipalities.

The Constitution includes two principles regarding local government: the right to 'local autonomy' from all public authorities including the state legislature, and legislative powers over local government given to the central state and autonomous communities. The constitutional recognition of a right to local autonomy (Article 137 of the Constitution [CE]) implies that the municipalities and provinces are not merely internal divisions of the autonomous communities, but part of the state as a whole. The Constitutional Court has ruled that the guarantee of local autonomy 'does not ensure specific contents or spheres of authority established and fixed once and for all, but rather the preservation of an institution in terms that are recognizable for the image that society has of such institution in each time and place' (Ruling of the Constitutional Court [STC] 32/1981). Local autonomy is contrary to any hierarchical position of the local governments under the state or the autonomous communities.

Legal Status of Local Governments

The legal system of local government falls under the concurrent jurisdiction of the state and the autonomous communities. The state has the power to establish the 'basis of the legal system of the public administrations'. On the other hand, the statutes of autonomy confer to the autonomous communities complementary powers over local government. In interpreting the Constitution together with the statutes of autonomy, the Constitutional Court has concluded that the Spanish local system has a 'two-fold nature'. The state is responsible for the 'fundamental' regulations while the autonomous communities are responsible for the 'non-fundamental' or so-called 'development' regulations (STC 214/1989, FJ 4). When regulating the local government system, both state and autonomous communities' laws must respect local autonomy, as directly guaranteed by Article 137 of the Constitution. But the Constitution does not specify what this local autonomy shall consist of, since it limits itself to a vague connection between local autonomy and 'matters of local interest', without specifying what these are. Consequently, both state and autonomous communities' laws have a wide margin for regulating the functions and organization of local governments.



The current fundamental regulations of the state on local government are primarily found in two Acts repeatedly amended: Law of the Basis of the Local System (LBRL) of 1985, and a Royal Legislative Decree of 2004, which approves the Restated Text of the Local Tax Authorities Act (LHL). This far, the state has interpreted its own 'fundamental' powers broadly, limiting the legislative and executive powers of the autonomous communities. The amendment of several statutes of autonomy since 2006 has not changed this situation.

Generally speaking, Spain's current local government system includes very limited state and autonomous community supervision or control on municipal and provincial activity. The Constitutional Court has ruled that the local autonomy guaranteed by Article 137 excludes these governmental controls to a great extent (STC 4/1981). In the absence of such controls, only courts are ordinarily responsible for oversight of the administrative activity of local councils. The LBRL replaces state and regional controls on local governments with a complex system of intergovernmental relations based on the idea of full respect for the powers of local institutions and the principle of cooperation. Basically, the LBRL establishes legal instruments to prevent conflicts between state and autonomous communities on one hand, and local authorities on the other while obliging local governments to share information with other government levels. To prevent or resolve conflicts of authority, the law promotes the 'free cooperation' of public administrations, either in the form of agreements or by participation in collaborative bodies, and by encouraging local level administrations to participate in the decision-making processes.

On this legal basis, the Spanish local government system has overall functioned satisfactorily since 1985. Local government is thoroughly democratized and has been receptive to new forms of participatory democracy. The elimination of controls from the upper-level territories has resulted in significant improvements to local public services, despite some cases of corruption in urban planning.

(A) Symmetry of the Local Government System

The Spanish local government system is very uniform and symmetrical due to the approaches of both the central state and most autonomous communities: the central state has established a common two-tier system with few variations for all Spain; and the autonomous communities have introduced very few particularities for the local government of their territory.

First, the state maintains a structure of local government that, to a large extent, was defined in 1833. That is, each village, town or city is a municipality. And the whole territory of Spain is divided into 50 provinces which currently (not originally) act as the second level of local government. Every municipality is integrated in a province.

Second, regional particularities within the 17 autonomous communities are scarce. It has been said before that each autonomous community has legislative power to develop the state basic legislation on local government. But since the state basic legislation is in fact very intense and extensive, and imposes a local government scheme made up of municipalities and provinces, the possibilities of innovation for any autonomous community are quite limited. Particular institutions have appeared especially in Catalonia and Aragon, which add a third level of



government: the townships (*comarcas*). Also, in the areas of some large cities such as Barcelona, Madrid, Vigo or Valencia there are some metropolitan government structures, normally focused on the management of very specific municipal services. The metropolitan area of Madrid does not have its own government structure because that space is occupied by the regional government (the Autonomous Community of Madrid).

Political and Social Context in Spain

Local politics is largely symmetrical to national and regional ones. National or regional parties also act at the local level. And this limits the effective autonomy of local politicians, even though they are elected locally. Currently, after the municipal elections of May 2019, most municipalities have leftist governments, although many of them are minoritarian. Some very important cities, such as Madrid, Malaga or Zaragoza, have conservative municipal governments.

Provincial governments are indirectly elected, by the councilors of the municipalities in each province. In that indirect election the political parties have great power. In this way, provincial governments normally reproduce municipal political majorities.

Beyond the local level, the general political situation shows common features to many other European countries: strong polarization of politics and absence of clear majorities. This has led to the current – and for the first time since 1978 – coalition government, between the traditional center-left Social Democratic Party (PSOE) and a new radical left-wing party (Unidas Podemos).

The general social and political situation is marked by two circumstances. A national economy that, although formally recovered from the great crisis of 2008, still shows very high unemployment rates (around 15 per cent of the active population), and where income inequalities dramatically increase. The second major social and political concern is the territorial integrity of Spain. Since approximately 2010 a very strong independence movement has emerged in Catalonia, which is one of the richest regions in Spain. This secessionist movement has the support of approximately 50 per cent of the population of the region.

More than 80 per cent of the 8,131 Spanish municipalities are very small having less than 5,000 inhabitants. Given the technical and economic incapacity of these municipalities, in many tasks they are replaced by the 50 provinces, which show a remarkable financial capacity. In some autonomous communities such as Catalonia or Aragon there are, in addition to the provinces, other intermediate supra-municipal local entities.

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4.2 Local Responsibilities and Public Services in Spain: An Introduction

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Responsibility Allocation System

State and autonomous region statutes confer powers to local entities in a wide range of matters. The Law of the Basis of the Local System (LBRL) ensures that these powers are related to a list of important action fields, such as urban planning, urban environment, water supply and sanitation services and collective transport, among others. In addition, this act sets up a limit to this allocation of powers: the possible duplication of responsibilities in different tiers of government (Article 25). Alongside this regulation, the LBRL (Article 26) requires municipalities to offer a list of services, which varies according to the number of inhabitants (less than 5,000, more than 20,000 and more than 50,000). In municipalities with less than 20,000 inhabitants, the provinces must coordinate the provision of some services, such as waste collection, water supply and sanitation services and street lighting. The number of inhabitants is an important difference that could be drawn between urban local governments (ULGs) and rural local governments (RLGs), considering that RLGs in Spain are significantly smaller than ULGs.

Local governments have a limited influence on the design of this responsibility allocation system. Capital cities usually play an important role in the policy-making processes of other tiers of government. So does the Spanish Association of Municipalities and Provinces (*Federación Española de Municipios y Provincias*, FEMP), which is the only and most important association of its kind, representing both ULGs and RLGs. Statutes often provide for the participation of this Association in different decision-making processes.

Forms of Public Service Management and Delivery

The Local Government Act lists several forms of public service management and delivery (Article 85 LBRL). On the one hand, there are modalities of direct service delivery, in which services are provided by the local government itself or by an entity (of a public or private legal nature) fully owned by the municipality alone or together with other municipalities or local authorities (in 2018 there were 4,331 of these entities); on the other hand, local governments can enter into public contracts by awarding service contracts or concessions governed by the Public Contracts Act (2017) (hereinafter LCSP) – these are always characterized as indirect service delivery forms.

When regulating these mechanisms of public service management, the LBRL makes no distinction between ULGs and RLGs. But there are important differences in practice. RLGs are usually smaller than ULGs and have fewer human and material resources. Therefore, they are



less capable of delivering public services on their own. In these cases, inter-municipal cooperation plays a very important role and so does the assistance role of the provinces helping RLGs rendering services. In both scenarios it is possible to create an inter-municipal cooperation scheme (*mancomunidad*); and/or to set up a new body, like a public company (jointly controlled by different municipalities or controlled by the province). Nevertheless, RLGs tend to prefer the first option, entering into agreements to establish inter-municipal cooperation schemes aimed at providing particular public services (i.e., waste collection, water supply). As for the ULGs, it is important to highlight the wave of remunicipalization processes that took place during the economic crisis (for instance, water supply in the City of Valladolid). Distrust of private contractors prompted a process of contracting-in certain public services in some municipalities (usually with left-wing governments). However, many of these attempts were frustrated because of the high transition costs and the legal and economic difficulties.

With regard to indirect service delivery, ULGs and RLGs are subject to the same legal provisions established in the LCSP. Smaller RLGs tend to resort to the general assistance of the province, as well as to the provincial centralized purchasing systems and those of the Spanish Association of Municipalities and Provinces (*Federación Española de Municipios y Provincias*). By doing that, they somewhat lose control over the contract awarding procedure.

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4.3 Digitalization of Rural Areas in Castilla y León

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Relevance of the Practice

Rural areas represent 85 per cent of the Spanish territory (6,678 municipalities), but only 20 per cent of the population live therein (7,686,815 inhabitants). These data reveal the cleavage that is increasingly opening up between urban local governments (ULGs) and rural local governments (RLGs). Territorial and social cohesion are threatened by rural depopulation and over-ageing population. Castilla y León, one of the largest regions in the European Union, located in the north of the country, is one of the autonomous regions that is most affected by these phenomena.



Figure 1: The Autonomous Community of Castilla y León in Northern Spain.⁹⁷

In 2017, the rural population accounted for 37 per cent of this region's total population (894,812 inhabitants), but this figure is rapidly decreasing. In the last 20 years the percentage of rural population fell by 14.3 per cent. Furthermore, the population of 65 and older reaches 23.3 per cent – almost five points above the national average (17.9 per cent). With the aim of reversing, or at least stopping, this trend, the Region of Castilla y León, along with its nine provinces, has launched the 'Smart Rural Territory' project. The main purpose of this project is to improve the delivery of public services in RLGs by using the smart technologies that are usually reserved to ULGs.

⁹⁷ Government Council of Castilla y León, 'Invertir en Castilla y León. Una apuesta segura' (*Junta de Castilla y León*, undated) <<https://invertirencastillayleon.com/>>.



Description of the Practice

Since 2007, Castilla y León has been fostering the development of the Network of Digital Municipalities in its territory. All the provinces and the most important municipalities of the region joined the Network, that coordinated and assisted local governments by the implementation of ICT on public service delivery. In this context, the Government Council of Castilla y León approved the Research and Innovation Strategy for Smart Specialization (RIS3) of Castilla y León 2014-2020, in accordance with two key cohesion policy objectives of the European Union for the 2014-2020 period: Research and Development, on the one hand, and Information Society, on the other. Due to the Covid-19 pandemic the Strategy has been extended until the end of 2021.

Within the framework of this Strategy, Castilla y León has implemented the 'Smart Rural Territory' project for the digitalization of rural areas. The nine provinces and some municipalities of the region have entered into an agreement with the autonomous region to participate in this project. The service contract for developing the software system was awarded to Telefonica, after being chosen among 12 other bidders that participated in the tendering procedure. A significant share of the project funding comes from the European Regional Development Fund (ERDF) (EUR 1,115,500); the rest is contributed by the Autonomous Region of Castilla y León (EUR 750,000).

The project consists in developing a common software platform for the coordinated and intelligent provision of certain local public services, namely waste collection, water management and street lighting. Monitoring of service performance is done by installing intelligent and efficient sensors -so far, 42 sensors for waste collection, 11 for water supply and 9 for street lighting. In the future other services will be included in the project, such as bicycle rental service, environmental monitoring and intelligent parking, with the aim of creating new business opportunities for enterprises 4.0.

The main purpose of the project is to enhance effectiveness and transparency in public service management. The new technologies used in the project provide real time data collected by the provinces. This information can be very useful for assessing and improving service delivery in each municipality. An important outcome is the possible adaptation of the service performance to the actual needs of the population.

Besides this purpose, the project pursues other social and economic objectives. The most important are the following:

- improving the quality of life and well-being of the population in a sustainable manner;
- maintaining population in rural areas;
- creating new business opportunities in RLGs that could attract population to rural areas.

Assessment of the Practice



The ‘Smart Rural Territory’ project is the first regional initiative aimed at developing a smart rural platform for all the public authorities in the region: provinces, municipalities and the autonomous region itself. It has to be regarded as a significant attempt to promote innovation and better public service delivery at a local level. Additionally, it is a successful example of inter-territorial cooperation. From a technological standpoint, one of the project’s most important achievements has been the deployment of the Narrow Band IoT (NBloT), a wireless communication technology requiring a very low power consumption. Nevertheless, the project is still in progress. Therefore, it is difficult to thoroughly assess its outcomes from a social and economic perspective, such as cost savings or creation of new business opportunities.

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4.4 Tragsa as an Instrument of Providing Essential Services in Rural Areas

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Relevance of the Practice

Rural areas represent 85 per cent of the Spanish territory (6,678 municipalities), but only 20 per cent of the population live therein (7,686,815 inhabitants). These data reveal the cleavage that is increasingly opening between urban local governments (ULGs) and rural local governments (RLGs). In this context, Tragsa (Transformación Agraria, S.A.) was created more than 40 years ago as a publicly owned company with the aim of providing essential services in the field of rural development and environmental protection.

Originally, Tragsa was conceived as a company owned solely by the state and the autonomous regions. Over the years, local entities such as provincial councils, island councils and the autonomous cities of Ceuta and Melilla, were given the opportunity to own a shareholding interest in Tragsa by means of acquisition of shares. Additionally, 30 years ago a subsidiary of Tragsa, named Tragsatec, was created to carry out specialized, technical activities in the areas of rural development, marine environment, and public health. As a result, Tragsa Group is nowadays one of the most important public groups of companies in the country, responsible for delivering a wide range of services mainly in rural settings under the control of 52 different public entities.

Description of the Practice

Tragsa is a vehicle and technical service of the administration. As a public company, it could be regarded as a form of privatization from an organizational perspective. As a rule, public companies and foundations are entities subject to private law, although they have to comply with many public law provisions regarding public procurement, staff recruitment and internal accounts. According to the law, Tragsa shall be required to execute exclusively, by itself or through its subsidiaries, the works entrusted to it by the shareholders in matters falling within the company's purpose. Currently, Tragsa's share capital amounts to more than EUR 32 million, made up of 29,579 shares. All the shares belong to public entities at the state, regional, and local levels, as shown in the following chart.



Table 1: Shareholders of Tragsa⁹⁸

Shareholders	Number of shares	Ownership Percentage
SEPI (State Public Company)	15.086	51,0024%
State	14.452	48,8252%
Autonomous Regions and Autonomous Cities (Ceuta and Melilla)	19	0,0646%
Provincial Councils	21	0,0714%
Island Councils	11	0,0374%

Tragsa's articles of association provide its organization and decision-making procedures, in accordance with the provisions of Act 9/2017 on Public Contracts (*Ley de Contratos del Sector Público*), regarding Tragsa Group. The company's governing bodies are composed of shareholders' representatives in proportion to their shareholding interest, ensuring representation of shareholders at the regional and local levels. Control over Tragsa's activities and decisions by public entities is ensured thereby, in order to fulfill EU Directives requirements of 'control similar to that exercised over its own departments' as part of public-public vertical cooperation (in-house providing). Furthermore, Tragsa has no choice but to accept a demand made by the competent authorities (the shareholders) and their fee proposal for its services. As the ECJ stated in its ruling in the case of *Asemfo v. Tragsa* (C-295/05), control is also sufficiently ensured.

Besides that, Tragsa and its subsidiaries may not participate in public procurement procedures put in place by the public authorities whose instrument they are (the shareholders), with the aim of protecting competition. However, in the absence of any tenderer, Tragsa may be entrusted with the execution of the activity subject to the public call for tenders.

Pursuant to the articles of association, Tragsa can pursue a wide range of tasks in rural areas, such as the following, among others:

- the carrying out of all types of actions works and supplies of services in respect of agriculture, stock-rearing, forestry, rural development, conservation and protection of nature and the environment, of aquaculture and fisheries, as well as the actions necessary for the improvement of the use and of the management of natural resources, in particular, the carrying out of works of conservation and enrichment of the historic Spanish patrimony in the countryside;
- agricultural activities, stock-rearing, forestry and aquaculture, and the marketing of the products thereof, administration and management of farms, mountains, agricultural, forestry environmental and nature protection centers, and the management of open spaces and natural resources;

⁹⁸ Prepared by the authors based on data supplied by Tragsa.



- the promotion, development, and adaptation of new techniques of new agricultural, forestry, environmental, aquacultural, or fishery equipment and nature protection systems, and systems for the logical use of natural resources;
- the manufacture and marketing of moveable goods for the logical use of the same character;
- the prevention of and campaign against plant and animal disasters and diseases and against forest fires and the performance of works and tasks of emergency technical support;
- the preparation of studies plans and projects and all types of advice and technical assistance and training in respect of agriculture, forestry, rural development, environmental protection and improvement, aquaculture and fisheries, nature conservation, as well as in respect of the use and management of natural resources.

Additionally, Tragsa and its subsidiaries can be called directly by the public authorities to take immediate action in emergencies in rural or urban areas. To that end, Tragsa and its subsidiaries are integrated into the arrangements for danger prevention and into action plans and shall be subject to implementing protocols.

Assessment of the Practice

Tragsa is an interesting example of insourcing in very important fields of action in rural areas throughout the country. Furthermore, it is prepared to provide civil protection and public services in urban settings only in case of emergency, when there is no time to award a public contract. A consequence of its effectiveness is the increase in the number of shareholders, as well as the creation of public companies at the regional level following suit. This kind of institutionalized/vertical cooperation appears to be very useful in a highly decentralized state as Spain with a large rural territory, where the outsourcing of many services across the country seems to be more expensive and ineffective. In addition, its preparedness for emergencies in urban areas enables a quick response in comparison with public procurement procedures. Nevertheless, its full compliance with European and national provisions on public contracts is controversial. The ownership percentage of autonomous regions and autonomous cities, provincial councils and island councils could be considered too small to fulfill EU Law requirements of control which is similar to that which they exercise over their own. Furthermore, Tragsa's corporate purpose comprises a very wide range of activities, which has also been perceived as an obstacle to control its activity. These facts justify the convenience of conducting in-depth research on Tragsa in the future.

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4.5 Nursing Homes for the Elderly

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Relevance of the Practice

Municipalities in Spain play an important role in the provision of residential services for the elderly. They are one of the many services that municipalities provide to the aging population and which can be defined as one of the most intrusive in the elderly's existence, as they deprive them of the autonomy to organize their everyday life. It is also undeniable how living in a nursing home affects considerably some fundamental rights of the resident, such as freedom of movement or the right to privacy.

In general, municipalities have the power to create and operate nursing homes by themselves and to do so according to plans or decisions rendered at the regional level, always with their consent. *De iure*, all municipalities have these powers, regardless of their size. Although there are some budgetary or financial provisions that may prevent municipalities, especially smaller ones, from creating these nursing homes, it can be said that all municipalities have, in principle, the power to do so.

Notwithstanding, the map of residential services for the elderly is not evenly drawn throughout Spain. The first factor that must be considered is the distribution of the elderly population. It can be said that the smaller (or more rural) the municipality, the older the population (on average). In rural municipalities, 28.5 per cent of the population is over 65 years old, whereas this percentage is 20 per cent in middle-sized municipalities and in urban municipalities, it sinks to 18.5 per cent.⁹⁹ Interestingly, however, this does not seem to be strongly related to the relative poverty risk ratios present in each municipality or region or the percentage of elderly people who own their own homes. On the contrary, this clearly shows the relevance of the rural-urban cleavage as regards nursing home policies and allows for a rich analysis of public services provided by municipalities and the influence the urban-rural divide exerts.

Description of the Practice

Nursing homes provide residential service to persons, especially elderly and/or dependent persons, who find themselves in need of such a residence. As such, they are part of the social services catalog that each autonomous region passes and executes since social assistance is under their jurisdiction according to the Spanish Constitution. Although this leads to relevant

⁹⁹ Rural municipalities are those with a population up to 2,000 inhabitants, middle-sized municipalities have a population between 2,001 and 10,000, whereas the population of urban municipalities is greater than 10,000 inhabitants.



differences in the regulation and provision of social services in each region, including residential services, it is nonetheless possible to study them as an aggregate.

From an organizational perspective, there are two basic types of nursing homes: public and private. Public nursing homes are those created and operated directly by a public body, without the intervention of private agents. Private homes, on the other hand, are created and held by private persons or entities, including those which comprise the Third Sector (associations, foundations, etc.). It is also possible that the administration, be it regional or local, implicates private nursing homes in order to provide residential services for which that same administration is responsible. Therefore, there are three main kinds of nursing homes: public, private, and private but publicly funded. This connects with the forms of public service management and delivery discussed above. What should be now underlined is that all autonomous regions have roughly the same regulations regarding the organization of nursing homes.

Hence, it is interesting to note that not all regions invest equally in nursing homes. Even when only the regions with an older population are considered, there are noteworthy differences between them. This may be due precisely to the fact that the aging population in some of these regions lives in rural areas. The dispersion of elderly persons in rural settings may well hinder the provision of 'aging in place' services (directly at home) and, in turn, encourage the creation of nursing homes and day-care facilities. That is the case of regions such as Extremadura, Castile and León, Aragon and Galicia, and contrasts with the highly urban region of the Basque Country. This also connects with the fact that elderly persons in rural areas need more intense attention due to the lack of proximity services, which is not the case for urban zones. This very housing dispersion may be a cause of the preference for nursing homes over 'aging in place' services, given the difficulty of providing with proximity services to such disperse populations.

The role of local governments as regards nursing homes is partially influenced by regional policy on that matter. Municipalities can choose to collaborate with the respective regional government in the execution of the regional residential policy or to develop their own, always within the confines of the applicable regulations. They may also opt for a combination of the two. Among the many elements that factor into the municipal decision regarding its nursing home policy, the financial element stands out (section 3 on local finances). In general, it can be said that municipalities have more financial incentives to collaborate with the regional government than to undertake their own policy execution. This is because the collaboration model will, as a rule, include provisions regarding the economic means to finance the residential service, which will be provided totally or partially by the regional government.

The existence of two decision levels regarding residential policy hinders, to some extent, the diagnosis of the causes of the uneven distribution of nursing homes. It is as yet unclear whether the abovementioned data regarding the distribution of nursing homes in rural and urban areas is a consequence of a regional policy choice, whether it is caused by local policy, or if it is the result of both.

Assessment of the Practice



The relevant differences in the provision of residential services not only between autonomous regions but also between regions with similarly aging population but the different urban-rural structure, suggest that this cleavage plays a decisive role in the nursing home policies of rural and urban municipalities. Therefore, this topic is ideally suited to provide another field in which to analyze the urban-rural axis and how it influences local policy-making and execution. Nursing homes also represent a fertile area in which to explore how local governments deliver public services, especially regarding the different forms in which this can take place according to the applicable regulations. The data, so far, clearly show us that the rural or urban nature of municipalities correlates strongly with the choice in relation to which public services are provided to the elderly and how this is carried out. These are, however, provisional results which would require a more thorough analysis to confirm this tentative assessment. The question that remains is to what extent local governments contribute to the provision of these services and their peculiar distribution between rural and urban areas when compared to the effects of regional policy on that same matter. This precise area is where the urban-rural cleavage between municipalities may play a decisive role.

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5. Local Responsibilities and Public Services in Switzerland

5.1 The System of Local Government in Switzerland

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Types of Local Governments

The Swiss model of federalism, based on the principle of subsidiarity, is structured in three layers of political representation, i.e. the Confederation (national government), the cantons and the municipalities. The Constitution of the Swiss Confederation, however, focuses on two layers only, the national and cantonal. In its Article 1 it not only lists the official 26 cantons but also gives them constitutive effect. In Article 3 it sets the rules for the power-sharing arrangements between the Confederation and the cantons: ‘The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.’ However, one must bear in mind that the term ‘competent’ would be more appropriate than ‘sovereign’ to describe the power vested in the cantons. In fact, the cantons have competence on all the tasks and duties that do not fall on the Confederation. But they nevertheless remain subdued to the Confederation, as the majority of the other cantons can impose their will on a canton via a revision of the Swiss Constitution. Indeed, according to the Article 48(a) of the Swiss Constitution, at the request of interested cantons, the Confederation may declare intercantonal agreements to be generally binding or require cantons to participate in intercantonal agreements in the following fields:

- the execution of criminal penalties and measures;
- school education in the matters specified in Article 62(4);
- cantonal institutions of higher education;
- cultural institutions of supra-regional importance; e. waste management;
- waste water treatment;
- urban transport;
- advanced medical science and specialist clinics;
- institutions for the rehabilitation and care of invalids.

The Federal Constitution does not attribute any competence to regulate local government to the national government. The municipalities are therefore created by and subjected to cantonal regulation. Thus, each canton defines the status and the competences of its municipalities in its cantonal constitution and legislation. We therefore differentiate 26 systems of municipalities corresponding to each of the 26 Swiss cantons. Still, one can identify five main types of municipalities:



- the classical political municipalities which are called *commune* in French, *comune* in Italian and *Gemeinde, Ortsgemeinde* or *Einwohnergemeinde* in German depending on the cantons. They are the basic general-purpose type of municipality;
- the so-called *bourgeoise* municipalities that have survived from the Middle Age in some cantons. When in 1798 the Helvetic Republic is proclaimed; the cantons are put on an equal footing and the inhabitants of the Swiss territory receive the Swiss citizenship. The original bourgeois do not agree to share the communal properties (lands, forests, etc.) with the new *bourgeoise*. Thus, the *bourgeoise* municipalities keep the control over the communal properties and the political municipalities guarantee the political rights to the new *bourgeoise*. As of today, in the cantons where such *bourgeoise* municipalities remain, they are mainly land owners and service providers (for example retirement houses, subsidized apartments, young offenders' facilities, etc.);
- the ecclesiastical community is the territorial division that is attached to a church and that is often called parish (*paroisse* in French). They are a single-purpose body;
- the so-called scholar commune *commune scolaire* is also a single-purpose body that deals with the school system on a certain territory within the limits assigned by the canton and that does not automatically match with the political municipality. For example, the school program remains a cantonal competence but the decision to build the school or to organize the carriage of school pupils is, to a large extent, delegated to the scholar municipalities;¹⁰⁰
- other types of municipalities that exist in some cantons.

Finally, one must add that the majority of the Swiss cantons have put in place an intermediary political level between the cantons and the municipalities called the district (*district* in French, *Bezirk, Verwaltungsregion, Verwaltungskreis, Wahlkreis, Amtei* or *Amt* in German, *distretto* in Italian). Out of the 26 cantons, only six do not have such a subdivision. These districts are very different from each other but they usually correspond to a group of municipalities. Again, the cantons hold the primary competence regarding their internal organization and scope.

Legal Status of Local Governments

The constitution framework that prevailed until 1999 did not mention municipalities, unless incidentally. Only the adoption of a new constitution that year ensured that local autonomy was granted constitutional protection.¹⁰¹ Article 50 reads as follows: (i) 'The autonomy of the communes is guaranteed in accordance with cantonal law.'; (ii) 'The Confederation shall take account in its activities of the possible consequences for the communes.'; (iii) 'In doing so, it shall take account of the special position of the cities and urban areas as well as the mountain regions.'

The effect of the new provision is limited. The extent of local autonomy remains in the hands of the cantons ('in accordance with cantonal law') and each of them thus continues to autonomously define its internal governance system. Only as far as cantonal law provides for

¹⁰⁰ Nicolas Schmitt, *Local Government in Switzerland: Organisation and Competences* (forthcoming).

¹⁰¹ Schmitt, *Local Government in Switzerland*, above.



municipal autonomy, it is guaranteed by the Federal Constitution. Consequently, municipal autonomy is justiciable and the Federal Supreme Court hears disputes concerning violations of it (Article 189(1)(e)). When it does so, it refers to the cantonal constitution and the cantonal legislative framework to determine the scope of local autonomy and decide whether the canton has impinged on it or not.

If the Article 50(2) of the Constitution constrains the Confederation, while fulfilling its tasks (e.g. military, national highways), to be considerate of municipalities, it does not confer additional jurisdiction on the Confederation. Essentially, this constitutional provision aims at fostering vertical cooperation between the three institutional levels of the Swiss federal structure but without bypassing the intermediary level, the cantons. The article refers specifically to the urban-rural divide and explicitly compels the national government to take account of the special priorities and needs of cities and urban areas on the one hand and mountain regions on the other hand. Among the concrete initiatives, the Tripartite Conference can be mentioned. It will be discussed at length further in the Country Report.

(A) Symmetry of the Local Government System

As mentioned above, there are 26 systems of local government corresponding to the 26 Swiss cantons. Thus, there are considerable differences regarding the rules that apply to urban local governments (ULGs) and rural local governments (RLGs), etc. For example, the Canton of Zürich has granted a special status to the cities of Zürich and Winterthur. Most cantons, however, are based on a symmetric system and allocate the same tasks and responsibilities to all municipalities, irrespective of their size.

Despite of the wide variety of cantonal local government arrangements, some common features can be identified. Schmitt demonstrates that all municipalities are run by an executive council of five to ten members who are elected by the citizens and who are compelled to take decisions on a collegial basis.¹⁰² While they traditionally are not paid for their work, the elected members of municipalities' councils in the ULGs tend to be professionals.

As regards legislative power, small municipalities (not to say RLGs) have citizens' assemblies that meet regularly to pass new laws and/or to elect the executive council members and other authorities. On the contrary, some cantons have compelled larger municipalities (ULGs) to create a parliament, i.e. an elected legislative body *representing* the citizens. As Schmitt notes, the Canton of Fribourg has adopted the Law on the Municipalities (*Loi sur les communes* in French) that requires eight specific municipalities to set up such a parliament while municipalities with over 600 inhabitants are only invited to do so.¹⁰³ Smaller municipalities can keep their citizens' assemblies.

Finally, Schmitt puts a light on an interesting paradox: while municipalities still enjoy a large set of competencies and have the right to collect taxes (and set the tax rates), judicial power is not granted to the municipalities. In fact, the lowest judicial level is, in some cantons, the

¹⁰² Schmitt, *Local Government in Switzerland*, above.

¹⁰³ *ibid.*



district's judge. Once again, one must look carefully at all the 26 cantonal organizations in order to grasp the subtleties of the local government systems that make Swiss federalism so complex.¹⁰⁴

Political and Social Context in Switzerland

If the prominent role and the many responsibilities conferred to the municipalities have long been praised and recognized as a key factor for the success of the Swiss political model, one must note that they tend to lose their luster. In fact, the degree of autonomy enjoyed by the municipalities decreases due to the increasing requirements (land use planning, environmental protection, social aid, waste management, etc.) from the Confederation, the cantons and, to some extent, the people themselves. The democratic pressure (complexity of the legal frameworks, over technical policy fields, procedural overload, etc.) on the municipalities is difficult to manage, especially for non-professional elected representatives and somehow encourages the centralization of the decision-making power and the pooling of local tasks and duties at a superior level.

In the last 30 years, Switzerland has thus witnessed a strong acceleration of the number of amalgamations of its municipalities. From more than 3,200 municipalities in 1999, the number has dropped to approximately 2,200 municipalities in 2018. While the rural municipalities tend to merge, it can be observed that urban municipalities tend instead to agglomerate¹⁰⁵ via different types of inter-municipal agreements. In any case, cantons and municipalities follow their own path with little interference from the national government. Today, approximately two thirds of the Swiss population is concentrated in the cities' centers¹⁰⁶ or agglomerations.

According to 2017 data, the 2,212 Swiss municipalities are relatively small, with 1,060 inhabitants on average, but very different in size. The smallest is Corippo with 12 permanent inhabitants and, like many others, spreads on less than 1 km². The largest in terms of territory is Scuol with 438.62 km² and the most populated is Zurich with 400,000 inhabitants. Many municipalities being unable to cope with the organizational requirements of today's life (school facilities, firefighter's service, water sanitation, etc.) and finding it difficult to recruit personnel, a strong process of merging local authorities has begun some sixty years ago and has accelerated in the last thirty years.

The four main coalition parties, namely the FDP. The Liberals, the Christian Democratic People's Party, the Social Democratic Party and the Swiss People's Party are all represented at the Federal level and in almost all the 26 cantons. Interestingly, in the urban cities, the

¹⁰⁴ *ibid.*

¹⁰⁵ According to the Federal Office of Statistics, the agglomeration can be defined as follows: An agglomeration is a group of municipalities with a total of more than 20,000 inhabitants (incl. overnight stays in converted hotels). It consists of a dense center and usually a crown. The delimitation of the crown is based on the intensity of the commuter flows.

¹⁰⁶ According to the Federal Office of Statistics, the city-center can be defined as follows: The municipality which, among the central municipalities of an agglomeration, has the highest number of HENs (= sum of inhabitants, work places and overnight stays in converted hotels) is considered as a city-center. In some cases, it is possible for an agglomeration to have several central cities.



traditional political parties are well organized and represented while in the smaller rural municipalities, political parties are less active. The peculiarity of small municipalities where every citizen knows each other means that people vote first for a specific candidate rather than for the parties.

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Loi cantonale fribourgeoise relative à l'encouragement aux fusions de communes [Fribourg Cantonal Law on the Encouragement of Fusions of Municipalities] of 9 December 2010, RSF 141.11

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5.2 Local Responsibilities and Public Services in Switzerland: An Introduction

Flavien Felder and Thea Bächler, *IFF Institute of Federalism, University of Fribourg*

The Swiss Federal Constitution provides in its Article 50 that the autonomy of the communes is guaranteed in accordance with cantonal law and that the Confederation shall take account in its activities of the possible consequences for the municipalities. In doing so, it shall take account of the special position of the cities and urban areas as well as mountain regions. This provision does not provide the Confederation with additional competence over the municipalities but rather invites the three institutional levels to intensify the vertical dialogues and to cooperate more efficiently.

In Switzerland, cantonal constitutions and statutory laws govern the legal frameworks in which municipalities operate. Therefore, the federal system is very heterogeneous, and it is difficult to have a clear picture of the municipalities' competencies in all 26 Swiss cantons. One would have to study carefully the legislation of each specific canton to define the degree of autonomy held by each municipality.

The academic literature confirms one general conclusion: the French-speaking cantons tend to be more centralized than the German-speaking cantons.¹⁰⁷ Scholars also point out that, for historical and geographical reasons, municipalities in the Canton of Grisons/Graubünden exercise a high degree of autonomy, while those in the cantons of Basel-City and Geneva enjoy relatively limited self-determination. In fact, the latter two cantons are sometimes called 'canton-city'¹⁰⁸ because of the small number of municipalities and the strong interdependence between the city and the canton. While the Canton of Basel was split in two half-cantons in 1833 (Basel-City and Basel-Country; the former being composed of only 3 municipalities), the Canton of Geneva has 40 municipalities and discussions to merge the municipalities with the Canton of Geneva come up regularly.

Therefore, in general terms municipalities enjoy what can be called a residual autonomy although the precise terminology differs from one canton to the other. They are competent when the local tasks are neither incumbent on the confederation nor on the canton.¹⁰⁹ Among them, taxation, policing, land planning, public roads, environment protection, public education, social aid, naturalization and culture typically lies in the hands of the municipalities although it is not an exclusive competence but usually shared with the cantons and often only executed by the municipalities. Of all of them, culture is probably the policy field in which municipalities have the most leeway.¹¹⁰

As the Swiss federal system typically is the result of independent states coming together to form a confederation, there is certainly no uniform scheme of responsibilities throughout the

¹⁰⁷ Stéphane Grodecki, 'Les compétences communales – comparaison intercantonale' in Thierry Tanquerel and François Bellanger (eds), *L'avenir juridique des communes* (Schulthess 2007) 74.

¹⁰⁸ *ibid* 74.

¹⁰⁹ *ibid* 28, 29.

¹¹⁰ Grodecki, 'Les compétences communales', above, 74.



country. Competencies in the policy fields listed above are neither distributed according to clear criteria nor according to the capabilities of the municipalities, whether rural or urban.

Interestingly, the relative broad municipal autonomy allows them to outsource some services to the private sector, including policing which of course calls into question the monopoly of the state for sovereign issues and challenges the democratic control over security forces.¹¹¹

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Guerry M, 'La privatisation de la sécurité et ses limites juridiques' (2006) 2 *La Semaine judiciaire* 141

Grodecki S, 'Les compétences communales – comparaison intercantonale' in Thierry Tanquerel and François Bellanger (eds), *L'avenir juridique des communes* (Schulthess 2007)

¹¹¹ Michael Guerry, 'La privatisation de la sécurité et ses limites juridiques' (2006) 2 *La Semaine judiciaire* 141.



5.3 The Allocation of Social Aid by the Municipalities

Flavien Felder and Thea Bächler, *IFF Institute of Federalism, University of Fribourg*

Relevance of the Practice

Article 115 of the Swiss Constitution states that persons in need shall be supported by their canton of residence. However, the subsidiarity principle allows the cantons to delegate competences to the municipalities and almost all 26 Swiss cantons have delegated this specific competence to the municipalities.¹¹² Although in this field municipalities do not have a legislative competence *per se* since the laws are adopted at the cantonal level, they have the obligation to enforce them at the local level. Not only can cantons push municipalities to comply with the cantonal legislation but they can also force them to follow the federal guidelines in the field of social aid, without violating the municipal autonomy guaranteed by the Federal Constitution in its Article 50.¹¹³

Today, social aid is seen as one of the best examples for the relevance of the subsidiarity principle. It is argued that the municipalities are closest to their citizens and know the economic and social reality best, which makes them most competent to deal with situations of poverty and to support persons in need. This has mainly a historic reasoning as the *Heimatorte* used to be in charge for people in poverty since the mediaeval times. Although this traditionally local responsibility has been maintained since then, tension raises because of the increasing financial burden on the municipalities, especially the rural ones. This may lead to a negative competition among municipalities.

This practice is particularly relevant for the report section 5 on intergovernmental relations of local government since smaller municipalities are often encouraged to collaborate. Indeed, they are allowed (and sometimes obliged) to group in ‘social aid regions’ and establish regional social aid services.

The practice is also relevant for the report section 3 on local financial arrangements as the cantons and the municipalities, when negotiating their financial contributions to the inter-municipal equalization fund, want the social assistance burden to be duly taken into account.

Description of the Practice

The purpose of social aid is to ensure the minimum subsistence level and to promote economic and personal independence. It also aims at integrating the people in need, who can neither be supported by their families nor claim other legal benefits. Thus, social aid must not be mistaken

¹¹² Only the cantons of Geneva, Tessin and Jura have assigned this task to a cantonal administration.

¹¹³ Stéphane Grodecki, ‘Les compétences communales – comparaison intercantonale’ in Thierry Tanquerel and François Bellanger (eds), *L’avenir juridique des communes* (Schulthess 2007) 69.



with other social insurances that cover a specific risk (health, accident, unemployment, disability, aging, maternity, etc.).¹¹⁴

For example, the Canton of Fribourg has 24 regional social services, all established by the municipalities which must collaborate in setting up joint social services. Some cover an urban population, while others are based in rural areas. The municipalities or group of municipalities which create a social service office also set up a social commission which represents the municipality in the field of social assistance. According to Article 20 of the Social Assistance Act (LASoc) of the Canton of Fribourg, the social commission has the last word since it:

- decides on the granting, refusal, modification, abolition and reimbursement of financial aid falling under Article 7; it determines the form, duration and amount;
- takes decisions relating to the social integration contract. It can, by decision, cancel or modify the contract if the person in need does not fulfill their obligations or if the measure proves to be inadequate;
- determines the social aid office to which beneficiaries are connected.

Interestingly, according to Article 32 of the LASoc, the operating costs of the social services are fully borne by the municipalities while the financial assistance and the costs linked to social integration measures are covered to 40 per cent by the canton and to 60 per cent by the municipalities. The financial burden on the municipalities is significant and contributes to political debates on the repartition of competencies among the canton and the municipalities.

Favre points out one difference between urban and rural social services. According to her, within social service offices located in urban municipalities, social workers are more numerous and can work in teams, but they are not always in direct contact with their social commission and their internal organization is usually more hierarchical.¹¹⁵

Assessment of the Practice

It would certainly be interesting to conduct a comparative study of the 26 Swiss cantons focusing on the social aid systems to identify urban-rural divides in greater detail. In 2016, the University of Applied Sciences released a study on the comparison of indicators of social assistance in 14 Swiss cities. According to its authors, urban and peri-urban cities are more concerned with social aid since the amount of persons in need - namely the ratio between the number of social assistance recipients and the total population - is higher in urban and peri-urban municipalities than in regions that are more rural.¹¹⁶ Unfortunately, they do not provide any specific recommendations on how to improve the urban-rural interplay.

¹¹⁴ *ibid.*

¹¹⁵ Elisa Favre, 'Une comparaison du fonctionnement de l'aide sociale dans six cantons romands' (Artias 2017) 3.

¹¹⁶ Beat Schmocker (ed), 'Comparaison des indicateurs de l'aide sociale de villes suisses' (2016 Report, Berner Fachhochschule 2017) <https://staedteinitiative.ch/cmsfiles/fr_indicateurs_aidesocial_rapport_2016.pdf>.



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5.4 Land Use Planning and the Struggle over Competencies: When the Judicial Power Comes into Play, the Recent Case of Fribourg

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

Relevance of the Practice

As regards land planning organization in Switzerland, the Confederation and the canton provide the principles and pass the laws and the ordinances while the communes are involved in different related fields but are particularly competent in local development planning (*plan d'aménagement local*).

Although the adoption of the local development plans is a local competence, the result of this procedure must comply with the cantonal master plan (*plan directeur cantonal*) which must be written in accordance with the Federal Act on Spatial Planning (SPA) and approved by the Confederation.

The revision of the SPA accepted by the Swiss citizens in 2013, aims at improving the control over the urbanization, at encouraging urban densification and at limiting the number of new building zones in rural areas decided at the local level. The rural municipalities are directly targeted by these new constraints and requirements and it can be said that the rural cantons that typically had a slower economic development compared to more urban cantons are the collateral victims of the revision. But they have no other choice than to limit the development of the built environment if they intend to safeguard their unspoiled landscapes, appreciated for relaxation and tourism. In the meantime, the Swiss population has repeatedly expressed their skepticism regarding the destruction of the countryside.

This practice is of importance for report section 3 on local financial arrangements since it would be interesting to study the impact of this new situation on the inter-municipality equalization formula in the canton. It would also be relevant for the report section 6 on people's participation in local decision-making as it is indisputable that local autonomy in land use planning has declined.

Description of the Practice

The Article 1 of the Federal Act on Spatial Planning (SPA) reads 'the Confederation, cantons and communes shall ensure that the land is used economically and that building areas are separate from the areas where building is not permitted. They shall coordinate their activities that have a spatial impact and implement a system of settlements that ensures the desired



development of the country. They shall take account of the natural environment and of the needs of the population and the economy'.¹¹⁷

The new building zones identified by the municipalities must be sized to meet the needs of the canton for the next fifteen years. Thus, municipalities can no longer decide extensions of the building area on its own competence level, as it was previously the case. Although exceptions are permitted by the new Federal Act on Spatial Planning, the conditions are very strict. All the reserves within the building zones must have been built; the availability of the building land must be guaranteed (deal with the owner is set); all necessary densification measures must have been taken and the coordination with the development of public transport must be ensured. The overarching goal being obviously to prevent the loss of agricultural land and of natural spaces.¹¹⁸

The new SPA gave the cantons a period of five years to adapt their own regulations, including the compliance of the cantonal master plans to the SPA. Due to the fact that the last cantonal master plan was approved in 2002, the Canton of Fribourg decided unilaterally to write a fresh new cantonal master plan. In December 2017, a few months before the state council of the canton Fribourg approved its new cantonal master plan, it was decided to assess the local development plans submitted by the municipalities during the last 5 years according to the former master plan (and thus the old SPA that was less binding). Thus, many large building zones proposed by the municipalities were approved by the canton and many construction works started.

This is when the cantonal court came into play. In September 2019, the cantonal court ruled against this operating mode, overturned the decision made by the cantonal office for land use planning and declared 57 local development plans as illegal. The State council of the canton Fribourg appealed to the federal court that confirmed the cantonal court's decision in October 2020. In the meantime, the construction works in the disputed building zones are frozen and the but thanks to a pragmatic and solution-oriented attitude of the majority of the municipalities concerned, 39 municipalities already revised their local development in order to comply with the new SPA. Some municipalities are currently studying the legal actions available against the cantonal Government of Fribourg, the only Swiss canton to find itself in such a problematic position. Other mayors publicly ruled out any resort to justice, acknowledging that the canton had naïvely hoped to simplify the work of the municipalities.

Assessment of the Practice

The practice is not only of interest for the lawyers as it deals specifically with the application of public law over time but it also raises many questions regarding the distribution of competencies between the three layers of the Swiss federal organization and brings into light the declining autonomy of the rural municipalities in this specific policy field. The role played

¹¹⁷ For an English translation of the Federal Act on Spatial Planning, see <<https://www.admin.ch/opc/en/classified-compilation/19790171/index.html>>.

¹¹⁸ 'Plan directeur cantonal' (*Etat de Fribourg*, 9 June 2020) <<https://www.fr.ch/daec/seca/sommaire/plan-directeur-cantonal>>.



by the judicial power in this context is not yet clear as the appeal is pending before the federal court but the case is challenging the trust placed in the administrative authorities by its citizens.

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Federal Act on Spatial Planning of 22 June 1979, SR 700
<<https://www.admin.ch/opc/en/classified-compilation/19790171/index.html>>

Federal Act on Rural Property Law of 4 October 1991, SR 211.412.11
<<https://www.admin.ch/opc/fr/classified-compilation/19910253/index.html>>

Scientific and Non-Scientific Publications:

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5.5 Promoting and Implementing Mobility Schemes in the Agglomeration of Fribourg

Flavien Felder, *IFF Institute of Federalism, University of Fribourg*

Relevance of the Practice

Transport systems have a direct impact on the urban-rural interplay as efficient transport services stimulate social interactions and urban growth while at the same time they generate more traffic and more pressure on the infrastructure, especially in urban centers. Since 2006, the federal government has invested more than CHF 8 billion in agglomeration projects¹¹⁹ and has implemented already three phases of its Agglomeration Transport Program (ATP) between 2008 and today. Through the ATP, the federal government is providing financial support to the agglomerations with the aim of encouraging coherent planning of transport and urban development. It is thus promoting urban development within the built-up area across municipal, cantonal and national boundaries, and expanding transport services where needed.

A focus on the Agglomeration of Fribourg is relevant because this institution has been very active on this front and has recently formally restructured itself to meet federal expectations and to seek the adhesion of additional rural municipalities in order to enlarge its scope of action.

This practice is related to report sections 4 and 5 on vertical and horizontal collaboration since the AggloFribourg has played an intermediary role between the primary federal level (the federal government), the second federal level (the cantons) and the third level (the municipalities).

Description of the Practice

In 2017, Swiss citizens and cantons voted the federal decree on the creation of a fund for national roads and agglomeration traffic called FORTA. This fund aims at improving the transport network throughout the country. As a result, the Federal Constitution was amended and its Article 86 now reads: '[a] fund shall be set up to finance the national highways and contributions towards measures to improve the road transport infrastructure in cities and urban areas'. Thus, the federal fund covers not only the national highways but also the mobility projects in the agglomerations. Through the Agglomeration Transport Program, the federal government finances transport projects in cities and agglomerations in which programs foster transport coordination and efficient urban development. Agglomeration programs can

¹¹⁹ 'Programme en faveur du trafic d'agglomération' (*Federal Office of Territorial Development, undated*) <<https://www.are.admin.ch/are/fr/home/mobilite/programmes-et-projets/pta.html#:~:text=Le%20PTA%20permet%20aux%20villes,effets%20sur%20le%20long%20terme>>.



therefore be seen as an important pillar of the federal government's agglomeration policy and of sustainable spatial development in Switzerland.

The AggloFribourg, originally created as an innovative supra-communal political institution comprising ten municipalities and later converted into an intermunicipal association in 2020,¹²⁰ carries out tasks of regional interest in the following areas: spatial planning, mobility, environmental protection, economic promotion, tourism promotion and promotion of cultural activities. Its mobility strategy includes all modes of transport and it applies throughout the territory of the member municipalities. Even though it indirectly aims at implementing the federal government's criteria in order to secure federal grants, the strategy responds to the challenges posed by urbanization and is adopted in coordination with the development of its territories. Thus, the Agglomeration of Fribourg promotes public transport and soft mobility in order to relieve congestion in critical sectors and to increase the travel capacity of the existing road networks.¹²¹

On 14 September 2021, the AggloFribourg submitted to the Confederation its Fourth Program of Agglomeration (PA4) for the period 2024-2028. It lists and describes a set of 100 infrastructure measures for a total investment of CHF 140 million during the period 2024-2028. Several measures concern nature and landscape, energy or urbanization but the majority of them are connected to mobility in general and 'gentle' mobility more specifically. It paves the road for an extension of the current public transport network by adding direct lines between its municipalities in order to decongest its center. The PA4 also plans the construction of a new section of its already existing 'gentle' mobility network called TransAgglo in order to encourage a modal shift from private cars to public transport and soft mobility.

Assessment of the Practice

The study of the mobility programs of the Fribourg Agglomeration is relevant, as this former supra-municipal association has been particularly proactive on this specific theme, even if, according to its critics, its original institutional nature (i.e. supra-municipal) has prevented it from taking more ambitious measures. While public transport has indeed been improved (frequency, number of lines, comfort, prices), the development of bicycle paths or modal mobility could have been more rapid and consistent. Those in favor of a pure and simple merger of the communes corresponding to the agglomeration's perimeter also criticize it for its slowness and lack of efficiency in this area, among others.

Another recurring criticism is linked to its lack of resources. Indeed, in order to obtain more cantonal and federal subsidies, agglomeration mobility projects must be supported by a larger number of municipalities, particularly rural ones. The fact that this institution was recently (January 2021) transformed into a simple form of inter-municipal collaboration aims, among

¹²⁰ Directorate for Institutions, Agriculture and Forests, 'Nouvelle loi sur les agglomérations : date d'entrée en vigueur fixée au 1er janvier 2021 et mesures pour garantir la transition' (*Canton of Fribourg*, 10 December 2020) <<https://www.fr.ch/diaf/actualites/nouvelle-loi-sur-les-agglomerations-date-dentree-en-vigueur-fixee-au-1er-janvier-2021-et-mesures-pour-garantir-la-transition>>.

¹²¹ 'Mobilité' (*Agglo Fribourg-Freiburg*, undated) <<https://www.agglo-fr.ch/mobilite>>.



other things, to increase its scope by including more rural municipalities on the outskirts of the canton's capital. It will be interesting to follow closely the next political developments in the canton following the rejection of the project to merge the communes of 'Grand Fribourg' (September 2021) as well as the reaction of the Confederation to the recently submitted new subsidy application (PA4), which hopes to meet certain federal requirements, although its scope of action has not yet been enlarged since its institutional remodeling.

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6. Local Responsibilities and Public Services in Austria

6.1 The System of Local Government in Austria

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Types of Local Governments

The Austrian Constitution defines Austria as a federal state formed by nine *Länder*. These are further divided into districts (*Bezirke*), administrative units executing tasks for both the *Länder* and the national government, where no statutory city exists. There are, however, 15 statutory cities (*Statutarstädte*) with a special statute, combining the authority and responsibilities of a municipality and a district. Municipalities (*Gemeinden*) are granted the right to self-government as independent administrative bodies in their sphere of competence by Article 116 of the Austrian Constitution. In sum, the three relevant levels of government are the central government, *Länder* and municipal level with some exceptions such as statutory cities which are assigned responsibilities from district level as well as the Capital City of Vienna, which is a municipality and a *Land* at the same time.

Legal Status of Local Governments

The Austrian Constitution of 1920 entrenches and protects municipalities not only as local administrative units but also as institutions of self-government (Article 116(1)). However, Articles 115–20 of the Constitution also extensively predetermine the organization of municipalities, their powers and intergovernmental relations. This tight national constitutional regime reduces the complementary power of the *Länder* under Article 115(2) of the Constitution to autonomously regulate local government through their own laws (*Gemeindeordnungen*) which results in a tendency towards uniformity.

As for their responsibilities, municipalities may only act lawfully on the basis of competences that are expressly conferred upon them and circumscribed by either national or *Land* legislation. However, this legislation *must* make them responsible for ‘all matters that exclusively or preponderantly concern the local community’ and are ‘suited to performance by the community within its local boundaries’ (Article 118(2) of the Austrian Constitution). Whether national and *Land* legislators observe this rule is checked by the Constitutional Court.

The own autonomous competences of municipalities on this basis, which exist in addition to the competences delegated from the national or *Land* government, include, in particular, the following areas: traffic and transport; gas, water and electricity supply; waste collection; sewage disposal; kindergarten, parts of education; elderly care; cemeteries; and cultural and sport facilities are all within the competences of municipal administration. For providing these public services, municipalities manage their own budget independently and can own assets of



all kind and operate economic enterprises. A major share of municipal budgets comes from intragovernmental transfers, which is a complex system of re-distribution of revenues across all levels of government.

(A) Symmetry of the Local Government System

The distribution of powers is uniform for all municipalities and therefore fails to take into account differences between bigger urban and smaller rural local governments. The Austrian Constitution adheres to the ‘principle of the abstract uniform municipality’, as enshrined already in 1920. This means that, with the exceptions of the above-mentioned statutory cities and the capital Vienna,¹²² all municipalities enjoy, also regarding their competences, equal legal status irrespective of variations in territorial size, population or economic and administrative capacities.

Performing the same tasks as big municipalities can be challenging for Austria’s smaller municipalities. The latter are the majority, as 55 per cent of 2,096 municipalities (in 2018) have less than 2,000 inhabitants and 88 per cent have less than 5,000 residents. Thus, Article 116(a) of the Austrian Constitution lays down the possibility for inter-municipal cooperation in the form of local authority associations (*Gemeindeverband*) to manage certain areas of responsibility such as water supply or waste management (single-purpose associations). Since 2011, the founding of multi-purpose associations (*Mehrzweckverband*) between municipalities is possible in order to go beyond coordination and centralize public service provision such as regional planning, economic development or welfare services. Even though it is legally possible, such multi-purpose associations are not very common.

Another form of cooperation is the possibility of municipalities merging into an institutionalized regional authority, the ‘territorial municipality’ (*Gebietsgemeinde*), as foreseen by Article 120 of the Constitution. The territorial municipality offers the possibility of bundling and/or controlling as many tasks as possible on a regional level, while at the same time maintaining decentralized provision of services by the individual local communities. The preservation of the local identity is guaranteed by own local mayors and municipal councils. However, this form of territorial merger (as opposed to amalgamations) is considered ‘dead law’, as it has never been put into practice.¹²³

Political and Social Context in Austria

The two major parties, the conservative Austrian People’s Party and the Social Democratic Party of Austria have historically shared the parliamentary majority, with the right-wing

¹²² Vienna has different competences because it is at the same time a municipality and one of the nine *Länder* (Arts 108-112 of the Constitution).

¹²³ Thomas Prorok and others, ‘Struktur, Steuerung und Finanzierung von kommunalen Aufgaben in Stadtregionen’ (KDZ 2013) <<https://www.kdz.eu/de/content/struktur-steuerung-und-finanzierung-von-kommunalen-aufgaben-stadtregionen>> accessed 31 January 2020.



Austrian Freedom Party ranging on third place with a significant share of votes since the 1990s. Other smaller parties are the Green Party and the liberal NEOS party. All mentioned parties are currently represented in different levels of government with different majorities. On the local level, apart from local independent candidate lists, the majority of municipalities are still split between the People's Party and the Social Democrats. This is also reflected in the organization of municipal associations, one being the Austrian Association of Municipalities (*Gemeindebund*), which is typically associated with the conservative party and smaller rural municipalities, and the Austrian Association of Cities and Towns (*Städtebund*), being organizationally closer to the Social Democrats and representative of larger cities.¹²⁴ However, this differentiation should be seen in a more historical context, as many municipalities and cities are members of both associations.

As of 2018, 52 per cent of Austria's population lived in municipalities with less than 10,000 inhabitants and 48 per cent in only 86 larger towns and cities, with Vienna alone having 21 per cent of the Austrian population.

As in many countries, urban and rural areas in Austria face different social problems and demographic challenges. Regarding poverty and social exclusion, for example, residents of Austria's urban areas are more at risk than their rural counterparts because of more single parents' households and more households with no or little income.¹²⁵ On the other hand, rural areas are confronted with out-migration especially of young people, women and highly educated people to cities. This has significant long-term effects on economic development, as well as the provision of health care and elderly care services.¹²⁶

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¹²⁴ The representation through either one of these associations is constitutionally regulated in Art 115(3) of the Constitution.

¹²⁵ Österreichischer Städtebund, 'Österreichs Städte in Zahlen' (2017) 42.

¹²⁶ Bundesministerium für Land- und Forstwirtschaft, Nachhaltigkeit und Wasserwirtschaft, 'Masterplan ländlicher Raum' (BMLFUW 2017).



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6.2 Local Responsibilities and Public Services in Austria: An Introduction

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Local governments in Austria perform their own autonomous functions (*eigener Wirkungsbereich*)¹²⁷ as well as tasks delegated by the federation and the respective *Land* (*übertragener Wirkungsbereich*). According to Article 116 of the Federal Constitution all municipalities have the same rights and duties (principle of the *Einheitsgemeinde*) except for the so-called 'statutory cities' (*Statutarstädte*), and Vienna which is both a municipality and a *Land*.¹²⁸

Local authorities, both urban (ULGs) and rural (RLGs) municipalities, are responsible for a wide range of public services, including the provision of infrastructure, kindergartens, primary schools, retirement homes, etc. As stated by the Federal Constitution they are independent economic entities (Article 116(2) of the Federal Constitution¹²⁹), and as such can contribute to the general economy with running their own industrial and commercial enterprises.

However, depending on the type of service, Austrian municipalities provide public services in different ways. The provision of public services ranges from self-operated municipal companies to public-private partnerships.¹³⁰

Particularly in the last two decades, the municipalities in Austria have increasingly become service providers for citizens rather than being mere administrative authorities. As there is no difference regarding the size or population of municipalities in the Federal Constitutional Law, fulfilling all these local responsibilities can be challenging especially for small Austrian

¹²⁷ Own responsibility tasks are local police, markets, traffic facilities, land use planning, social services, water, sanitation and waste, sports and leisure time facilities. In spite of their self-governing status, the municipalities in these respects have to obey *Länder* and federal laws and are subject to control in legal and efficiency terms. The *Länder* oversee the budgets of municipalities with reference to economy, profitability, and expediency. The standards of supervision vary considerably between the *Länder*.

¹²⁸ See the Introduction to the System of Local Government in Austria, report section 1.

¹²⁹ All municipalities are corporations and have the right to own property, run businesses, levy municipal taxes, and generally manage their own financial affairs: '*Die Gemeinde ist selbständiger Wirtschaftskörper. Sie hat das Recht, innerhalb der Schranken der allgemeinen Bundes-und Landesgesetze Vermögen aller Art zu besitzen, zu erwerben und darüber zu verfügen, wirtschaftliche Unternehmungen zu betreiben sowie im Rahmen der Finanzverfassung ihren Haushalt selbständig zu führen und Abgaben auszusprechen.*'

¹³⁰ The instruments of public service delivery include: Communal self-supply through enterprises owned and operated by the municipality itself. The *Stadtwerke* as an organizational part of the municipal administration formed the economic foundation of municipal autonomy. Communal enterprises as independent companies organized under private law. These 'out-sourced' communal enterprises do not only deliver public utilities' services but also increasingly operate cultural or social infrastructures. Communal ordering of services by commissioning private companies. In recent years the ordering of services has got a decisive boost and has replaced the communal enterprise as a means of providing public services in some areas.

Public procurement has become a central instrument for securing public utilities. With the Public service concession, the municipality transfers the right for full or partial provision of public services to a third party. Public Private Partnerships which are used in particular for areas of public utilities that require high infrastructure costs (e.g. hospitals, school campuses, etc.).



municipalities. Thus, inter-municipal cooperation is a key feature of local government in Austria to provide the necessary economies of scale and expertise that individual municipalities are lacking.¹³¹ Hence, municipal associations (*Gemeindeverbände*, Article 116(a)) play a crucial role in public service delivery managing, for example water supply or waste management.

Similar to most of the Western European countries ULGs and RLGs in Austria need to tackle different challenges in delivering public services. However, the decrease in public resources together with an increase of public tasks are the main challenges that all Austrian municipalities are facing, due to demographic changes (ageing, migration from rural areas to urban areas), climate change, societal changes (Generation Y, migration and segregation), land take and scarcity, energy transformation and digitization.

Impact of Demographic Changes on the Provision of Local Public Services

Rural migration and the influx of population into urban areas puts the provision of public services as the central cornerstones of good living conditions under more and more pressure and increases the urban-rural divide. Austria's population is growing, but there are significant regional differences and many rural regions are affected by population declines. It is the cities and their surrounding regions that are driving population growth in Austria. The population forecast of the Austrian Conference on Spatial Planning (ÖROK) from 2018¹³² assumes that the population of Austria will grow by further 710,000 people (+ 8.0 per cent) by 2040. The nine largest cities in Austria – Vienna, Graz, Linz, Salzburg, Innsbruck, Klagenfurt, Villach, Wels and St. Pölten – will account for almost two thirds of the country's forecast population growth in 2040.

In the past ten years, four out of ten Austrian municipalities have shrunk. The decline affects mainly RLGs in Upper Styria, Upper Carinthia and the northern *Waldviertel* and *Weinviertel* in Lower Austria. Most of these RLGs are located far away from economic centers and have poor transport connections.

On the one hand economically weak RLGs but also structurally weak ULGs are increasingly losing younger and well-educated people. At the same time, the proportion of elderly people is rising. The population forecast of the Austrian Conference on Spatial Planning (ÖROK) from 2018 believes that in some rural peripheral areas by 2040 more than a third of the population could be over 65 years old. Migration not only changes social life, it also has a negative impact on vacancy and real estate prices, making it more and more difficult to provide services of general interest close to home, and worsens employment and income prospects.

¹³¹ For detailed information on inter-municipal cooperation, see report section 4 on local government structure.

¹³² Österreichische Raumordnungskonferenz ÖROK, 'Kleinräumige Bevölkerungsprognose für Österreich 2018 bis 2040 mit einer Projektion bis 2060 und Modellfortschreibung bis 2075 (ÖROK-Prognose)' (ÖROK 2019) <https://www.oerok.gv.at/fileadmin/user_upload/Bilder/2.Reiter-Raum_u_Region/2.Daten_und_Grundlagen/Bevoelkerungsprognosen/Prognose_2018/Bericht_BevPrognose_2_018.pdf> accessed 7 November 2019.

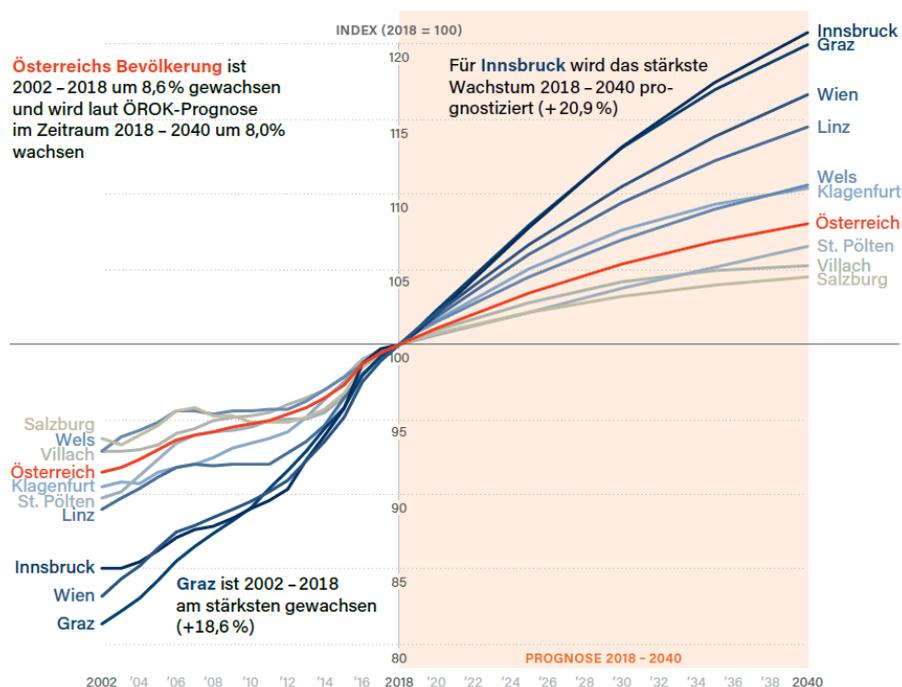


Figure 2: Statistik Austria (POPREG, ÖROK-Prognose 2018).¹³³

On the other hand, economically strong ULGs – especially the capital cities of the Austrian *Länder*– have benefited from immigration both from other Austrian regions and from abroad and are continuously growing (see figure above). But growth also means a shortage of housing, and public infrastructure is continuously reaching the limits of its capacity and resilience. The boost of commuters together with an unfavorable modal split and the coexistence of people with different ethnic and cultural backgrounds pose further challenges on growing ULGs in Austria.

In order to meet these challenges in both RLGs and ULGs, the promotion of cooperation between municipalities to provide public services in Austria has become a priority on the political agenda. Nonetheless, the approaches for RLGs and ULGs differ. Recognizing the importance of functional areas, ULGs are increasingly trying to develop integrated strategies and projects for territorial cooperation together with their often rural neighboring municipalities. This latest development was driven by the current Austrian spatial development concept (ÖREK 2011) and the partnership ‘Cooperation Platform Urban Regions’, which was mainly supported by the Austrian Association of Cities.¹³⁴

With regards to RLGs, the so-called *Master Plan ländlicher Raum* in 2017¹³⁵ gave a boost to rethinking municipal cooperation as a vital instrument, not only for the better delivering of public services, but also for safeguarding Austria’s rural areas. The *Masterplan ländlicher Raum* is the result of a broad participation process from autumn 2016 until summer 2017 aimed at

¹³³ Graph: Ramon Bauer and Tina Frank, ‘Österreichs Städte in Zahlen 2020’ (Österreichischer Städtebund 2020).

¹³⁴ See the Introduction to the Structure of Local Government in Austria, report section 4.1.

¹³⁵ Bundesministerium für Land- und Forstwirtschaft, Nachhaltigkeit und Wasserwirtschaft, ‘Masterplan ländlicher Raum’ (BMLFUW 2017) <<https://www.bmlrt.gv.at/service/publikationen/land/masterplan-laendlicher-raum.html>> accessed 6 November 2019.



sounding out possible solutions for strengthening the rural areas, which was initiated by the then Minister of Agriculture.

Regrettably, the *Masterplan ländlicher Raum* mainly targets RLGs, and lacks a holistic approach to spatial development. Although the *Masterplan ländlicher Raum* promotes inter-municipal cooperation as an important implementation tool for the provision of public services, it is not seen as a strategic instrument for integrated territorial development. Paying too less attention to functional areas where ULGs are essential partners for RLGs in delivering public services like public transport hinders a successful urban-rural interplay and contributes to the urban-rural divide.

With the current project of the Austrian Conference on Spatial Planning (ÖROK) on strengthening regional governance including both ULGs and RLGs a first important step towards fostering urban-rural linkages has been set.

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6.3 Organization of Public Transport in Austria Focusing on Functional Urban Regions (City Regions)

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Relevance of the Practice

A good example of the different challenges for urban local governments (ULGs) and rural local governments (RLGs) in delivering public services is public transit. Traffic is currently the most emitting sector in Austria with a share of 46 per cent of total CO₂ emissions. Since 1995 the total traffic volume in Austria has increased by 33 per cent and the availability of cars has doubled from 28 to 62 per cent. Only in Vienna automobile transportation has declined in favor of public transport and cycling.

In order to achieve the EU climate and energy targets by 2030, Austria's CO₂ emissions in the transport sector must be reduced by approx. 30 per cent or 7.8 million CO₂ equivalent in the next 10 years. This means that 25 per cent less fossil fuels should be used at Austrian petrol stations. At the same time, a shift towards environmentally friendly modes of transport (walking, cycling and public transport) has to be carried out in order to save a further 50 per cent of CO₂ emissions in the transport sector.

The nationwide mobility survey *Österreich unterwegs*¹³⁶ reveals major differences in the mobility behavior of the Austrian citizens, depending on the size of the municipality: Public transport only plays a crucial role in ULGs with more than 25,000 inhabitants. In smaller ULGs and RLGs the share of public transport is around 7 per cent, which corresponds to the share of cycling. In municipalities with low population density the private car determines the mobility behavior. In these areas automobile transportation needs to be redesigned in the direction of alternative drive systems or, in the case of shorter distances, a trend reversal towards 'active mobility' (cycling, walking) is required. To switch from private car to public transportation would mean to offer better and more public transportation. However, and from an economic point of view, the expansion of 'classic' public transportation in RLGs with low population density is hardly justifiable due to low cost recovery rates.

Description of the Practice

Public transit in functional urban areas plays a crucial role due to strong commuter flow between the city region's municipalities. On the border between the core cities (*Kernstadt*) and their surrounding municipalities of the Austrian city regions, three different transport

¹³⁶ The survey was conducted in 2014 by the Federal Ministry of Transport, Innovation and Technology, <https://www.bmvit.gv.at/themen/verkehrsplanung/statistik/oesterreich_unterwegs.html> accessed 12 November 2019.



systems with a multitude of actors from different governmental levels and from the private sector are coming together:

- rail transport as important element of regional transport services;
- urban public transport (provided by both rail and bus transport);
- regional bus transport for services outside the cities and in the surrounding municipalities of the city regions.

This requires coordinated planning and provision of public transit in order to guarantee citizens tailor-made public transport. Due to insufficient legal framework conditions and ambiguities in organization and responsibilities, the cross-border public transport between core cities and their neighboring municipalities, which are often RLGs, are more single projects than common and sustainable transport solutions embedded in joint mobility strategies.¹³⁷ Another stumbling block is the public transport financing. Regional and local traffic is primarily financed by the federal government and the *Länder*. Urban public transport instead, is financed almost solely by the cities itself (e.g. City of Linz or Graz). In some *Länder*, the municipalities are obliged to make financial contributions for the provision of regional and local traffic (e.g. in Vorarlberg, where public transport is provided by local authority associations). Other municipalities order additional public transport services both from public and private carriers at their own expense (e.g. the Municipality of Ebenthal in the City Region of Klagenfurt). Overall, the current public financing of public transit in Austria is quite complex, which often impedes a demand-oriented public transport in Austria's city regions.

The following two city-region-examples indicate the complexity of providing public transport in Austria:¹³⁸

City Region of St. Pölten (93,663 inhabitants, Lower Austria)

In the City Region of St. Pölten there are two organizing authorities (*Aufgabenträger*) for the provision of public transport: the regional transport association VOR (*Verkehrsverbundgesellschaft*) of the *Land* and the City of St. Pölten. The City of St. Pölten is responsible for urban public transport planning and finances the urban transportation with subsidies from the *Land*. The regional transport association, instead, is in charge of tariff setting, ordering and support in planning, both in the core city and the surrounding municipalities.

City Region of Klagenfurt (157,980 inhabitants, Carinthia)

In the City Region of Klagenfurt there are also two organizing authorities (*Aufgabenträger*) for the provision of public transport: the regional transport association VKG (*Verkehrsverbundgesellschaft*) of the *Land* and the City of Klagenfurt. Unlike to St. Pölten, the City of Klagenfurt does not only plan and finance the urban public transport; it also operates public transportation (bus traffic) with its communal utility enterprise *Stadtwerke Klagenfurt AG*. The regional transport association is liable for the regional rail traffic in the city region (*S-Bahn*) as well as for providing public (bus) transport in the other city region's municipalities. As in Lower Austria the regional transport association in Carinthia is in charge of tariff setting, ordering and support in planning.

¹³⁷ The competences for the provision of public traffic that crosses city limits are not clearly regulated by law.

¹³⁸ Karoline Mitterer and others, 'Stadtregionaler öffentlicher Verkehr. Organisation, Steuerung und Finanzierung im stadtreionalen öffentlichen Verkehr am Beispiel der Landeshauptstadt-Stadtregionen' (KDZ 2016) <<https://www.kdz.eu/de/file/20959/download>>.



Assessment of the Practice

The provision of public transport in both ULGs and RLGs is not just a question of affordability. The impact of financial inter-linkages and shared competencies in the Austrian public transport sector hinder efficient public transport supply at the local level. This applies in particular to functional urban regions, where urban and regional transport should be well connected. Hence, further development is needed in order to achieve better modal split solutions in favour of public transport and to improve both the supply and the quality of public transport without undermining the budgetary objectives of regional and local authorities. A common project¹³⁹ of the *Unterarbeitsgruppe stadtreionaler öffentlicher Verkehr* (UAG)¹⁴⁰ in 2017/2018 elaborated possible solutions and suggested various scenarios to address these challenges. The recommendations include in particular:

- clarification of responsibilities;
- establishment of processes and mechanisms for improved coordination and collaboration;
- financial planning security.

In this context it is worth mentioning the example of the *Nahverkehrs-Errichtungs-Gesellschaft m. b. H.* (NAVEG), a former company of the *Land* Upper Austria and the City of Linz, which was responsible for the development, coordination and financing of local transport projects in the greater Linz area. A contractual shared responsibility and commitment of the parties involved, as in the case of NAVeG, may lead to purposeful and efficient development of municipal cross-border transport projects. However, the successful further development of the current public transport system in Austria requires both the pooling of expenditure and task responsibilities for public transport and the implementation of the measures at all federal levels.

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¹³⁹ Karolina Mitterer, Nikola Hochholdingner and Andreas Valenta, 'Finanzierungsströme im ÖPNRV' (KDZ 2017) <<https://www.kdz.eu/de/file/20956/download>>; Stephanie Pasold and Christoph Schaaffkamp, 'Weiterentwicklungsansätze der Organisation, Steuerung und Finanzierung des stadtreionalen öffentlichen Personennah- und Regionalverkehrs' (KCW GmbH 2017) <https://www.staedtebund.gv.at/fileadmin/USERDATA/themenfelder/mobilitaet/Dateien/PK_09_2017_1_Endbericht_Org_Finanzierung_stadtreg_OePNRV.pdf>.

¹⁴⁰ The UAG consists of representatives of the capitals of the *Länder* (heads of the transport planning departments or staff members of the departments for financing public transport), the managing directors of the communal utility enterprises for municipal transport, the *Länder* Vienna, Lower Austria, Vorarlberg, Upper Austria and Styria (heads of the transport departments) and a representative of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.



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6.4 Municipal Water and Wastewater Management in Austria

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Relevance of the Practice

The public provision of water supply and wastewater disposal services as basic services of general interest has a long tradition in Austria. Predominantly provided by the public sector on local level, municipal water services are characterized by high quality, reliability and customer satisfaction. Approximately 95 per cent of the population are supplied by the public water supply and wastewater treatment network, the remaining 5 per cent are inhabitants of remote, self-sufficient settlements.¹⁴¹ Austrian consumers have a high level of confidence in their water service providers and 90 per cent of consumers were 'satisfied' or 'very satisfied' with their local services.¹⁴²

Austria's geographic conditions, particularly the heterogeneous topographic features, have created a contrasting settlement structure with a concentration of settlements in agglomeration regions and scattered settlements in peripheral, more alpine regions.¹⁴³ The spatial features and the particularly low population density in some regions are a challenge for the efficient provision of network-bound public services and have contributed to a municipal water sector structure that is characterized by a high share of small to very small service providers. Small-scale water suppliers and wastewater disposal facilities operate predominantly in rural and/or peripheral regions, and cooperative provision models are common. A few large municipal companies provide water services to larger cities and urban agglomerations, usually in delegated public management.

The joint consideration and regional perspective of spatial units in Austria has been recognized as a prerequisite for ensuring efficient and economically viable, reliable and resilient water supply and disposal infrastructure. However, the prevalence of cooperative provision models in Austria is not primarily a result of strategic planning, but often of simple necessity due to the lack of financial resources and structural weaknesses in peripheral regions.

¹⁴¹ Michael Getzner and others, 'Vergleich europäischer Systeme der Wasserversorgung und Abwasserentsorgung. Endbericht (Langfassung)' in *Informationen zur Umweltpolitik 197* (Kammer für Arbeiter und Angestellte 2018) 93-94.

¹⁴² Österreichische Vereinigung für das Gas- und Wasserfach (ÖVGW), 'Die österreichische Trinkwasserwirtschaft. Branchendaten und Fakten' (edn 3/2018, ÖVGW 2018) 35 <http://www.trinkwassertag.at/wp-content/uploads/2018/04/%C3%96VGW_Branchenbild_Trinkwasserwirtschaft_2018.pdf>.

¹⁴³ Markus Gruber and others, 'Raumordnung in Österreich und Bezüge zur Raumentwicklung und Regionalpolitik' (no 202, ÖROK 2016) 23 <https://publik.tuwien.ac.at/files/publik_271716.pdf>.



Description of the Practice

The domestic regulatory and legal framework of municipal water supply and disposal in Austria is formed by national legislation, particularly the Act on Water (WRG 1959, *Wasserrechtsgesetz*), the Drinking Water Ordinance (TWV 2001, *Trinkwasserverordnung*) and the Environmental Support Act (UFG 1993, *Umweltförderungsgesetz*) as well as sub-national legislation on the level of the *Länder*. Based on the principle of subsidiarity, the *Länder* hold legislative and executive competences for water supply and wastewater disposal, but the regulations are not uniform across the nine *Länder* due to the federal system (Article 10(1)(10) of the Austrian Constitution). The organization of water supply and wastewater disposal services falls within the local jurisdiction, as Austrian municipalities have the right to local self-administration and are competent in all matters that are in the exclusive or predominant interest of the local community (Article 118 of the Austrian Constitution). Based on this framework, some *Länder* explicitly allocate the responsibility for the provision of water supply and wastewater disposal services to the municipalities. However, in practice the vast majority of Austrian municipalities assume this responsibility in one way or another (either in direct, delegated public management or in associations with other municipalities), depending on the specifications of the *Länder* regarding the legal models of organization.

Sector Structure

The operational provision of water services on the local level is, with few exceptions, carried out by public companies, predominantly in direct or delegated public management. 95 per cent of drinking water supply and 96 per cent of wastewater disposal services are provided by public companies, and respectively 5 per cent and 4 per cent by private or mixed-economy companies.¹⁴⁴ There are noticeable differences in the applied management models and legal form of enterprises between urban and rural areas. In urban areas, such as Graz, Linz or Innsbruck, public water utilities are often jointly operated in delegated public management. This management model represents a formal privatization, as the provision of water utilities is outsourced to enterprises that operate under private law (*Eigengesellschaften* as AGs or GmbHs). However, the infrastructure remains in public ownership and typically the municipalities are the largest shareholders of such companies, with only a few exceptions of minor private shareholdings. This model may reduce the financial burden of growing municipalities as it allows extra-budgetary financing and investments. An exemption is the capital city, Vienna, which directly provides water supply and disposal services through an administrative division (MA 31).¹⁴⁵

In rural areas, water supply services are provided either through municipal companies (*Regiebetriebe*) in direct public management or bundled in water cooperatives (*Wassergenossenschaften*) or water associations (*Wasserverbände*). In general, water associations (*Wasserverbände*) and water cooperatives (*Wassergenossenschaften*) can be established for the same purposes, such as e.g. waste management or water supply and

¹⁴⁴ Denise Rasztovits, 'Ökonomische und räumliche Analyse der Trinkwasserversorgung und Abwasserentsorgung in den Ländern Österreich, Frankreich und Portugal' (dissertation, TU Vienna 2016) 52.

¹⁴⁵ See Getzner and others, 'Vergleich europäischer Systeme der Wasserversorgung und Abwasserentsorgung', above, 119-120.



wastewater disposal. In contrast to water cooperatives, water associations are established for the implementation of measures and activities that extend over an area of several municipalities and therefore, the members of associations are usually municipalities (and may also be cooperatives) (WRG 1959, Article 87). Water associations are one of the oldest examples for institutionalised inter-municipal cooperation for the provision of public services in Austria. Water cooperatives are constituted by three or more parties, which are typically property owners (WRG 1959, Article 74). This small-scale, bottom-up model is frequently used in remote and/or scattered rural settlements out of the need to compensate for the lack of financial resources of the responsible municipal authorities (especially considering the trend of population decline).¹⁴⁶ The wastewater services sector has a similar structure: many small treatment plants with low individual capacities dominate in rural-peripheral regions and mergers between municipalities in the form of wastewater associations (*Abwasserverbände*) are the most common model.¹⁴⁷

The prevalence of cooperative models as a particular feature of the Austrian municipal water sector is reflected in the figures: There are approximately 5,500 water suppliers in Austria, of which more than 60 per cent (3,400) are water cooperatives, 35 per cent (1,900) are municipal companies and around 3 per cent (165) are associations. The figures also show the structural differences between urban and rural regions: Despite their large shares in the total water suppliers, associations only provide services to about 10 per cent and cooperatives only to 11 per cent of the population. Almost 50 per cent of the population is supplied by municipal companies.¹⁴⁸ The majority (54 per cent) of the 1,927 wastewater treatment plants have a capacity of less than 500 PE, but 66 per cent of the total installed capacity in Austria is installed in 66 large treatment facilities, which are less than 4 per cent of the total treatment plants.¹⁴⁹

The small-scale structure of the Austrian municipal water sector is a financial factor, as cost recovery is more difficult to achieve for smaller municipalities and enterprises operating in rural areas. On average, the relation between expenses and revenues is 96 per cent in the water supply and 106 per cent in the wastewater disposal sector, while larger municipalities tend to reach cost recovery more often than smaller municipalities. This discrepancy can be explained with the disproportionately higher capital cost for smaller municipalities.¹⁵⁰ Privatization of public services is seen with skepticism in Austria and the regulatory framework was not adapted to ease the entry for private actors. Each local government may individually decide whether to delegate water services to private sector actors or not. While this option is still rarely exercised, financial pressures for local governments have been increasing over the last decades, particularly for rural municipalities facing structural weaknesses and/or

¹⁴⁶ See Roland T Nöbauer, *Genossenschaften als Chancen für Kommunen: Potentialanalyse genossenschaftlicher Infrastrukturbetriebe* (Diplomica 2012) 12.

¹⁴⁷ See Getzner and others, 'Vergleich europäischer Systeme der Wasserversorgung und Abwasserentsorgung', above, 120.

¹⁴⁸ ÖVGW, 'Die österreichische Trinkwasserwirtschaft', above, 15-16.

¹⁴⁹ Österreichischer Wasser- und Abfallwirtschaftsverband (ÖWAV), 'Branchenbild der österreichischen Abwasserwirtschaft 2020' (ÖWAV 2020) 20
<https://www.oewav.at/upload/medialibrary/oewav_bb_2020_gesamt_DL.pdf>.

¹⁵⁰ See Getzner and others, 'Vergleich europäischer Systeme der Wasserversorgung und Abwasserentsorgung', above 140.



population decline. Therefore, some smaller municipalities, e.g. Ruden, Kötschach-Mauthen (both Carinthia) or Ernsthofen (Lower Austria), have chosen the model of formal and material (=full) privatization of their wastewater disposal services.¹⁵¹

Assessment of the Practice

In general, the Austrian municipal water sector provides water supply and disposal services with a high level of quality, reliability, affordability and customer satisfaction. Hence, especially from the consumer's perspective, this area of public services can be considered good practice. Structural challenges and issues of the Austrian municipal water sector do not so much affect the quality provided but rather concern the long-term sustainability of the system's organization regarding existing financial disparities as well as the capacity and resilience of decentralized systems and thus the security of supply in peripheral regions. The urban-rural divide in the provision of network infrastructure is steadily increased by the trends of population decrease in peripheral regions and migration to agglomerations, both increasing the pressure on municipal budgets. They also disproportionately increase the risk of leaving rural municipalities and settlements, which cannot make use of economies of scale as a competitive advantage in the provision of municipal services, behind. Water associations and cooperatives have proven successful models to bridge gaps and counteract disparities between urban and rural regions in Austria. However, in the future, additional focus must be placed on the further regionalization and improved interplay of the highly decentralized systems, especially in order to increase their resilience and adaptability to the impacts of climate change.

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6.5 Social Housing: The Case of Vienna

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Relevance of the Practice

The provision of adequate and sufficient as well as affordable housing is widely regarded as a public responsibility in Austria, where social housing policy has a long tradition and local governments – urban as well as rural – have long played an active role within the system. In Austrian public debate and in the context of this practice entry, the term ‘social housing’ is understood as encompassing municipal housing as well as object- and subject-based public housing subsidies. The importance of the social housing sector in Austria varies across the nine *Länder* and its municipalities. The share of municipal housing units in total housing units, for example, amounts to 23 per cent in Vienna but less than 5 per cent in the other *Länder*. Subsidized housing units, mostly constructed by limited-profit housing cooperatives, are common in all *Länder*, in cities as well as small municipalities.¹⁵²

The City of Vienna has become the most prominent and an international best-practice example for social housing policy with its inclusive and collaborative approach. Up until today, Vienna directly constructed 220,000 municipal housing units and subsidized another 200,000 units constructed by limit-profit cooperatives, which in total provide living space for almost half (43 per cent) of the city’s population.¹⁵³ For the last 100 years, the capital city has also demonstrated the disproportional challenges in the provision of affordable housing for fast-growing metropolises. While this task constitutes a financial burden for communal budgets in general, it usually (and increasingly) weighs heavier for urban municipalities due to the current socio-economic and developmental trends of urbanization and increased heterogeneity of lifestyles and interests. In contrast, especially smaller, rural municipalities often face the difficulty of providing affordable living space while at the same time fighting the trends of depopulation and shrinkage, which could soon make the established infrastructure obsolete.

Over the last decades, Vienna’s public housing sector has undergone significant changes as it faces more diverse trends and pressures. It has developed from a purely public task to a sector with many public and private actors involved. Special models of financing and provision have emerged in order to secure public financing and the safeguarding of the municipal budget. Because of the sectors’ far-reaching significance and particularly the increasing shift towards the involvement of the private sector, the status quo of the practice in Vienna demands critical consideration. The Viennese example is directly relevant to all report sections due to the

¹⁵² Dennis Tamesberger, Johann Bacher and Harald Stöger, ‘Sozialer Wohnbau als Garant für günstigen Wohnraum’ (*A&W Blog*, 28 February 2020) <<https://awblog.at/sozialer-wohnbau-guenstiger-wohnraum/>>.

¹⁵³ Nikola Hochholdinginger and others, ‘Public Value des sozialen Wohnbaus. Der Beitrag des sozialen Wohnbaus zum gesellschaftlichen und sozialen Zusammenhalt in Wien’ (KDZ on behalf of Wiener Wohnen Kundenservice GmbH 2019); Michael Ludwig, ‘Das Wiener Modell – der soziale Wohnungsbau in Wien’ in Bund deutscher Baumeister, Architekten und Ingenieure (eds), *Jahrbuch 2017 mit Sachverständigenverzeichnis* (BDB 2017) 1.



structure, many actors and instruments of the system, its financial background as well as its participatory approach to the provision of affordable and inclusive high-quality living space.

Description of the Practice

The legal framework for social housing in Austria is characterized by high complexity and numerous provisions and intertwined instruments, whose implementation also varies strongly across the *Länder*. In general, national legislation such as the *Mietrechtsgesetz* (MRG, Tenancy Act), the *Wohnungseigentumsgesetz* (WEG, Law of Condominiums) and in particular the *Wohnungsgemeinnützigkeitsgesetz* (WGG, Limited Profit Housing Act) forms the legal basis for the practice. The execution of the WGG, which specifies the legal status and responsibilities of non-profit housing associations as well as provisions regarding the financing, allocation of and remuneration for subsidized housing units, falls within the responsibility of the *Länder* (WGG BGBl. 139/1979). Furthermore, on the legal level of the *Länder*, the nine *Wohnbauförderungsgesetze* (housing subsidy acts) contain specific guidelines for all public housing subsidies, encompassing provisions regarding qualitative requirements, eligibility and tariffs for subsidised rental objects as well as loan schemes for for-sale objects. The *Wohnbauförderung* is a powerful price-regulating political instrument in Austria and not directly tied to the WGG, but its provisions apply to the activities of limited-profit housing cooperatives. Until the 1990s, the social housing sector was primarily a communal task and housing subsidies were financed from communal housing construction taxes. Today, the *Länder* carry the financial and executive responsibility for this sector.¹⁵⁴ Differences in the regulations between urban and rural local governments within a *Land* may occur due to implementation and specific provisions of existing local instruments such as the *Flächenwidmungsplan* and *Bebauungsplan* (municipal zoning and building codes), e.g. regarding design and quality standards or the required amount of parking spaces.

Vienna has become a widely known example for social housing policy mainly due to its long tradition of the construction of public housing units, rooted in the socialist inter-war period also referred to as ‘Red Vienna’, during which most of the existing stock of municipal housing units was constructed. Until the 1980s, the City of Vienna itself was very active in the construction of municipal housing units, creating a stock of approximately 220,000 housing units in public ownership, which amounts to almost one fourth of the city’s total housing stock.¹⁵⁵ Today, municipal housing units are managed and maintained in direct public management through Wiener Wohnen, an enterprise of the City of Vienna and legally part of the city administration (*Magistratsabteilung 17*).

Over the last 40 years, Vienna has increasingly outsourced the tasks of constructing and managing affordable housing units to other public and private actors. The city offers subsidies for the construction of affordable housing units to limited-profit and commercial developers

¹⁵⁴ Anna Brunbauer, Markus Neuhaus, Felix Josef and Christoph Weber, ‘Soziale Wohnungswirtschaft in Österreich. Gemeindebau, Gemeinnützigkeit und Wohnraumförderung’ (FGW- Forschungsgesellschaft für Wohnen, Bauen und Planen 2019) 16.

¹⁵⁵ Ludwig, ‘Das Wiener Modell’, above, 1.



and also provides direct financial assistance to tenants (*Wohnbeihilfe*), both funded through a mix of federal and state taxes. The *Wohnbeihilfe* is an instrument of the *Länder*, which Vienna administers in its dual function as city-state. Approximately 51 per cent of the annual public subsidies in the area of affordable housing in Vienna are directed towards the construction of new buildings, 38 per cent towards the refurbishment of the existing stock and 11 per cent towards subject-based subsidies directly reducing the rent for eligible tenants.¹⁵⁶ Up until today, more than 200,000 housing units were created mainly through public subsidies.¹⁵⁷

Limited or non-profit housing cooperatives (*Gemeinnützige Bauvereinigungen* (GBV)) have long been central actors in the Viennese system of social housing. They operate as private enterprises (as cooperatives or corporations) but are subject to the *Wohnungsgemeinnützigkeitsgesetz* (WGG). The WGG stipulates the limited profitability of the cooperatives and that they, in contrast to private developers, must re-invest any excess capital in affordable housing units. In turn, they are granted significant tax advantages.¹⁵⁸ GBVs play a significant role for social housing in all of Austria. In total, they constructed and maintain more than 950,000 housing units, one fourth of which are located in Vienna.

However, despite the efforts, GBV President Karl Wurm estimates that there is still an annual lack of approximately 7,000 new affordable housing units in Vienna.¹⁵⁹ Therefore, in order to satisfy the demand of a growing urban population, the city incorporates commercial, for-profit actors in the provision of affordable housing since the 1990s. These developers have increasingly been receiving subsidies for the construction of new units, but in contrast to limited-profit cooperatives, are only bound to rent limits until the received subsidies have been repaid (typically 10-15 years).¹⁶⁰ Another Viennese approach for the inclusion of private capital in the provision of affordable housing was the introduction of a new spatial classification category, 'social housing', which was added to the municipal building code in 2019. It sets out that all projects with more than 5,000 m² living area on plots reallocated to building land are subject to long-term rent control for two thirds of the total units.¹⁶¹

New housing projects that are either to be constructed on municipal land or with the support of public subsidies are initiated through public competitions, so-called *Bauträgerwettbewerbe*. These competitions aim at the creation of socially and ecologically sustainable and innovative housing units and are often oriented along one particular theme (e.g. intergenerational or cultural housing, wooden construction etc.). All limited-profit and commercial developers are

¹⁵⁶ *ibid* 6.

¹⁵⁷ Wohnservice Wien (ed), 'Wohnberatung Wien: Alle Informationen über den sozialen Wohnbau' (10th edn, 2021) <https://wohnberatung-wien.at/fileadmin/user_upload/Wohnberatung_Wien_Broschuere_Web.pdf> 11 accessed 26 July 2021

¹⁵⁸ Ludwig, 'Das Wiener Modell', above, 9.

¹⁵⁹ Martin Putschögl, 'Zu viele große, teure Wohnungen in Wien' (*Der Standard*, 6 June 2018) <<https://www.derstandard.at/story/2000081022212/zuviele-grosse-teure-wohnungen-in-wien->

¹⁶⁰ Karl Wurm, 'Wohnbaugenossenschaften & gemeinnütziger Wohnbau in Österreich Teil 1' (interview, 'Genoschaft' blog WU Forschungsinstitut für Kooperationen und Genossenschaften, 6 May 2019) <<https://www.wu.ac.at/ricc/geno-schaft/aktuelle-blogbeitraege/detail/wohnbaugenossenschaften-gemeinnuetziger-wohnbau-in-oesterreich-teil-1->

¹⁶¹ Gemeinnützige Bauvereinigungen Wien (GBV), 'Mehr Geförderter Wohnbau durch neue Widmungskategorie' (GBV, 7 December 2020) <<https://www.gbv-aktuell.at/wien/news/817-mehr-gefoerderter-wohnbau-durch-neue-widmungskategorie->



eligible to submit designs, which are then evaluated by an interdisciplinary expert panel as well as municipal representatives.¹⁶²

For more than two thirds of the population in Austria's largest cities, the capitals of the *Länder*, renting is the preferred form of accommodation. Furthermore, more than half of these urban dwellers rent from either limited-profit cooperatives (23 per cent) or municipal housing (16 per cent). The share of tenants in the rest, and predominantly rural areas, of Austria is only around 26 per cent. However, while private homeownership is the most common form in more rural areas, limited-profit cooperatives are the main type of landlords in the rental segments of medium and small size municipalities.¹⁶³

Vienna is a standalone example in Austria due to the extent of the city's activities in the area of social housing. But in the past, other Austrian cities and municipalities have too been active in the construction of municipal housing units and, like the capital, shifted their focus towards the subsidization of limited-profit and commercial actors in recent years. In contrast to the capital city, which still directly manages and maintains the municipal housing stock, delegated management of the formerly municipal units through GBVs is more common in small and medium-sized cities due to their more limited administrative capacities.

In general, there is a higher demand for affordable housing units in urban areas with typically higher rent levels than in rural areas, therefore these municipalities inherently face bigger pressure to provide affordable living space. They also need to take into consideration more complex quality aspects and heterogeneous needs, thus public competitions setting out specific requirements for subsidized projects are more common in larger municipalities. Furthermore, differences between the *Länder* as well as urban and rural municipalities occur particularly due to the respective implementation of the instrument *Wohnbauförderung*. Among others, this instrument pursues environmental policy objectives such as increasing and ensuring the thermal quality and energy efficiency of existing and new buildings. But while several existing strategies aim to curb Austria's high land consumption (approx. 13 ha/day of which 4.5 are building land), the current legal provisions of the *Wohnbauförderung* in most *Länder* appear to mainly increase current ecological issues. Most *Länder* heavily subsidize land-intensive single-family homes and the construction of excessive parking lots.¹⁶⁴ Due to the differences in the availability of building land and settlement patterns, this issue fuels urban sprawl and disproportionately affects rural rather than urban municipalities.

Assessment of the Practice

Similar to Sweden and the Netherlands, and in contrast to Great Britain and Germany, Austria has a large limited-profit housing sector. In general, the Austrian approach does achieve its most explicit objective, the creation of affordable housing units. Subject and object-based

¹⁶² See 'Bauträger-wettbewerbe' (*Wohnservice Wien*, undated) <<https://wohnservice-wien.at/wohnen/kommunaler-wohnbau/bautraegerwettbewerbe>> accessed 26 July 2021.

¹⁶³ Gerald Kössl, 'Mieten in den Landeshauptstädten Österreichs' (research brief, GBV 2020) 1.

¹⁶⁴ Alexis Mundt and others, 'Berichtsstandard Wohnbauförderung 2018' (IIBW, on behalf of Land Wien, Magistratsabteilung 50. IIBW 2018) 37.



subsidies are widely accessible and particularly the latter is estimated to have had significant curbing impact on the overall development of housing cost in Austria's municipalities, often making Austria an international best-practice example.¹⁶⁵

The country's international reputation in this area is rooted primarily in the long tradition of social housing in the City of Vienna. However, from today's perspective it must be questioned whether the current Austrian (and particularly Viennese) system of the provision of affordable housing can still live up to its reputation. In the last decades, municipalities have widely withdrawn as developers while private actors now dominate the activities in this segment. Current trends indicate increased activities of commercial actors in the subsidized housing sector in the future, a development that is contrary to the former socialist ideal of Red Vienna, a city providing inclusive and high-quality living space to all its citizens. This raises the question of whether we are still talking about the same 'Viennese model of social housing' and whether the current system is able to take into account processes and dynamics within the market and the society.

All large urban areas in Austria face a shortage in affordable housing units, which is steadily increased by rising rent levels. Out of socialist tradition, Viennese municipal housing units are spread across all city districts and, due to high income thresholds, are available to large segments of the population. Both these factors have long ensured a certain socio-economic diversity of the inhabitants of municipal housing units. But in recent years, Vienna has experienced a trend of differentiation between dwellers of municipal housing and subsidized housing units. Increasingly, those municipal and subsidized housing units characterized by older building fabric and located in less central areas of the city are inhabited by lower income households. Meanwhile, middle to upper income households inhabit the more modern or centrally located municipal and subsidized housing units. This process can to some extent be explained with the common entry barriers to subsidized housing units constructed by limited-profit cooperatives: In order to rent (or buy) such an apartment (at reduced rent), tenants must make an up-front financial contribution to the construction costs (*Finanzierungsbeitrag*). In contrast, there are no financial entry barriers to municipal housing units, which are accessible to the lowest income groups and assigned through waiting lists. This trend indicates that the city's most recent activities are not sufficient to ensure inclusivity and prevent the increased displacement of low-income groups. Another factor not to be underestimated in this context is the prevalence and influence of Airbnb on local housing markets, which in Vienna also affects municipal and subsidized housing, whereby their subletting in principle is not permitted. Subletting a municipal flat is expressly forbidden accordingly to the tenancy agreements. Failure to do so may result in termination. The same applies to cooperative flats: The termination provisions of the Tenancy Act and the Limited Profit Housing Act clearly state that the landlord may terminate a tenancy agreement if the tenant lease/sublet his flat entirely. However, in both cases 'in its entirety' applies. Subletting individual rooms is not prohibited.

In general, public expenses for social housing in Vienna (in all three categories, construction, rehabilitation and subject-based subsidies) have steadily decreased over the last years.¹⁶⁶ At

¹⁶⁵ *ibid* 5.

¹⁶⁶ Martin Putschögl, 'Immer weniger geförderte Wohnungen in Wien' (*Der Standard*, 8 October 2020) <<https://www.derstandard.at/story/2000120572617/immer-weniger-gefoerderte-wohnungen-in-wien>>.



the same time, subsidized housing projects have become more expensive mainly due to the *Bauträgerwettbewerbe*, which aim at ensuring the quality and social and ecological sustainability of large-scale housing projects but also drive up the additional costs in construction. These costs in turn increase the required *Finanzierungsbeiträge* for modern subsidized housing units, making them less available to low-income households. Recognizing the growing challenges, the City of Vienna has decided to take back on the task of directly constructing municipal housing units in 2015 (*Gemeindewohnung Neu*). Since 2020, around 3,700 new municipal flats are being implemented,¹⁶⁷ one third of which are ‘SMART’ units, geared towards the demand for more compact and affordable units.¹⁶⁸ The new municipal housing units will be offered at the same rent levels as the existing municipal and subsidized units (7.5 Euro/m²) and without the precondition of own capital for *Finanzierungsbeiträge*.

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¹⁶⁷ The first project with 120 ‘Gemeindewohnungen NEU’ in Vienna’s 10th district was already handed over to its residents at the beginning of November 2019.

¹⁶⁸ Wohnservice Wien (ed), ‘Wohnberatung Wien’, above, 15.



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7. Local Responsibilities and Public Services in Poland

7.1 The System of Local Government in Poland

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Types of Local Governments

Poland is a unitary state without any autonomous entities. As a consequence, a uniform system of territorial self-government exists throughout Poland. The traditions of territorial self-government date back to 1918 when, after 123 years of political oblivion, the Polish state was established. After World War II, Poland was an undemocratic and centralized state which led to, among other things, the liquidation of territorial self-government. The reconstruction of territorial self-government began in Poland with the political transformation after 1989. The first stage was the restoration of territorial self-government in communes (*gmina*) in 1990, then in 1999 the self-government in counties (*powiat*) and in voivodeships (*województwo*) was introduced.

The current Constitution of the Republic of Poland of 1997 introduces two types of territorial self-government, namely *local* self-government and *regional* self-government (Article 164). Currently in Poland (since 1999), territorial self-government is three-tier and it is structured as follows:

- self-government in communes as the basic level of local self-government;
- self-government in counties the second level of local self-government;
- self-government in voivodeships as regional self-government.

In addition, large municipalities (over 100,000 residents) may be granted the status and tasks of a counties (city with *powiat* rights/cities with *powiat* status).

Therefore, there are four levels of political representation in Poland: the state and three levels of territorial self-government.

At present (2020), there are 2,477 communes (*gmina*), including 1,555 rural *gminas*, 621 urban-rural *gminas* and 302 urban *gminas*. The population of *gminas* ranges from 1.7 million (the Capital City of Warsaw) to 1,300, and the average population of a Polish *gmina* amounts to 15,000. It means that in the comparison to other European countries, Poland's *gminas* are relatively large. If we take into account only urban *gminas*, the average population is 61,000, whereas in rural *gminas* the average population amounts to approximately 7,000. At the beginning of the political transformation in Poland in 1990, there were 2,383 *gminas*. It means that modifications introduced in the division into *gminas* have been rather minor.

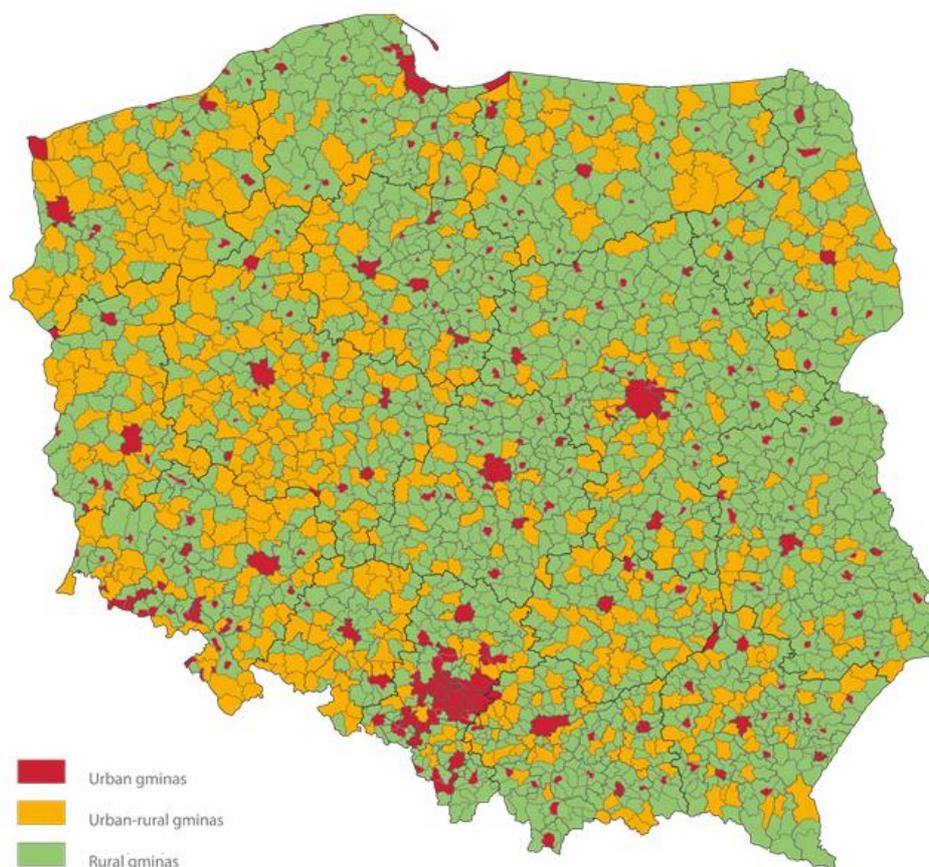


Figure 1: Spatial delimitation of *gminas* in Poland¹⁶⁹

The second tier of the local government, i.e. the level of counties (*powiat*), was established in Poland in 1999. At present, there are 314 *powiats* and 66 cities with *powiat* status. The population of *powiats* range from 21,500 to 373,500. The average population of a Polish *powiat* amounts to 82,000, whereas cities with *powiat* status have on average 191,000 inhabitants. When the territorial reform was being prepared in 1999, it was the establishment of *powiats* (as intermediate units between *gmina* and voivodeship) which gave rise to the greatest controversies. Dissenting voices against the introduction of an additional level of territorial structure (and, in consequence, a local government unit) were not rare. Even now the issue of *powiats* is under public debate, mainly due to the problem of the financing of *powiat* local government as well as functional weakness of smaller *powiats* (Polish *powiats* are small units in comparison to their counterparts in other European countries). The formation of seven new *powiats* in 2002 was the last major modification in the map of *powiats*.

The third level of territorial structure applies to voivodeships (*województwo*). The voivodeships correspond to the NUTS-2 regions (according to the European Nomenclature of Territorial Units for Statistics),¹⁷⁰ which are the basis for regional operational programs co-financed by

¹⁶⁹ 'Types of *gminas* and urban and rural areas' (*Statistics Poland*, 2020) <<https://stat.gov.pl/en/regional-statistics/classification-of-territorial-units/administrative-division-of-poland/types-of-gminas-and-urban-and-rural-areas/>> accessed 2 November 2019.

¹⁷⁰ Eurostat, 'Background' <<https://ec.europa.eu/eurostat/web/nuts/background>> accessed 2 November 2019.



the European Union. The year 1999 marked a crucial point in shaping the territory and political system of voivodeships. After lengthy preparations accompanied by political disputes, it was decided to form 16 voivodeships. It meant a departure from territorial fragmentation on a regional level (in the years 1975-1999 there were as many as 49 voivodeships in Poland). As a result of an enlarged territory, voivodeships as regions gained the right to self-government—thus, another stage of decentralization of Poland was reached. So far, the number of voivodeships has not been changed.¹⁷¹

Legal Status of Local Governments

The inclusion of the principle of subsidiarity¹⁷² in the preamble to the Constitution of the Republic of Poland of 1997 and the principle of decentralization¹⁷³ in the first chapter of the Constitution is of key importance for the legal status of self-government in Poland. Article 16 provides legal guarantees for local authorities: '(i) The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law. (ii) Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility.'

A comprehensive regulation concerning territorial self-government is contained in Chapter VII ('Local government') of the Constitution of the Republic of Poland of 1997.

Territorial self-government is based on democratic legitimacy. At each level, residents elect a representative body (the number of councilors currently ranges from 15 to 51, with the exception of Warsaw with 60 councilors). In addition, the head of the executive body (mayor) has been elected directly by the residents at the *gmina* level since 2002. Moreover, the Constitution of Poland guarantees residents of *gminas*, *powiats* and voivodeships the right to directly settle matters through the institution of a local referendum. A referendum on self-taxation of residents for public purposes is a special type of the local referendum. However, such a referendum can only be held at the *gmina* level.

Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities (Article 163 of the Constitution of the Republic of Poland of 1997). *Gmina* self-government, which has been granted the presumption of competence in matters of territorial self-government, is of fundamental importance. Article 164 establishes the following: '(i) The commune (*gmina*) shall be the basic unit of local government. (ii) Other units of regional and/or local government shall be specified by statute. (iii) The commune shall perform all tasks of local government not reserved to other units of local government.'

¹⁷¹ Mirska Andżelika, 'State policy on the formation and modernisation of Polish territorial structure' in Europäisches Zentrum für Föderalismus-Forschung Tübingen EZFF (ed), *Jahrbuch des Föderalismus 2018: Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2018).

¹⁷² 'Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities'.

¹⁷³ Article 15: 'The territorial system of the Republic of Poland shall ensure the decentralization of public power'.



Territorial self-government units are subject to the Constitution of the Republic of Poland and the Acts of the Polish State. Three system acts are of fundamental importance:

- the Act of 8 March 1990 on *Gmina* Self-Government,
- the Act of 5 June 1998 on *Powiat* Self-Government,
- the Act of 5 June 1998 on Voivodeship Self-Government.

The only criterion of supervision over the activity of self-government is the criterion of legality, supervision is exercised by government administration authorities (the Prime Minister, voivodes¹⁷⁴ and regarding financial matters - regional audit chambers). However, any disputes between the government administration and territorial self-government shall be settled by an administrative court. There are no authoritative interrelations between the tiers of territorial self-government – only voluntary cooperation is possible.

The Constitution divides public tasks performed by self-government into own tasks (financed from the budget of a self-government unit) and commissioned tasks (financed from the state budget).

Gmina self-government performs a wide range of public tasks which include, among others, issues related to local technical infrastructure, social infrastructure, education, health and order protection and safety. In accordance with the principle of subsidiarity, the *powiat* self-government 'assists' *gmina* in performing local tasks that exceed the capacity of a *gmina* ('supra-communal' local tasks). While the self-government of *gmina* and *powiat* implements a number of public services for local communities on an ongoing basis, the main role of voivodeship self-government is to facilitate economic development of regions. Among other things, the task of the voivodeship self-government is to manage EU structural funds.

(A) Symmetry of the Local Government System

There are three types of *gminas*:

- urban *gminas* (their boundaries correspond with the boundaries of the city forming the municipality);
- urban-rural *gminas*, which include both cities within administrative boundaries and areas outside city boundaries;
- rural *gminas* without cities within their territory.

Cities in Poland are towns and cities with city rights (granted by the central government). However, it is a formal classification based solely on an administrative criterion. The Act on *Gmina* Self-Government does not differentiate the tasks of according to this classification – all *gminas* have the same scope of activity. The exceptions are large urban *gminas* which also have the status of *powiat* (city with *powiat* rights). They carry out the tasks of both *gmina* and *powiat*. Currently, there are 66 of them and the general criterion for their establishment is a

¹⁷⁴ The voivodes (16) shall be the representative of the Council of Ministers in voivodeships. They are appointed by the Prime Minister. *Voivodeships* are the highest-level administrative subdivision of Poland.



population over 100,000. However, some local government politicians claim that this threshold should be reduced to 50,000¹⁷⁵.

On the other hand, the need is recognized to merge the cities with the *powiat* rights and *powiats* whose authorities are seated in the said cities due to significant disproportions in the institutional potential of *powiats*. Government analyses indicated a significantly higher potential of cities with *powiat* rights and a particularly low potential of *powiats* without large urban centers. The data show that *powiats* without large cities have significantly scarcer resources allocated to the fulfilment of public tasks of *powiats*¹⁷⁶.

Public tasks may be performed by individual self-government units independently or by way of cooperation with other self-government units (inter-municipal cooperatives). Self-governments of a given level may cooperate with each other (cooperation between *gminas*, between *powiats*, between voivodeships). Moreover, cooperation between the levels is also possible: since 2016, unions of *powiats* and *gminas* may be established. The form of the *powiat-gmina* union is intended for the implementation of tasks that exceed the competence of one tier of self-government. The aim was to enhance the independence and operational flexibility of territorial self-government units. It can also be interpreted as an attempt to address the problems occurring mainly in metropolitan areas.

The legal form of the union of *gminas* (union of *powiats*, union of *gmina* and *powiat*) requires the establishment of a new legal person to perform part of the tasks of the self-government. Unions of *gminas* are a very popular form of performing self-government tasks (currently there are 313 of them in Poland and they include from 2 to 49 *gminas*). There are 7 *powiat* unions and 8 *powiat-gmina* unions. Their tasks involve mainly the organization of common local public transport. The same applies to education as only a uniform system of education from primary schools (which is the responsibility of *gminas*) to secondary schools (which are subject to *powiats*) can resolve demographic problems or fulfil the expectations of the local labor market.

The performed public tasks may also be modified through ‘delegating’ public tasks by a territorial self-government unit to another territorial self-government unit. This is done by way of a voluntary agreement.

‘Commissioning’ tasks to the self-government by the government administration is a different matter – if they are commissioned by virtue of the law, they are imposed on the self-government ‘from the top’ (together, of course, with financial resources from the Polish state budget). Polish self-governments indicate that those funds are often insufficient.

¹⁷⁵ ‘Interpelacja nr 5867 do Ministra Spraw Wewnętrznych i Administracji’ (*Sejm Rzeczypospolitej Polskiej*) <<http://orka2.sejm.gov.pl/IZ5.nsf/main/2AE373E5>> accessed 1 July 2019.

¹⁷⁶ ‘Zasadniczy, trójstopniowy podział terytorialny państwa’ (*Ministerstwo Spraw Wewnętrznych i Administracji*, 31 May 2001) <<https://archiwum.mswia.gov.pl/pl/aktualnosci/1644,dok.html>> accessed 1 July 2019.



Political and Social Context in Poland

Compared to other countries, the national political parties are in Poland not very strongly represented at the local government level.¹⁷⁷ To gain a stronger voice, self-governments attempted to create a nationwide political movement of mayors of large cities. For example, in 2011 Union of Mayors – Citizens to the Senate¹⁷⁸ (*Unia Prezydentów – Obywatele do Senatu*) was established and it put forward its candidates in the elections to the upper house of the Polish Parliament – Senate (majority voting system applies). The Local Government Movement ‘Non-Partisans’ (*Ruch Samorządowy ‘Bezpartyjni’*) was also established, consisting of mayors and councilors. The purpose of the movement is to be an alternative to political parties in local government elections (primarily at the level of the voivodeship self-government).

However, if we analyze the results of local government elections, the influence of national political parties clearly diminishes, the lower the level of government. Starting from the highest level, i.e. the 16 voivodeship self-governments, it is basically political parties that dominate the elections to the voivodeship assemblies. In the local government elections of 2018, candidates of national parties received a total of 89.4 per cent of votes. The Local Government Movement ‘Non-Partisans’ gained 5.28 per cent of the country's vote. Regional groupings received marginal support, except for three voivodeships. In the Opolskie Voivodeship, ‘The German Minority Electoral Committee’ traditionally receives strong support (in 2018 – 14.64 per cent). In two other voivodships, regional movements concentrated around local politicians obtained: 8.29 per cent of votes (the Lower Silesian Voivodeship: Electoral Committee of Voters ‘*With Dutkiewicz for Lower Silesia*’¹⁷⁹) and 5.26 per cent of votes (the Świętokrzyskie Voivodeship: Electoral Committee of Voters ‘*Wenta*’¹⁸⁰s *Świętokrzyskie Project*’).

At the *powiat* level, the presence of parties in the elections is weaker, in the 2018 elections the national parties won about 62 per cent of votes. At the level of *gminas*, the parties have obviously the smallest influence – local election initiatives prevail. In *gminas* with up to 20,000 inhabitants (single-mandate constituencies) national parties won about 27 per cent of votes. In *gminas* with over 20 000 inhabitants the figure was approx. 50 per cent.¹⁸¹ In rural *gminas*, traditionally, the peasants’ party – the Polish People’s Party (*Polskie Stronnictwo Ludowe*) – has played an important role. In the last elections, the importance of the Law and Justice Party

¹⁷⁷ Bukowski Michał, Jarosław Flis, Agnieszka Hess and Agnieszka Szymańska, *Rządzący i opozycja, partie sejmowe i lokalne w małopolskich wyborach samorządowych 2014* (Attyka 2016) 24.

¹⁷⁸ The Senate is the upper house of the [Polish Parliament](#), the lower house is the [Sejm](#). The Senate and the Sejm exercises legislative power in Poland. The Members of both houses are elected by direct election. The Senate consists of 100 senators, the Senate - 460 deputies.

¹⁷⁹ Rafał Dudkiewicz was from 2002 to 2018 the Mayor of Wrocław, the capital city of the Lower Silesian Voivodeship.

¹⁸⁰ Bogdan Wenta having run from his own committee and was *elected* as Mayor of *Kielce*, the capital of the Świętokrzyskie Voivodeship. For years related with handball, first as a player of the Polish national team and Germany. 2004 - 2012 was the coach of the Polish national handball team. One of the best handball player in history of Polish handball.

¹⁸¹ National Electoral Commission, ‘The Results of Local Elections 2018’ (*Local Government Elections 2018*, 30 June 2018) <<https://wybory2018.pkw.gov.pl/pl/dane-w-arkuszach>> accessed 14 December 2019.



(*Prawo i Sprawiedliwość*) has increased, reflecting the situation at the national government level.

The number and share of rural population in the total population of the country is declining. At the end of 2017, the rural population accounted for 39.9 per cent (in 1950 over 63 per cent)¹⁸². The *gminas'* population forecasts of the Polish Central Statistical Office (GUS) for 2017-2030 indicate, above all, a strong development of major urban agglomerations with adjacent areas. They will continue to attract people from more peripheral areas. At the same time, a continuation of the suburbanization process should be expected, which will lead to a significant increase in population in the *gminas* adjacent to big cities.¹⁸³ These changes are caused by lower prices of flats or house building costs and reflect the growing economic status which enables inhabitants to move to an area more beneficial in terms of being a 'greener environment'.¹⁸⁴ In 2018, 55 cities with *powiat* rights (there are 66 cities of this type in total) recorded a decrease in population compared to the previous year. These included cities that aspire to play the role of a metropolis (Poznań, Łódź, Bydgoszcz). Warsaw, the capital city of Poland recorded an increase. The number of *gminas* with less than 5,000 inhabitants is steadily growing. There are already approx. 800 of them.

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¹⁸² Stańczak Joanna and Znajewska Agnieszka, 'Population in Poland: Size and Structure by Territorial Division as of June 30, 2017' (Central Statistical Office, 2017) <https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5468/6/22/1/ludnosc_stan_i_struktura_w_przekroju_terytoryalnym_stan_w_dniu_30.06.2017.pdf> accessed 1 December 2019.

¹⁸³ 'Prognoza ludności gmin na lata 2017-2030' (*Statistics Poland*, 31 August 2017) <<https://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-gmin-na-lata-2017-2030-opracowanie-eksperymentalne,10,1.html>> accessed 1 December 2019.

¹⁸⁴ Małgorzata Waligórska, Zofia Kostrzewa, Maciej Potyra and Longina Rutkowska, 'Population Projection 2014-2050' (Central Statistical Office 2014) <<https://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-na-lata-2014-2050-opracowana-2014-r-,1,5.html>> accessed 1 December 2019.



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7.2 Local Responsibilities and Public Services in Poland: An Introduction

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The Polish local self-government provides mainly a wide range of public services. Decentralization was a fundamental element of the Polish transformation and is a fundamental principle of the Polish political system. The self-government is responsible for satisfying the needs of the residents on an ongoing basis, including taking care of safety and public order. These tasks are allocated in accordance with the principle of subsidiarity. For example, as regards road maintenance: certain roads are the responsibility of the *gmina*, others of the *powiat*, then there are regional roads and finally roads for which the Polish State assumes responsibility. The same applies to tasks related to education, health care and social care. Moreover, it is very common to delegate state tasks to be performed by self-governments (so that they are performed as close to the citizens as possible).

In the years 1990-1999, there was a simple scheme of performing public tasks in Poland: responsibility was taken over either by the *gmina* self-government or by the Polish state (bodies and offices of delegated government administration). However, during political transformation further decentralization was given priority, so works on support for *gminas* in performing local tasks were in progress. In 1999, the *powiat* self-government was established (which includes several *gminas* in its territory). The *powiat*, as a larger self-government unit, took over the local tasks of a higher level (e.g. the *gmina* is responsible for primary schools, while the *powiat* is responsible for secondary schools). The number of *gminas* in one *powiat* ranges from 3 to 19.¹⁸⁵

The exceptions are large urban *gminas* which due to their population and financial potential are able to handle higher-level tasks. They were granted the status of cities with *powiat* rights (one urban *gmina* (one city) corresponds to one *powiat*).

Therefore, *gmina* and *powiat* complement each other in order to provide services to the residents on an ongoing basis. However, the voivodeship self-government, established in 1999, is to play the role of a regional self-government, which has assumed some of the responsibility for the economic development of the regions from the state.

From the legal point of view, self-government units are to perform public tasks on their own behalf and on their own responsibility. Importantly, the law does not distinguish categories of tasks for urban or rural *gminas*. Self-governments may carry out these tasks independently, entrusting tasks to other self-governments, cooperating with other self-governments. They can also privatize tasks or use the instrument of a public-private partnership.

As far as cooperation in performing tasks is concerned, there are 313 inter-communal unions in Poland. Common waste management is very popular – there are 70 such communal unions. The largest union consists of 27 *gminas*. In total, 683 *gminas* are members of a union whose

¹⁸⁵ Rady Ministrów, 'Obwieszczenie Prezesa Rady Ministrów z dnia 23 sierpnia 2017 r. w sprawie wykazu gmin i powiatów wchodzących w skład województw' (*ISAP M.P. 2017 poz. 853*, 7 September 2017) <<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WMP20170000853>> accessed 1 July 2019.



objective is the common waste management, which accounts for 27.5 per cent of *gminas* in Poland¹⁸⁶.

Another practice is to delegate local government tasks to other entities. The differences in operating strategies between urban and rural *gminas* can also be observed in this area.

A *gmina* self-government may assign the management of a small school (up to 70 students) under an agreement to a legal entity that is not a self-government unit (e.g. an association, a foundation) or to a natural person. This solution protects small rural communities against the liquidation of schools.

Tasks may be also carried out under a public-private partnership (e.g. running a sewage treatment plant (Konstancin-Jeziorna, Osina), building a local road (Łazy), building a school and a sports hall (Piastów)).

In Poland, PPPs are established very carefully. In the history of Poland, 135 such partnerships have been recorded to date. The majority of the partnerships involve *gminas* which entered into 84 such agreements in total (urban *gminas* 39, rural *gminas* 25, urban and rural *gminas* 20). However, due to the fact that some *gminas* entered into more than one partnership, only 57 *gminas* in Poland have experience with such a form of public service provision. It accounts for 2.3 per cent of all *gminas*¹⁸⁷.

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¹⁸⁶ Ministry of Internal Affairs and Administration, 'Zarejestruj, zmień statut lub wyrejestruj związek międzygminny, związek powiatów, związek powiatowo-gminny' (*Serwis Rzeczypospolitej Polskiej*, 2 July 2019)
<<https://www.gov.pl/web/mswia/zarejestruj-zmien-statut-lub-wyrejestruj-zwiazek-miedzygminny-zwiazek-powiatow-zwiazek-powiatowo-gminny>> accessed 10 July 2019.

¹⁸⁷ 'Bazy projektów PPP' (*Platforma Partnerstwa Publiczno-Prywatnego*, 7 August 2019)
<http://www.ppp.gov.pl/baza/Strony/baza_projektow_ppp.aspx> accessed 4 July 2019.



7.3 The Provision of Local Public Transport

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Relevance of the Practice

The task related to the provision of local public transport is a particularly important, highly debated issue in Poland. The main responsibility in this respect lies with the *gmina*, but also with the *powiat* and the voivodeship (in the scope of supracommunal connections). Before 1989, a state-owned enterprise PKS (Motor Transport Company) conducted business in Poland. It was a monopolist on the market but maintained a very dense network of local connections of high frequency. Residents were used to the availability of public transport (aside from its quality). Due to the political transformation, PKS lost its monopoly and the responsibility for transport in Poland was fragmented. Different self-governments deal with this task with varying degrees of success. It should be borne in mind that efficient public transport ensures access to other public services (access to education, health care, culture), especially for children and the elderly. It also has an impact on the quality of the environment (pollution, traffic jams in cities).

Description of the Practice

Urban and rural *gminas* face other problems and challenges regarding the provision of local and regional transport.

Rural *gminas* are confronted with the problem of insufficient transport connections. The drastic reduction in public transport led to the implementation of management according to the NPM (New Public Management) model, i.e. privatization of public transport enterprises. Private entrepreneurs were eliminating unprofitable connections in rural areas. As a result, a phenomenon of transport exclusion of residents has occurred (and thus limited access to work, education, health care, culture, etc.). Residents of rural areas try to cope with this situation by purchasing cars (import of used, cheap cars). In some *gminas* there are more than 3,000 cars per 3,500 residents. This in turn poses the problem of air pollution and the utilization of old cars.

The NIK (Supreme Audit Office) report of 18 April 2016 shows that self-governments are not able to handle the statutory task of ensuring public transport.¹⁸⁸

The scale of the problem with local transport is different in urban areas, agglomerations and metropolitan areas. The problem here is how to organize a common transport network across administrative boundaries.

¹⁸⁸ Department of Infrastructure, 'Funkcjonowanie regionalnego pasażerskiego transportu drogowego' (*Najwyższa Izba Kontroli*, 25 May 2016) <<https://www.nik.gov.pl/plik/id,10841,vp,13179.pdf>> accessed 10 July 2019.



Assessment of the Practice

The scale of the problem with local transport is different in urban areas, agglomerations and metropolitan areas. The problem here is how to organize a common transport network across administrative boundaries.

This problem can be solved by the cooperation of self-governments. Since 2016, the unions of *gmina-powiat* may be established. Eight such unions have been formed, seven of which concern the common organization of public transport.

However, only 18 inter-communal unions out of 313 have public transport within the scope of their activity, of which 8 unions were established for one purpose only, i.e. public transport (the others are multi-purpose, e.g. environmental protection, sewerage, tourism, etc.)¹⁸⁹.

Therefore, the task of *gmina* self-government, which is to provide public transport, has various effects in the course of the operation of urban and rural self-governments. Rural self-governments encounter the problem of transport exclusion of residents (elimination of connections, lack of transport in general – lack of financial resources). Urban self-governments face the challenge of agglomeration and metropolitanization processes – the expectations of residents regarding common transport and fares valid beyond the administrative boundaries of *gminas* and *powiats*. When considering this task from a broader perspective, it may be treated as an activity intended to improve the mobility of residents. The domain of urban self-governments is innovative activities, such as the city bicycle system or the rental of city electric cars.

Performing this task affects the financial situation of self-governments (report section 3), may lead to structural changes through the formation of unions of self-governments to provide common transport services or to the cooperation with private entities under PPPs (report section 4). In view of the crisis in that area, the Polish Central Government has recently been very active and announced a program of financial support for self-governments. To the disappointment of the *gminas*, the voivodeship self-government (report section 5) will be the administrator of the funds. In this respect, the self-government may appeal directly to the residents, e.g. local referendums in Kraków and Wrocław on the construction of the underground railway (report section 6).

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7.4 Provision of Internet Infrastructure by Local Government: A Step Towards Smart Villages

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Relevance of the Practice

The new information technology has and will have a crucial impact on the quality of life in the urban and rural area.

In Poland in 2019 83 per cent households have Internet access at home. It was 90 per cent in large cities, 85.6 per cent in medium-sized cities and 84.6 per cent in rural areas. Poland attains an average result comparing to the other European Union countries. The highest rate of Internet access is in the Netherlands – 98 per cent of households has an access to the Internet. The lowest one occurs in Bulgaria which is 72 per cent. The average one in EU was 89 per cent.¹⁹⁰

There is no problem of lack of the Internet access in the common public perception in Poland. For this reason, the information provided by the Office of Electronic Communications of Poland is surprising. Almost 3.6 thousand inhabited places in Poland did not have access to the network in 2018. It also proves that the situation has worsened compared to 2017. Then, only 2.8 thousand places were 'white blanks' on the map of the Internet access.¹⁹¹ The following reasons of the phenomenon can be indicated. Firstly, mobile operators sometimes switch off and move the transmitters' masts. Secondly, bankruptcies occur among telecommunications companies. Thirdly, it may be the issue of inaccurate (imprecise) data submitted by operators to the Office of Electronic Communications. In the Office Electronic Communications Report dated 2020, the method of identifying a locality without Internet access has been changed. It is established that the previous reports comprised of uninhabited localities still included in the 'System for IDs and names of places'.¹⁹² The data verification proved 8 localities (with 15 inhabited houses) without Internet access in Poland.¹⁹³

However, there is still a problem with the network access in Poland as a large part of households is deprived of the Internet connections to meet today's expectations (so-called

¹⁹⁰ Information society in Poland, 'Results of statistical surveys in the years 2015–2019' (*Statistics Poland*, 16 December 2019) <<https://stat.gov.pl/en/topics/science-and-technology/information-society/>> accessed 1 July 2020, 152.

¹⁹¹ Urszula Zielińska, *Stan infrastruktury w Polsce w 2018 roku: przybyło białych plam na mapie internetu* <<https://cyfrowa.rp.pl/telekomunikacja/40911-stan-infrastruktury-w-polsce-w-2018-roku-przybylo-bialych-plam-na-mapie-internetu> 9 lipca 2019> accessed 1 July 2020.

¹⁹² The system is managed by the Central Statistical Office of Poland.

¹⁹³ Office of Electronic Communications, 'Report on the Telecommunications Market in Poland in 2019' (2020) 80 <https://www.uke.gov.pl/download/gfx/uke/pl/defaultaktualnosci/36/345/9/raport_o_stanie_ryнку_telekomunikacyjnego_w_polsce_w_2019_r_4.09.pdf> accessed 1 October 2020.



NGA, with a minimum speed of 30 Mb/s). In 2019, households (inhabited by people aged 16 – 74) with access to broadband fixed-line Internet (e.g. DSL) represented:

- in cities with more than 100,000 residents: 69.7 per cent;
- in cities below 100,000 residents: 61.4 per cent;
- in the villages: 55.7 per cent;
- in the villages (households created exclusively by farmers): 50.5 per cent.¹⁹⁴

This issue became even more apparent with the prospect of the pandemic Covid-19.

The main barriers to the development of digitization in the coming years include: low profitability and high costs of connecting the Internet network to places away from urban centers (the more peripheral the area, the worse the situation is), an ageing society, and thus, limited competences of this group with the Internet use, little awareness of the advantages of digital solutions.

Description of the Practice

Providing internet services is the domain of private enterprises. However, the public administration is responsible for building the information society in Poland. These tasks are divided between the central administration, regional government and local government. The EU funds are a major source of financing for the expansion of Internet networks in Poland. There are EUR 2,255.6 million in the Operational Program 'Digital Poland' 2014 – 2020.¹⁹⁵

The basic tasks of the regional government in terms of building the information society include:

- the development and implementation of a regional program of building the information society and its coordination with the strategic documents of the national and European level;
- the development and implementation of regional projects in terms of building IT networks;
- the coordination and support in the accomplishment of regional and sub-regional activities for the benefit of IT networks;
- the activities coordination in terms of launching public e-services;
- the support of economic potential of the region by ensuring the elimination of 'white blanks' in access to broadband Internet services;
- the activity coordination in terms of digital inclusion of residents;
- the activities support for the e-government establishment in the voivodship.

Local government activities focus on:

¹⁹⁴ 'The Use of Information and Communication Technologies in Public Administration Units, Enterprises and Households in 2019' (*Statistics Poland*, 1 June 2020) <<https://stat.gov.pl/obszary-tematyczne/nauka-i-technika-spoleczenstwo-informacyjne/spoleczenstwo-informacyjne/wykorzystanie-technologii-informacyjno-komunikacyjnych-w-jednostkach-administracji-publicznej-przedsiębiorstwach-i-gospodarstwach-domowych-w-2019-roku,3,18.html>> accessed 15 October 2020.

¹⁹⁵ The Ministry of Development Funds and Regional Policy <<https://www.polskacyfrowa.gov.pl>> accessed 20 July 2020.



- launching local information society services in terms of e-health, e-education, e-culture and e-administration;
- measures aimed at reducing the scale of the digital divide;
- supporting the investment competitiveness of the local market, e.g. by providing economic entities with access to the Internet and e-services.

The Act of 7 May 2010 on Supporting the Development of Telecommunications Networks and Services authorized the local government to perform a new task in the field of telecommunications. Therefore, the construction of telecommunications infrastructure has become the commune's own task - similarly, the construction of, for example, the sewage system, local roads or a gas network. Local governments can apply for EU funding from the Polish state budget, and create public-private partnerships.

The purpose of the act was to facilitate investments in modern telecommunications infrastructure and to provide access to broadband Internet to all citizens, regardless of the place of living - in the city or in the village. The activities of the local government should focus on implementing investments in the areas where the phenomenon of digital divide has been researched and commercial operators do not conduct and do not intend to conduct investments independently. The effective preventing of communes from independently running or participating in income-related projects will be the consequence of this approach.

Thus, local development strategies aimed at overcoming the digital divide between rural and urban areas and exploiting the rural development potential through connectivity and digitization are crucial.

Assessment of the Practice

A further outflow of people from peripheral areas, mainly rural, including both areas dominated by agriculture and small urban centers will be seen in Poland by 2030. Therefore, the pressure to support restructuring processes in rural areas will increase. One of the key factors determining current development is access to high-speed internet for residents (access to education, health care, culture, banking, etc.), entrepreneurs and public administration.

The private telecommunications operators cannot be forced by the law to build networks in unprofitable places. Therefore, the Act of 7 May 2010 on Supporting the Development of Telecommunications Networks and Services by Parliament made the local government responsible for counteracting the digital divide in its area. Through financial incentives (funds from the state budget, funds from the European Union), the central government intends to motivate the local government to act in this area.

The decision concerning the form of creating the broadband Internet networks can be made by local governments. The form may concern a budgetary establishment, public-private partnership or commissioning this task to a private company. It should be emphasized that this is a voluntary government task. The implementation of this task will be decided by a local government depending on social needs and its capabilities (similarly, in the case of, for example, the construction of a gas network). Moreover, the local government has to prove



that its activity in this regard will not distort competition on the local telecommunications market.

For this reason, EU funds provide a number of financial support programs as well as support programs from the Polish Government to motivate communes to perform this activity. The financial offer is referred especially to rural areas.

The most beneficial variants of investment and ICT network operation for the local government depend on the local government place and role on the telecommunications services market. The different situation is in large cities where local operators also build their networks and provide Internet access, cable TV services, etc. apart from the infrastructure of nationwide operators. The market is often monopolized by a single infrastructure owner and service provider in smaller towns.

The process of public consultation is crucial.¹⁹⁶ It allows to indicate areas in which the implementation of local government investments is justified, and to define Internet services concerning residents' interest.

Financing the construction of the Internet network by local governments may come from

- subventions or a targeted grant from the state budget;
- an EU fund;
- revenues from conducting telecommunications activities;
- own resources of local government units.

A resolution of the local government authority is necessary to start telecommunications activities and an Internet network construction. In addition, the information about the commencement of telecommunications activities must be announced on the website of the Bulletin of Public Information and submitted to the President of the Office of Electronic Communications¹⁹⁷ of Poland. The information must contain a description of the project and a justification necessary for the local government to prove that this activity does not distort competition on the local telecommunications market. The local government is also required to

¹⁹⁶ In this case, consultation is optional. The Act of 8 March 1990 on *gmina* Self-Government distinguishes obligatory (e.g. on changing the commune boundaries) and optional consultations 'in other important issues of *gmina*'. The rules and procedure for conducting consultations with citizens are defined by each *gmina* in its territory (it is a resolution of the commune council). For example, such consultations were conducted in the rural *Gmina* of Kochanowice (7,000 residents), in the rural *Gmina* of Mstów (10,000 residents), and the rural *Gmina* of Zabór (4,000 residents). See the respective websites of the municipalities of Kochanowice, <<http://kochanowice.pl/konsultacje-spoleczne-w-sprawie-budowy-sieci-swiatlowodowej-w-gminie-kochanowice/>>, Mstów, <<http://www.mstow.pl/art/911,inwestycje-konsultacje-spoleczne-w-sprawie-budowy-sieci-swiatlowodowej-w-gminie-mstow-02-02-2010>> and Zabór, <http://gminazabor.pl/PL/1000/343/KONSULTACJE_W_SPRAWIE_SIECI_SWIATLOWODOWEJ/k/> accessed 15 October 2020.

¹⁹⁷ The Office of Electronic Communications was established on 14 January 2006. The President of the Office of Electronic Communications is a central regulatory authority responsible for telecommunications and postal activities and frequency resources management. It's also a supervisory authority responsible for controlling compliance of products emitting or vulnerable to emission of electromagnetic field, including radio equipment placed on the market in Poland.



demonstrate the compatibility with other telecommunications networks established by public entities or financed from public funds.¹⁹⁸

Currently, (as of June 2020), 454 local government units performing such activities are registered in the 'Register of Local Government Units performing activities in the field of telecommunications' kept by the Office of Electronic Communications.¹⁹⁹ These are small rural communes and as well as the government of the Mazowieckie Voivodeship constructing an Internet network in rural areas.²⁰⁰

The Wi-Fi network is an alternative to broadband Internet. For instance, the WiFi4EU Initiative supports free wireless internet access in public spaces such as parks, squares, public buildings, libraries, health centers and museums in communes. Communes can apply for vouchers worth 15,000 euro within the WiFi4EU initiative. These vouchers are used to cover the costs of installing Wi-Fi hotspots in communes' public places not offering this type of free public access to the Internet yet.²⁰¹

Providing Internet access and countervailing digital exclusion is particularly important for the implementation of the smart village concept in Poland.

The concept of smart village is a response to the idea of a smart city. The aim is to countervail the divisions between villages and cities and to raise the standard of living of rural residents. However, the point is not to make the village resemble a city, but to have equal development opportunities. Likewise, this concept is also defined by the European Commission. Therefore, digital technologies and innovations can support the quality of life and a higher standard of public services for citizens, enable better use of resources, improve agricultural production, and reduce the burden of work. Finally, more environmentally friendly solutions can be created. Consequently, depopulation in rural areas is possible to be countervailed.²⁰² Certainly, the concept of 'smart' is much extensive referring to digital technologies and involves a range of social, economic and environmental innovation issues. However, it is difficult to implement the assumptions of this concept without access to the Internet.

¹⁹⁸ The Act of 7 May 2010 on Supporting the Development of Telecommunications Networks and Services.

¹⁹⁹ Ewelina Fornalczyk, 'Rejestr Jednostek Samorządu Terytorialnego wykonujących działalność w zakresie telekomunikacji' (*Urząd Komunikacji Elektronicznej*, 30 December 2019) <<https://bip.uke.gov.pl/rjst>> accessed 14 July 2020.

²⁰⁰ Joanna Czechowicz-Bieniek, 'Informacja prasowa - Zakończyła się budowa sieci szerokopasmowego internetu na Mazowszu – największy projekt informatyczny w Europie' (*Samorząd Województwa Mazowieckiego*, 23 December 2015) <<https://www.mazovia.pl/dla-mediow/informacje-prasowe/art,3577,zakonczyła-sie-budowa-sieci-szerokopasmowego-internetu-na-mazowszu-najwiekszy-projekt-informatyczny-w-europie.html>> accessed 15 July 2020.

²⁰¹ 'WiFi4EU - Free Wi-Fi for Europeans' (*European Commission*, last update 29 July 2020) <<https://ec.europa.eu/digital-single-market/en/wifi4eu-pytania-i-odpowiedzi>> accessed 15 July 2020.

²⁰² 'Badania Naukowe i wiedza' (*European Network for Rural Development*, 8 June 2020) <https://enrd.ec.europa.eu/smart-and-competitive-rural-areas/smart-villages/smart-villages-portal/eu-networks-organisations-research_pl> accessed 15 July 2020.



In Poland, the discussion on smart village is just initiated. Nevertheless, the first support programs and competitions financed from EU funds²⁰³ are already underway.²⁰⁴ This discussion contributes to rural development activities and the promotion of the concept of sustainable development.²⁰⁵ Thus, as well as cities can be 'smart' now, rural areas intended to become attractive for residents and entrepreneurs. Therefore, the digital exclusion of rural areas is one of the barriers to be overcome. In this respect, local governments can take action and join the process of building an information society in rural areas.

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Website of the Smart Villages Pilot Project, <<http://www.pilotproject-smartvillages.eu/>>

Website of the Institute of Rural and Agricultural Development of the Polish Academy of Sciences (IRWiR PAN), <<http://smart.irwirpan.waw.pl/>>

²⁰³ Funding by European Agricultural Fund for Rural Development: Europe investing in rural areas, which does not support the construction of internet infrastructure.

²⁰⁴ For example: Ostoja Natury in the 'Smart Rural 21' project, see 'Ostoja Natury with Subsidies under the Rural Development Program' (*Ostoja Natury*) <<https://ostojanatury.pl/nawosci/ostoja-natury-with-subsidies-under-the-rural-development-program/>> and 'Ostoja Natury in the "Smart Rural 21" project' (*Ostoja Natury*) <<https://ostojanatury.pl/nawosci/ostoja-natury-in-the-smart-rural-21-project/>> accessed 15 October 2020.

²⁰⁵ Smart Wieś, <<http://www.smartwies.pl/>> accessed 15 July 2020.



7.5 Lack of Effective Housing Management in Communes and Attempts to Recover from the Crisis

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Relevance of the Practice

Satisfying the housing needs of households, especially those with low income, is the local government own task. People who cannot afford to buy their own dwelling or rent it on a free-market (commercial) basis may apply for housing from the commune's resources (council flat). However, the current audits of the Supreme Audit Office regarding the housing economy of communes in Poland have demonstrated that communes are not able to properly implement this task.²⁰⁶ Partly, it is caused by the following objective factors: the lack of vacant council flats and the lack of funds for the new flats built by communes. According to the Supreme Audit Office, the existing possibility of co-financing communal housing investments with funds from the state budget does not solve the financial problems of communes related to the new flats acquisition and the use of existing housing stock.

The effects of the economic system change in Poland after 1989 should be mentioned. The priority was to build a market economy and swift privatization of flats that were public property before 1989. Parallel to the privatizations, over the years, there were new instruments to support new proprietary housing, mainly in the form of subsidies to individual mortgage loans. The activities undertaken by the Polish government to develop rental housing were marginal.

It is generally believed that the lack of housing is also a serious problem for Polish people. Serious territorial differences, namely poor housing conditions or the lack of housing were twice as likely to assess as one of the problems of Polish families by residents of large cities and metropolises than by residents of small towns and villages.²⁰⁷ The need of housing policies diversity conducted at the local authorities' level in Poland is justified by these studies. Simultaneously, the weakness of the central authorities' actions is shown regarding implemented housing programs geographically uniform. The housing policy in Poland should be diversified primarily in terms of the impact area – with a division into medium and large cities and metropolises on the one hand, and small towns and villages on the other hand. It

²⁰⁶ Najwyższej Izby Kontroli, 'Informacja o wynikach kontroli. Wykonywanie przez gminy zadań z zakresu gospodarki mieszkaniowej' (*Departament Administracji Publicznej* 2018) <<https://www.nik.gov.pl/plik/id,20338,vp,22961.pdf>> accessed 10 July 2020, 5.

²⁰⁷ IBRiS, 'Problemy mieszkaniowe Polek i Polaków oraz ocena istniejących rozwiązań' (*Habitat for Humanity Poland* 2018) <http://habitat.pl/wp-content/uploads/2018/04/HabitatPoland_badanie-opinii-publ_mieszkalnictwo2018.pdf> accessed 15 October 2020.



seems necessary to set priorities for the housing policy depending on the specificity of the influence area.²⁰⁸

General Profile of the Housing Situation in Poland

The ownership structure of housing is a characteristic feature of Poland (and other Central and Eastern European countries): only 20 per cent of flats involve flats for rent and 80 per cent concern private property.²⁰⁹

	Housing ownership in %			
	Individuals	Housing cooperatives ²¹⁰	Communal flats Company accommodation	Others
Poland overall	84.24	8.55	6.09	1.12
Cities	75.36	14.10	8.82	1.72
Villages	96.35	0.99	2.36	0.3

Table 2: Proprietary Structure of Dwellings in 2016 r.²¹¹

Over 14.62 million apartments concern the housing stock in Poland in 2018. It means that Poland accounts about 386 dwellings per 1000 inhabitants. The only weaker result among UE countries was recorded in Slovakia (369 dwellings). In comparison to Germany, the ratio amounted to 509 dwellings per 1000 inhabitants, 459 in Hungary and 455 in Czech Republic.²¹²

The housing deficit that amounts to 2.1 million properties in Poland is going to increase to 2.7 million by 2030. This is the result of the HRE Think Tank report entitled 'How many dwellings are missing in Poland?' published at the end of 2018.²¹³ The huge problem is the availability of housing for people with too low incomes to buy or rent an apartment on market terms, and, likewise, too high to be able to apply for a social or council flat. For instance, after comparison

²⁰⁸ Piotr Lis, 'Polityka mieszkaniowa dla Polski Dlaczego potrzeba więcej mieszkań na wynajem i czy powinno je budować państwo?' (Stefan Batory Foundation) <https://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/Interaktywny_Polityka%20mieszkaniowa.pdf> accessed 15 October 2020.

²⁰⁹ 'Housing Statistics' (Eurostat, 7 July 2020) <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Housing_statistics/pl> accessed 10 July 2020.

²¹⁰ From 1945 to 1990, housing policy was provided in Poland in the context of a socialist economic policy (with a preference for state and cooperative property). With the crisis of the socialist economy the housing policy in Poland had to be new defined. A transformation was made from direct state intervention in housing policy to the market economy. In that context, housing co-operatives were seen with suspicion, being identified with the old socialistic system. Housing cooperatives were seen as not being viable in the new market system. Overall, the share of cooperatives in the housing stock in Poland fell sharply.

²¹¹ Krystyna Hanusi and Urszula Łangowska-Szczeńiak, 'Housing Status of Rural Areas' Households in Poland in the Light of Household Budget Survey of 2016' (Studia Obszarów Wiejskich 2018) 52 <<https://doi.org/10.7163/SOW.52.3>, http://www.rcin.org.pl/igipz/Content/76836/WA51_98790_r2018-t52_SOW-Hanusik.pdf> accessed 8 October 2020.

²¹² 'REPORT Housing condition in Poland' (Ministry of Development 2020) <<https://www.gov.pl/web/rozwoj/raport-o-stanie-mieszkalnictwa>> accessed 10 July 2020, 12.

²¹³ 'Ile mieszkań brakuje w Polsce? Raport' (Heritage Real Estate 2018) <<https://heritagere.pl/wp-content/uploads/2018/12/HRE-TT-RAPORT-ILE-MIESZKA%C5%83-BRAKUJE.pdf>> accessed 10 July 2020.



of the average net wage in the corporate sector and the average rent, it proves the cost of renting a commercial market in metropolises consumes the following part of the salary: Warsaw – 38 per cent, Crakow – 38 per cent, Lodz – 31 per cent, Wroclaw – 42 per cent, Poznan – 31 per cent, Gdansk – 36 per cent.²¹⁴

Description of the Practice

Communes' Measures in Satisfying Housing Needs

63,424 households waited for a council flat from the commune in 2018, including 79.2 per cent in cities, 20.8 per cent in urban areas.²¹⁵ 9,542 council flats were built throughout Poland in the years 2013-2017, i.e. about 1,900 annually (there are 2,477 communes in Poland). Each commune is obliged to adopt a document entitled 'Rules for renting flats', applied in its territory. A person waiting for a flat has the right not to accept a flat offered by the commune and wait for another offer.

Mainly flats built by developers for sale or rent (44.7 per cent) and for private use by individual investors (43.6 per cent) were commissioned in 2013-2017. Individual housing for sale or rent (7.5 per cent), cooperative apartment (1.8 per cent), council flats (1.2 per cent), social housing for rent (0.9 per cent) and company apartment (0.3 per cent)²¹⁶ are the other forms of housing.

The highest percentage (97.8 per cent) in the new dwellings completed in 2019 has represented commercial (developer) construction and investments implemented by individuals. Accommodations intended for people with lower incomes including council flats, flats within social construction associations²¹⁷ and company apartments accounted for only 2.2 per cent of the number of newly built flats (i.e. about 4.6 thousand) in 2019. Developers are responsible for almost 80 per cent of new housing construction in cities. Private construction dominates in rural areas (about 80 per cent). If developers decide to build flats in a rural area, it is mainly near the city borders (for city dwellers).²¹⁸

Not only do communes not build council flats but they also privatize those in their possession. As a result of the council flats' sale, the stock of them decreased by around 9,1 per cent in

²¹⁴ *ibid.*

²¹⁵ Agnieszka Matulska-Bachura and others, 'Housing economy and municipal infrastructure in 2018' (Statistics Poland 2019) 32

<<https://stat.gov.pl/obszary-tematyczne/infrastruktura-komunalna-nieruchomosci/nieruchomosci-budynki-infrastruktura-komunalna/gospodarka-mieszkaniowa-i-infrastruktura-komunalna-w-2018-r-,13,13.html>> accessed 10 July 2020.

²¹⁶ Krzysztof Markowski and others, 'Housing economy in the years 2013–2017' (Statistics Poland 2018) <<https://stat.gov.pl/obszary-tematyczne/infrastruktura-komunalna-nieruchomosci/nieruchomosci-budynki-infrastruktura-komunalna/gospodarka-mieszkaniowa-w-latach-2013-2017,11,1.html>> accessed 10 July 2020, 9.

²¹⁷ Polish: *Towarzystwa budownictwa społecznego* (TBS).

²¹⁸ 'REPORT Housing condition in Poland', above, 14.



2015-2018²¹⁹ (sales to the tenants or return of flats to former owners or their heirs)²²⁰. Privatization decisions are parts of the communal independent housing policy.

An additional cost and inconvenience for communes are council flats as tenants do not even pay the minimum rent. The housing crisis is primarily affecting cities. The level of satisfying the housing needs (as well as the technical condition of buildings) in rural areas is higher than in cities.²²¹ Furthermore, the lack of funds for repairs is another difficulty. As a result, many council flats are uninhabited due to poor technical condition.

Financing of council construction may come:

- from own resources (the level of expense on housing management amounted to 3.3 per cent of communes' budgets on average);
- from the central government financial help, but the legislator imposed a specific way of using government money and managing the housing that are built as a result of these investments. In the eyes of law, the commune is obliged to keep the rent at a very low level, and to make the premises available only to people in need, i.e. those with low income or in a very difficult life situation. Although government subsidy ranges from 20 per cent to even 60 per cent, only a few local governments access it. According to the Ministry of Investments and Development, thanks to the state aid, 3,289 apartments have been built in 161 towns (some of them as a result of renovation) since 2016;
- the loans, bonds or various models of public-private partnership.

Assessment of the Practice

The tendency to reduce the share of council construction in the overall stock structure (the number of flats) has been monitored for several years.

The new financial support programs are offered by central government considering the disastrous housing situation in Poland in order to support communes in the construction of apartments for rent. The state aid was offered to communes due to their small financial resources. Communes are supposed to be motivated through these funds to better perform their tasks in regard to the local housing policy. The 'Housing Plus' program was one of the offers that assumed the construction of affordable apartments for rent on market terms. The program operated in 2017-2019 and was established by a resolution of the Council of Ministers of September 27, 2016 as an element of the 'National Housing Program'. In response to an interpellation of Krzysztof Brejza, MP of the Sejm of the Republic of Poland, the Ministry of

²¹⁹ Najwyższej Izby Kontroli, 'Informacja o wynikach kontroli', above, 5.

²²⁰ The flats nationalization took place in Poland after World War II, and after 1989 the former flats owners could and can regain them.

²²¹ Herbst Irena, 'W poszukiwaniu rozsądnej polityki mieszkaniowej' <<https://wiedzadlapolityki.files.wordpress.com/2016/03/w-poszukiwaniu-rozsc485dnej-polityki-mieszkaniowej.pdf>>.



Development announced that a total of 867 apartments were commissioned by the end of 2019, and there are also about 1.9 thousand apartments under construction.²²²

Currently, works on new forms of financial support are underway at the Ministry of Development. Including the Government Housing Development Fund worth PLN 1.5 billion is to be established to support the construction of apartments in communes that suffered financially from the Covid-19 result.²²³

Moreover, a single example of municipal districts build flats for rent, pleased to welcome an opportunity for development and preventing depopulation. The higher rent in comparison to council flats is going to allow financing the investment. Examples of good practice are cities such as: Żory (60 thousand residents), Kępice (3,646 residents), Jarocin (26,353 residents). The primary purposes of the Municipality of Żory are to create a stock of rental housing for families and people with the very low incomes entitling them to receive housing from the municipality so far, and are unable or unwilling to buy a flat with a bank loan. The projected average rent is approximately PLN 15.50²²⁴ / m² including the cost of building and financing the investment. An additional monthly maintenance fee of PLN 4.30²²⁵ for each square meter of the apartment needs to be paid by residents to cover heating costs (about PLN 1.80), maintenance of common parts of the building, administration, snow removal, lighting and staircases heating, elevators maintenance, greenery and playgrounds maintenance.²²⁶

According to experts, municipal districts are going to become convinced that the construction of housing is the key for halting depopulation and degradation processes of cities as it may lead to economic development and an increase in tax revenues.²²⁷

It's only natural that people who cannot afford to live in the centers to settle in peripheral blocks of flats or in suburban communes. However, they work in the city all the time. Since cities have limited possibilities in this regard, they cannot force a private developer to build expensive flats in the center as well as the cheaper ones in suburbs. Nevertheless, a housing policy may be pursued more actively by communes and new opportunities may be searched to solve housing problems in their area. It relates primarily to municipalities.

²²² Tweet by Krzysztof Brejza (*Twitter*, 6 January 2020)

<https://twitter.com/KrzysztofBrejza/status/1214207397700538369?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwetembed%7Ctwterm%5E1214207397700538369%7Ctwgr%5E&ref_url=https%3A%2F%2Fwww.money.pl%2Fgo-spodarka%2Fna-razie-tylko-mieszkanie-minus-trzy-lata-i-nie-ma-nawet-900-lokali-6464835126683777a.html> accessed 10 July 2020.

²²³ Serwis Rzeczypospolitej Polskiej, <<https://www.gov.pl/web/rozwoj/wiecej-tanich-mieszkan-na-wynajem--rada-ministrow-przyjela-projektustawy-dot-spoecznej-czesci-pakietu-mieszkaniowego-z-poprawkami>> accessed 29 July 2020.

²²⁴ Approximately 3,45 Euro.

²²⁵ Approximately 1 Euro.

²²⁶ 'Nowe mieszkania czynszowe w Żorach' (*Mieszkanie*, undated) <<http://www.mieszkanie.ztkzory.pl>> accessed 10 July 2020.

²²⁷ Mariusz Gołaszewski, 'Why is it profitable for communes to build apartments for rent?' (Aesco Group 2018) <<https://aesco.com.pl/dlaczego-gminom-oplaca-sie-budowac-mieszkania-na-wynajem>> accessed 10 July 2020.



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8. Local Responsibilities and Public Services in Croatia

8.1 The System of Local Government in Croatia

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

Croatia has 21 units of regional self-government (*zupanija*), 20 counties and the Croatian Capital City of Zagreb. Each county is divided into a number of local government units. Also, each county has its own representative and executive body elected by popular vote for a term of four years. The City of Zagreb is a special territorial and administrative unit whose responsibilities are regulated by a separate Act on the City of Zagreb. The City of Zagreb has a dual status as a unit of local and regional government unit and thus performs activities within the scope of the city and as a county. It also carries out responsibilities of the state administration. In doing so administrative bodies of the City of Zagreb have the powers and obligations of state administration bodies.

There are 556 units of local government, that is 128 towns (*grad*) and 428 municipalities (*općina*). Towns are local government units typically of urban character with more than 10,000 inhabitants. Exceptions apply in case of historical, economic or geospatial reasons. Municipalities are local government units of rural character with less than 10,000 inhabitants. Each town and municipality has its own representative and executive body elected by popular vote for a term of four years. Each local government unit is further divided into one or more settlements regardless urban or rural. One or more settlements are represented by sub-local government entities called neighborhood councils with elected representatives which serve on non-professional terms. Some towns and some municipalities have only one neighborhood council. Towns and municipalities have basically the same responsibilities, except for towns in which counties have their administrative seat and towns with a population above 30,000 inhabitants. The latter are referred to as 'large towns' and have additional responsibilities. Seats of county are generally the largest towns within a county. There are only four large towns which are not the seat of a county.

Legal Status of Local Governments

The right to local and regional self-government is guaranteed by Article 128 of the Croatian Constitution, according to which '[c]itizens shall be guaranteed the right to local and regional self-government' and this right 'shall be exercised through local and/or regional representative bodies', as well as citizens' direct participation in the administration of local affairs. The rights specified in this Article shall be exercised by Croatian and European Union nationals in compliance with law and EU *acquis communautaire*.



The right to local government is further prescribed in national legislation such as the general Local Government Act, Local Government Financing Act, etc. The Croatian system of local self-government is based on the principle of autonomy of government and the principle of subsidiarity. The European Charter of Local Self-Government has been fully ratified by the Croatian Parliament. Croatian local governments have a judicially enforceable right to local self-government before the Constitutional Court and other judiciary bodies.

(A)Symmetry of the Local Government System

Local authorities have comprehensive responsibilities which are enumerated in the Constitution and further prescribed by the general Local Government Act. Local government units perform tasks of local importance which directly affect needs of the citizens and which are not assigned to state bodies by the Constitution or other laws, and especially the tasks referring to organization of settlement and housing; spatial and urban planning; utility services; child-care; primary health protection; social welfare; elementary education; culture, physical culture and sports; consumer protection; environment protection; fire and civil protection; maintenance of municipal roads and traffic management. In addition to these competences, large towns also have responsibilities related to maintenance of local public roads and construction permits.

Regional government units carry out affairs of regional importance which are not assigned to central bodies by the Constitution or other laws. The scope of counties' responsibilities can be self-managing and entrusted (government affairs). Counties are tasked with performing the following tasks: general public administration services; primary and secondary education; healthcare; regional and urban planning; economic development; environmental protection; transport and traffic infrastructure; management of the network of educational, medical, social welfare, and cultural institutions; administration pertaining to agriculture, forestry, mining, and industry; management of road transport infrastructure; construction permitting, excluding the area of big cities and a county seat city.

Re-assignment of responsibilities between individual local and regional governments is allowed pending approval of the representative bodies of both government units. Out of 556 local government units some 8-10 local governments have taken over such responsibilities. Certain restrictions apply such as the ability to fund a specific responsibility (in case of most of responsibilities) and a minimum number of inhabitants (8,000 inhabitants for management of elementary education).

Political and Social Context in Croatia

The Croatian population of 4.2 million is predominantly urban with 71 per cent of the total population living in towns which cover 39 per cent of total territory. The remaining 29 per cent of the total population are scattered through municipalities which cover 61 per cent of Croatian territory. According to the 2011 Census, 19 per cent of the population lives in Zagreb,



the capital city of Croatia. Population density is 76 inhabitants per square kilometer (139 inhabitants per square kilometer in towns, 36 in municipalities).

National parties dominate local level of government. In 2009, direct elections of a mayor were used for the first time, replacing the former system in which a representative body elected a mayor. But this did not significantly change the political landscape at the local level. The share of incumbents who lost in the 2017 elections was 40 per cent in towns and 30 per cent in municipalities, but national parties still dominate local level of government. In the 2017 elections a group of non-aligned mayors raised, making them the second largest 'political' group at the local level with a share of 15 per cent of the total number of town/municipal mayors.

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8.2 Local Responsibilities and Public Services in Croatia: An Introduction

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Allocation of responsibilities among urban local governments (ULGs), rural local governments (RLGs) and regional governments in Croatia is set in Article 129(a) of the Constitution and further elaborated in the Organic Law on Local and Regional Governments and various sectoral laws. The key criteria for the allocation of responsibilities are the number of inhabitants and the level of sub-national government.

All local governments, whether urban or rural, carry out tasks referring to organization of settlement and housing; spatial and urban planning; utility services; child-care; primary health protection; social welfare; elementary education; culture, physical culture and sports; consumer protection; environment protection; fire and civil protection; maintenance of municipal roads and traffic management.

Large towns, above 30,000 inhabitants, and the towns in which a regional government has a seat, have additional responsibilities related to the maintenance of local public roads and construction permits, in addition to those listed above. The regional governments execute these functions on behalf of the smaller towns and municipalities.

In case of specific services there could be an additional limitation in place for provision of a specific service, such as minimum number of inhabitants for, e.g., management of elementary education.

The scope of counties' responsibilities can be self-managing and entrusted (government affairs). Counties are tasked with performing the following tasks: general public administration services; primary and secondary education; healthcare; regional and urban planning; economic development; environmental protection; transport and traffic infrastructure; management of the network of educational, medical, social welfare, and cultural institutions; administration pertaining to agriculture, forestry, mining, and industry; management of road transport infrastructure; construction permitting, excluding the area of large towns and a county seat city.

Re-assignment of responsibilities between individual local and regional governments is allowed pending approval of the representative bodies of both government units. Certain restrictions apply such as the ability to fund a specific responsibility (in case of most of responsibilities).

Local governments can provide services themselves, through institutions established by local governments, through local government owned enterprises or by entrusting public services to private operators through public procurement contracts or concessions.

Local governments typically provide general services related to all responsibilities within the nationally imposed legal framework – organization of services, contracting, funding, planning and taxation. They also provide organization of settlement and housing, spatial planning services, construction permitting, business permitting and provision of social welfare benefits. Institutions established by local governments provide child care, health protection, social welfare services, elementary education, culture, and fire protection. Local government owned



enterprises mostly perform utility services, environment protection and maintenance of roads and infrastructure. Public procurement contracts and concessions are mostly used for infrastructure construction and maintenance, waste management, public lighting, public transport, parking and green market management. Public-private contracts for public service provision have been implemented in areas of sport and education, however, this form of public service provision is not widespread due to downfalls of early public-private partnership (PPP) contracts.

Local governments are also allowed to carry out their responsibilities through various forms of inter-municipal cooperation, be it joint administrative departments, companies or institutions. The General Local Government Act enables voluntary inter-municipal cooperation, but leaves it up to participating local governments to set all terms of cooperation in a cooperation agreement. There are no mandatory inter-municipal cooperation arrangements in provision of services.

Although the Constitution defines responsibilities which are within autonomous scope of local governance, the sectoral legislation limits the extent to which local governments are autonomous in carrying out those functions. Local and/or regional governments are entrusted with partial responsibilities and often required to obtain approvals from other levels of governments. E.g. in primary education, local governments are responsible for capital investment, maintenance and operating expenses (insufficiently funded through grants for decentralized functions) while the government funds teachers' wages. In terms of firefighting, local governments have broader responsibilities but are required to seek approval for the appointment of fire chief, fire protection plans, and other basic decisions from other levels of government. RLGs face broader restrictions than ULGs although the autonomous scope of ULG and RLG is basically the same. The gap between the constitutional provisions and the actual performance is caused by governmental centralization of most of the functions during the time of the 1990 Homeland War and structural fragmentation of local governments at the same time. Some responsibilities were partially decentralized in the 2000's (education, firefighting, social welfare, healthcare) and 2008-2010 (road maintenance, construction permitting). The gap still remains due to high fragmentation of local government and government's mostly unchallenged method of operation. Lately this principle has been tested before the Constitutional Court and, pending decision, may change the intergovernmental relations in future.

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8.3 Firefighting

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

One of the significant challenges for Croatia is ensuring adequate fire protection to its businesses, residents and tourists. According to the Croatian Firefighting Association, five-year average of fire incidence is 6,868 fire outbreaks in the open, 3,361 fires in buildings and 720 fires of vehicles.

Croatia is a tourism-dependent economy and an efficient firefighting service has tremendous importance not only for protection of lives and property of residents, but also for safety of tourists and protection of nature and environment. Most of tourism activities take place in the Adriatic region, the capital city and national parks. More specifically, tourism activities are evenly spread across urban and rural local governments in these areas. Rural local governments in general have lower fiscal capacity and fewer inhabitants than urban local governments, making it more difficult for rural local governments to provide an equally efficient firefighting service.

The organization of fire protection in Croatia is an interesting practice of urban-rural interplay which involves all levels of government, provides for inter-municipal cooperation, and integrates public, private and non-profit volunteer entities in the delivery of public service. Funding for the service is a mix of own source revenues, central government earmarked grants, incentives and private funding. Therefore, this public service cuts across all report sections – financial arrangements, the structure of local governments, inter-municipal relations and even citizen participation in public service delivery (not just decision-making).

Description of the Practice

Structure of the Firefighting Service at Local Level

Rural local governments establish and fund voluntary firefighting associations (VFA) – non-profit organizations that generally rely on trained individuals who are required to respond to fire outbreaks, but are not employed by the firefighting association. When such individuals respond to fire outbreaks during his/her working hours, the municipality compensates the individual's employer for the time an individual spent responding to the fire. In case an individual responded to fire outbreak outside the working hours, the compensation is paid to the individual.

Small urban local governments also frequently use VFAs as a means of fire protection.

Urban local governments establish and fund Public Firefighting Brigades (PFB). PFBs are registered as institutions - local government budgetary users – which employ professional



firefighters. In addition to PFBs there are also VFAs active in the urban areas as a support to PFBs.

Certain industrial facilities or infrastructure operators, due to the fire risks, are required to establish their own professional or voluntary fire brigade or outsource fire service to VFA or PFB should these have sufficient capacities for such a service.

Due to over 150 years of firefighting tradition, local governments in general have one or more firefighting entities in their territory. In order to streamline and coordinate decision-making, and simplify funding arrangements for VFAs in local governments with several firefighting entities, all firefighting entities are members of a local government Firefighting Union.

Inter-Municipal Cooperation in Fire Protection Services

Urban local governments (ULGs) and rural local governments (RLGs) can establish an inter-municipal Firefighting Union and all VFAs and PFBs from their territories are members of such a Union. Also, ULGs and RLGs can establish joint PFBs to provide professional firefighting service to an inter-municipal area. RLGs generally do not have fiscal capacities to establish and operate a PFB, but by joining forces with ULG, additional funding becomes available for funding inter-municipal service in a form of additional 1 per cent of the personal income tax (PIT) collected in the area of RLG.

Firefighting Funding Arrangements at Local Level

Local governments are required to pass Fire Risk Assessments and Fire Protection Plans. The Assessment and the Plan are prepared by outsourced expert planners. Fire Risk Assessment is a document outlining the current situation, a numerical analysis of fire risks and proposed measures for mitigation of fire risks. Fire protection plans are strategic plans which lay out requirements for the organization of fire protection services in accordance with fire risk assessments, including required number of firefighters and equipment. Therefore, the Fire Protection Plan indirectly sets the funding level for firefighting service.

VFA funding – all local governments, urban or rural, are required to provide specific percentage of budgetary revenues to VFAs through the Firefighting Union. Local governments with budget up to approx. EUR 650,000 provide 5 per cent of revenues to VFAs and the percentage diminishes as revenues grow in variable steps. No local government can provide less than 1 per cent except the City of Zagreb which provides 0.35 per cent of the budget. It is worth noting that the funding levels are not directly related to the incidence of fire outbreaks, but the size of the budget. The Law on Fire Protection does stipulate that in case of insufficient funding, local governments must provide additional funds, but does not provide grounds for local government to reduce spending in case of overfunding. This area calls for further analysis of funding levels, fire incidence and outcomes of intervention. Furthermore, such financial arrangements may not be in line with the constitutional autonomy of local governments which is currently under review at the Constitutional Court.

PFB funding – Until 2003 professional firefighting was central government function carried out by the Ministry of Interior and funded through the state budget. As of 2003 the function and funding was decentralized to 55 local governments. Funding is carried through a combination of own-source revenue and earmarked central government grant limited to 2003 government



funding levels and annually adjusted under so called 'minimal fiscal standards for fire protection'. Local governments are entitled to 1 per cent of personal income tax collected at its territory for funding PFBs. Should 1 per cent of PIT yield less than minimal fiscal standard, the remaining funding up to the minimal fiscal standard is provided by the state budget in a form of earmarked grant to the local government. Generally, minimal fiscal standards suffice for professional firefighters' payroll and the remaining costs of firefighting services are covered by other sources of local government budget. Should ULG and RLG jointly establish a PFB, RLG is entitled to 1 per cent of PIT collected at its territory, however, the government grant does not increase.

An industrial/infrastructure operator is required by the Law on Firefighting to establish a fire brigade. Such fire brigades are funded at the expense of the operator.

Structure of Firefighting Service at the Regional Level

Regional governments can establish regional Firefighting Union and regional Fire Brigade within a Firefighting Union. The regional Firefighting Union has a coordinative, planning and oversight role over local Firefighting Unions. The regional Fire brigade is comprised from existing local PFBs and VFAs established in the territory of the regional government. The regional fire brigade acts at the regional fire chief's order if so requested by the local fire chief in case of fire outbreak which a local fire brigade cannot successfully handle.

Firefighting Funding Arrangements at Regional Level

Regional governments are required to provide specific percentage of budgetary revenues to the regional Firefighting Union. Regional governments with budget up to approx. EUR 650,000 provide 5 per cent of revenues to the Firefighting Union and the percentage diminishes as revenues grow in variable steps. No regional government can provide less than 1 per cent.

Structure of Firefighting Service at the National Level

The national government's firefighting body is the Croatian Firefighting Association (CFA). It is in charge of policy affairs at national level, firefighting training and firefighting response in case of a fire outbreak that cannot be contained by regional Firefighting Union brigade.

Firefighting Funding Arrangements at National Level

CFA is a budgetary user of the state budget and funding is allocated in the regular budgeting cycle.

Assessment of the Practice

The firefighting service is organized in a standard hierarchical structure and it seems to contain fire outbreaks rather efficiently. However, it remains unclear whether fire services and other relevant actors should devote additional resources in fire prevention activities, other than raising awareness campaigns.



The legislative framework does provide flexibility in terms of organization of the service through various actors and leverages public and private resources in doing so. It is one of the few well developed inter-municipal service provision models in Croatia.

However, the system is comprised of an excessive number of hierarchically parallel entities from local to national level engaged in fragmented advocacy, planning, reporting and coordination which indicates there is a room for process streamlining and increased efficiency of administrative structures.

Also, the financial arrangements imposed by the central government onto subnational level call for further analysis of funding gaps or overspending issues. There are no publicly available records of ongoing or completed research projects related to these issues. Current financial mechanisms are not appropriately aligned with fire risks and incidence or outcomes of intervention.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 92/2010 on Fire Protection (*Zakon o zaštiti od požara*)

Law no 125/2019 on Firefighting (*Zakon o vatrogastvu*)

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9. Local Responsibilities and Public Services in Albania

9.1 The System of Local Government in Albania

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

With the 2014 Territorial and Administrative Reform (TAR)²²⁸, in Albania there are two types of local self-governments, i.e. the basic level of local self-government consisting in 61 municipalities (*Bashkia*), and the second tier of local self-government made up of 12 regions (*Qarku*).

Municipalities comprise also administrative units, which can be towns and/or villages. In most cases, the administrative units are the former rural communes that were amalgamated with the TAR with their closest and cultural and historical urban centers. The Municipality of Tirana, for example, is subdivided in 24 administrative units, i.e. 11 subdivisions of the former (urban) municipality and 13 (rural) communes that were amalgamated to Tirana with the TAR. The administration of these units is part of the municipal administration and is directed by an administrator who is appointed and dismissed by the mayor. Towns may be divided into smaller units called quarters (*lagje*). As a rule, a quarter can be established in territories with over 20,000 residents. A town's division into quarters and its territory shall be approved upon a decision of the municipal council.

The regions, the second-tier local self-governments in Albania, were and continue to be entrusted with only few general responsibilities for 'coordination and harmonization' of regional policies with national policies and they may also perform any function that is mandated to them by one or more municipalities within the region or the central government. In practice, the regions do not perform any significant responsibility, other than some administrative tasks delegated by the national government.

Legal Status of Local Governments

The right of local governments to self-government is enshrined in Article 13 of the Constitution of Albania and the Law on Local Self-Government. The constitution prescribes that local government in Albania is based on the principle of decentralization of powers and is exercised according to the principle of local autonomy. The constitutional standing of the second-tier of local self-government, the regional council (*Këshilli i Qarkut*), is the same as for municipalities, regardless of the fact that they have only a few 'coordination' own responsibilities. Only the

²²⁸ Law no 115/2014 on the Administrative-Territorial Division of Local Government Units in the Republic of Albania.



municipal council (*Këshilli Bashkiak*) is directly elected. The regional council is composed of members from the elected bodies of the municipalities that make up the region, i.e. mayors and other members that are elected from among municipal councilors of the municipalities that compose the region.

The Law on Local Self-Government prescribes the right and the ability of local governments in Albania to regulate and manage public affairs under their own responsibility, within the limits of the law. The exercise of the right of self-government is guaranteed by additional rights of local governments as juridical persons, the right to own and dispose of property, to raise revenues and make expenditures, to perform economic activity, to cooperate with other local governments, etc. The Law on Local Self-Government prescribes also the basic principles of local government finances, according to which, local governments 'shall be entitled, within national financial policies, to adequate financial resources, commensurate with the responsibilities provided for by the Law' (Article 34).²²⁹

(A) Symmetry of the Local Government System

All municipalities are entrusted with general competences to carry out all responsibilities relevant to the local community (as prescribed by law), and any other responsibility that is not specifically assigned (by law) to another level of government. Local governments are entrusted with own and delegated functions and responsibilities. Local self-governments have own responsibilities in the core public services and public infrastructure, in the field of education, social protection, culture, recreation and sports, environmental protection, agriculture, rural development, forests and pastures and protection of nature and biodiversity, local economic development and public order and safety including fire protection. Although these are all 'own' local matters, the degree of political and administrative and fiscal powers decentralized to local governments varies significantly from function to function and in any case, in performing these functions, local governments should also respect regional and national policies and standards for service delivery.

The spirit of the new Law on Local Self-Government entails symmetric decentralization of exclusive functions to all new 61 municipalities, regardless of size, capacity or any other condition that may affect service delivery for particular functions. However, the law introduces also the possibility of asymmetrical decentralization to specific municipalities. However, the transfer of specific responsibilities to specific local governments shall be regulated through a separate law.²³⁰ In practice there are a number of cases of asymmetries through transfers of competences to specific local governments for specific purposes, either through a specific law, government decree or a more simple Memorandum of Cooperation between different central and local governments. Examples include the transfer of responsibilities for operating and maintaining pre-university students' dormitories, the operation of certain social service centers that were previously operated by a specific line ministry and public order, as the

²²⁹ Law no 139/2015 on Local Self-Government, Art 34.

²³⁰ Law no 139/2015, dated 17 December 2015, on Local Self-Government, Official Gazette No 249, p16963, Art 21.



municipal police in Tirana may impose fines for the irregular parking within the territory of the municipality, which is a national police competence.

Political and Social Context in Albania

Albania has a relatively young history of democratic local self-government. While an independent country since 1912, for about half a century (1944-1990), Albania suffered a severe totalitarian regime, during which local government meant simply 'local structures of the (central) government'. Albania began the journey of political and administrative decentralization in 1992 with the first local democratic elections. As in many other ex-communist countries, the early reform processes simply focused on laying down the basic concepts and legal framework for decentralization and local self-government to counter a half century legacy of repressive and non-democratic institutions.²³¹ In the early 2000s Albania adopted decentralization reforms that saw the consolidation of local responsibilities and the introduction of basic instruments for the financing of local responsibilities. The reforms enacted between 2014 and 2017, have been even more impactful. In 2014, the Government of Albania (GoA) consolidated 373 urban and rural local governments into 61 municipalities. In 2015, Parliament passed a new Law on Local Self-Government (LSGL)²³² and a new Law on Local Self-Government Finance (LGFL).²³³ These laws were considered as critical components of a larger strategic plan to expand the role of democratically-elected local governments in Albania by creating larger municipalities and giving them more responsibilities and resources.²³⁴

Following the collapse of the communist regime, the political landscape is dominated by two major parties, the Democratic Party (DP) and the Social Party (SP). The third largest political party is the Socialist Movement for Integration (SMI). The 2013 general elections were won by a coalition between the SP and the SMI that governed together until the general elections of 2017, since when the SP is governing alone. Local politics is controlled by these three major parties. There have been only a few cases of an independent candidate running a local government as a mayor. The latest case when independent mayors run and took office is the local elections of 2007. Between 2007 and 2011 there have been 12 independent mayors out of 373. After 2011, there have been no cases of independent mayors taking office in Albania.

Regarding the social context of local government, it is important to note the massive number of Albanians that have left the country (but that still have Albanian citizenship) since the early 1990s. Only between 2014 and 2018, about 200,000 Albanians have emigrated while about

²³¹ Stafa Elton and Xhumari Merita, 'Albania: Aligning Territorial and Fiscal Decentralisation' in William Bartlett, Sanja Kmezić and Katarina Đulić (eds), *Fiscal Decentralisation, Local Government and Policy Reversals in Southeastern Europe* (Palgrave Macmillan 2018).

²³² Law no 139/2015 on Local Self-Government (LSGL).

²³³ Law no 68/2017 on Local Self-Government Finance (LSGFL).

²³⁴ Government of Albania, 'National Crosscutting Strategy for Decentralization and Local Government' (adopted by Decision of the Council of Ministers no 691 of 29 July 2015).



100,000 have immigrated.²³⁵ As for internal population movements, the 2011 census ascertained that the population living in urban areas for the first time exceeded the population living in rural areas. The resident population in urban areas was 53.5 per cent, while 46.5 per cent lived in rural areas.

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²³⁵ Instat, 'Migration and Migrant Integration' (Instat Institute of Statistics)
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9.2 Local Responsibilities and Public Services in Albania: An Introduction

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Until 2015, urban and rural local self-governments in Albania were entrusted with symmetrical own, shared and delegated functions and responsibilities. Own functions were those functions over which local government units exercised full administrative, service, investment and regulatory authority. Public services related to infrastructure and utilities formed the core of exclusive functions of local governments in Albania. Shared functions included some generic maintenance responsibilities in the areas of pre-university education, primary health care and social protection. Delegated functions basically included all those central government functions the implementation of which was delegated to the local governments, through a specific law or bylaw. Unfortunately, the symmetrical decentralization of responsibilities to both urban and rural local governments, in a context of extreme territorial fragmentation and insufficient human, material and financial resources have led to significant disparities in terms of access to and quality of services.²³⁶

In late 2015, the Parliament of Albania adopted a new Law on Local Self-Government. This new law aims at harmonizing Albania's local government legal framework with the TAR and consolidating and expanding the authority of the 61 newly created local governments to perform new services in accordance with the provisions of the new National Cross Cutting Strategy for Decentralization and Local Government.²³⁷

Local governments in Albania perform own and delegated functions and competences, which are decentralized in a symmetrical manner.²³⁸ Local Self-Governments have full authority to *regulate* and *administer* the exercise of their own functions in an autonomous manner. The ability to regulate refers to the right to establish general and normative rules of conduct and binding standards in compliance with the law. The ability to administer refers to the right to plan, finance and organize the exercise of a function. Although they enjoy autonomy, when performing their tasks, local governments should also respect regional and national policies. In fact, in cases of national interests or to ensure qualitative services, the national government may impose specific norms and standards, also on own local functions. In the latter cases, the law²³⁹ requires that the national government provides the necessary financial support.

Local self-governments have own responsibilities in the core public services and public infrastructure; education; social protection; culture, recreation and sports; environmental protection; agriculture, rural development, forests and pastures, nature and biodiversity; local economic development; and public order and safety. Obviously, the degree of political and administrative powers decentralized to local governments vary from function to function.

²³⁶ Law no 8652/2000 on the Organisation and Functioning of Local Governments.

²³⁷ Government of Albania, 'National Crosscutting Strategy for Decentralization and Local Governance 2015-2020' (adopted by Decision of the Council of Ministers no 691 of 29 July 2015).

²³⁸ Law no 139/2015 on Local Self-Government, Art 21.

²³⁹ *ibid*, Art 22.



From the functional responsibility perspective, the new Law on Local Self-Government brought a number of novelties: (i) the elimination of shared functions – which meant an immediate transformation of the previous shared functions into exclusive functions. The rationale for this choice was to reduce confusion and vagueness over local government responsibilities. Indeed, to some degree, the concrete ‘shares’ of responsibilities of the national and local governments on ‘shared functions’ were never fully clarified. This made local governments exclusively responsible for maintaining, operating and building new schools and health and social service centers – the responsibility over which was previously shared with local governments. Unfortunately, this change was not accompanied by any increase in intergovernmental transfers. Local governments responsibilities changed overnight without a significant increase in their revenue sources²⁴⁰; (ii) the decentralization of a number of new and costly functions to local governments, including paying teachers in kindergartens and preschools and support staff in all levels of pre-university education; the regulation and administration of fire protection; irrigation and drainage; agricultural counselling; the maintenance of rural roads (previously performed by the regions); the establishment, regulation and administration of social services, including day care centers for disadvantaged groups; social housing; and the establishment of a social fund; etc. Unlike the transfer of the ‘shared’ functions, the transfer of these new responsibilities in 2016 was accompanied by the introduction of a specific earmarked grant, broken down per function and municipality by the respective line ministry.

References to Scientific and Non-Scientific Sources

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Scientific and Non-Scientific Publications:

Levitas T and Stafa E, ‘Financing the New Own Functions of Local Governments in Albania’ (USAID 2018) <<https://www.plgp.al/financing-the-new-own-functions-of-local-governments-in-albania/>>

²⁴⁰ Tony Levitas and Elton Stafa, ‘Financing the New Own Functions of Local Governments in Albania’ (USAID 2018) <<https://www.plgp.al/financing-the-new-own-functions-of-local-governments-in-albania/>>.



9.3 Decentralized Early Childhood Education

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

Early childhood education is particularly important for improving the educational and life chances of children, in particular those coming from poor or disadvantaged households while creating pathways to a better and more inclusive and resilient society.

Until 2015 the regulation and financing of early childhood education in Albania was a national responsibility. In 2015 the responsibility for this important function was transferred at the local level and local governments have become exclusively responsible for the regulation, administration and financing of early childhood education, which now constitutes one of their most relevant responsibilities in the social sector. With the decentralization of this function, emerged key policy and financial issues in terms of access to and quality of service across municipalities and therefore also between urban and rural areas. From this perspective, the analysis of this practice is crucial to analyzing the problematic realities connected with the urban-rural divide and interplay.

The practice directly addresses the key questions in report section 2 on local responsibilities, related to social welfare policies. The practice in particular addresses also the issues of adaptation of service provision to changes in the demographic structure of their populations. Additionally, the practice cuts across other report sections, in particular section 3 on local finances and section 4 on local government structure.

Description of the Practice

As of 2015, municipalities are exclusively responsible for the regulation and administration of preschool education in Albania. The Ministry of Education, Sports and Youth (MoESY), does not have anymore any role in the provision of the service, except for the development of education curricula and training of preschool teachers, for which both levels of government are responsible. The Ministry's deconcentrated branches at the territorial level also do not have anymore any regulatory role as regards preschool education. Their role has been re-dimensioned to monitoring and oversight and collecting statistics. From this perspective, local governments in Albania are fully responsible for regulating and administering early childhood education.

At the local level, the newly decentralized responsibility was followed by a specific earmarked grant from the state budget, calculated by the MoESY, for every municipality, based on the historical costs they have incurred before the function was decentralized. The specific transfers covered only the salaries of teachers and support staff in preschools and was distributed to municipalities on the basis of the currently employed personnel – although this would contradict directly the provisions of the Law on Pre-University Education which calls for a per



pupil financing system. No other types of expenditures are financed, despite the real and immediate needs.

Albanian municipalities inherited preschool networks that are physically run down, and which have radically different staffing patterns, pupil/teacher ratios, and enrollment rates - differences that have in turn been compounded by internal migration and falling birthrates. Some municipalities have too many underutilized facilities in rural areas. Others have too few teachers, classrooms, and support staff to serve the children living in their urban cores. Many municipalities face both problems.

The decentralization of preschool education brought to light significant disparities across municipalities. Even prior to its decentralization, preschool education had long been both underfinanced and very unevenly provided across the country as a whole. Before it was decentralized, these problems essentially remained ‘hidden’ within the internal operations of the Albanian State. But when preschool education was made a municipal own-function, these differences –and the insufficient and uneven financial flows behind them – all became painfully visible.

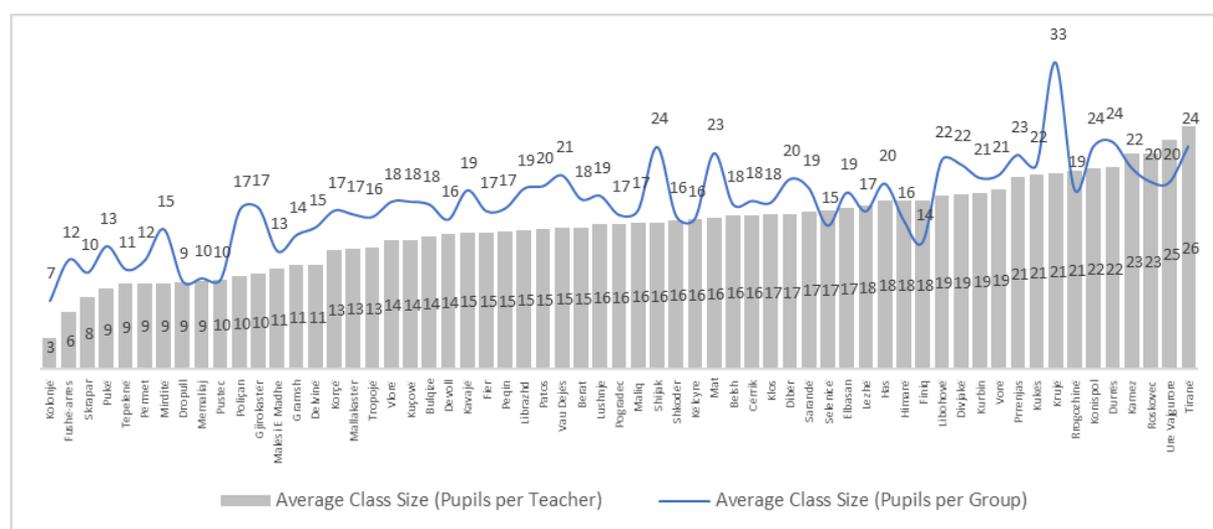


Figure 3: Average Class Size in Preschool Education in Albania.²⁴¹

The figure above shows the disparities in terms of average class size in preschool education across Albania’s newly constituted municipalities. It can be noticed that the average class size (pupils per teacher) varies from 3 pupils per teacher in the small and very mountainous Municipality of Kolonje to 26 preschool pupils per teacher in the capital City of Tirana. The figure shows that there are significant disparities across local governments also in terms of number of preschool pupils per group.

This is an indication that the financing system of earmarked specific grants based on the historical costs and decisions of the MoESY, was not reflecting social and demographic developments in Albania and was in fact amplifying the already existing serious inequities across the country.

²⁴¹ Data from the Ministry of Education, Sports and Youth and USAID Albania, own calculations



The Table below shows the breakdown of preschools and pupils between urban and rural areas in 2018. In total in Albania there are 2093 preschools, 27 per cent of which are located in urban settings while 73 per cent in the rural areas. This is a reflection of the fact that the preschools and schools were built during the communist period, when 65 per cent of the country's population was living in the rural areas, and where there were severe governmental controls over demographic movements from rural to urban areas. Urban preschools host 53 per cent of the total number of preschool children in Albania.

In total, only 10.5 per cent of preschools in Albania provide hot meals for preschool children and charge a daily fee for it of up to EUR 1 per day per pupil. The remaining 89.5 per cent of preschools do not provide any meal for their children. In urban areas, almost all preschools (97 per cent) provide meals for their children while in rural areas only 3 per cent of preschools provide a meal.

Table 3: No of preschools and pupils broken down by urban and rural settings, in 2018.²⁴²

	No of Preschools		No Preschool Pupils		No of preschools providing meals		No of preschool children receiving meals	
Urban	570	27%	42,940	53%	212	97%	20,875	98%
Rural	1,523	73%	37,774	47%	7	3%	396	2%
Total	2,093		80,714		219		21,271	

To begin addressing these challenges and disparities across local governments, in 2019, the Ministry of Finance and Economy and the MoESY, with the support of USAID Albania, adopted a preschool education finance reform. The reform had three main components: (i) improving the legal specification of the financing system for preschool education; (ii) increasing the level of funding for preschool by 10 per cent; and (iii) introducing a new and more transparent and equitable allocation system that is based on the number of pupils as a proxy of service needs and which can be adapted to the social and demographic changes.

The figure below shows the projected impact of the preschool education finance reform adopted in 2019 in Albania. The increased funding and the new allocation system are expected to push funding towards those municipalities that have an urgent need for additional teachers, measured by their pupil to teacher ratios. It is expected that the reform will result in a general reduction in the average class sizes, from 18 to 15 preschool pupils per teacher and in some extreme cases in both urban and rural areas from 26 to 18 pupils per teacher. The effects of the reforms are expected to resonate in particular in those municipalities that had very overcrowded preschool classes which can be found in both the larger and more urban municipalities such as Tirana, Durrës and Kamez but also among smaller and more rural municipalities such as Roskovec and Ura Vajgurore. The figure below shows that if effectively implemented, both small and large, urban and rural, mountainous and non-mountainous municipalities benefit from the new financing system for preschool education.

²⁴² Data from the Ministry of Education, Sports and Youth, own calculations.



Ultimately, if effectively implemented, as a result of this program, more than 52,000 (71 per cent) of preschool children will benefit from more comfortable class sizes – a key precondition for improving access to and quality of preschools. This is expected to bring significant improvements in education for Albania’s youngest generations, creating therefore opportunities for a more inclusive and resilient society, while it would also help parents labor market participation.

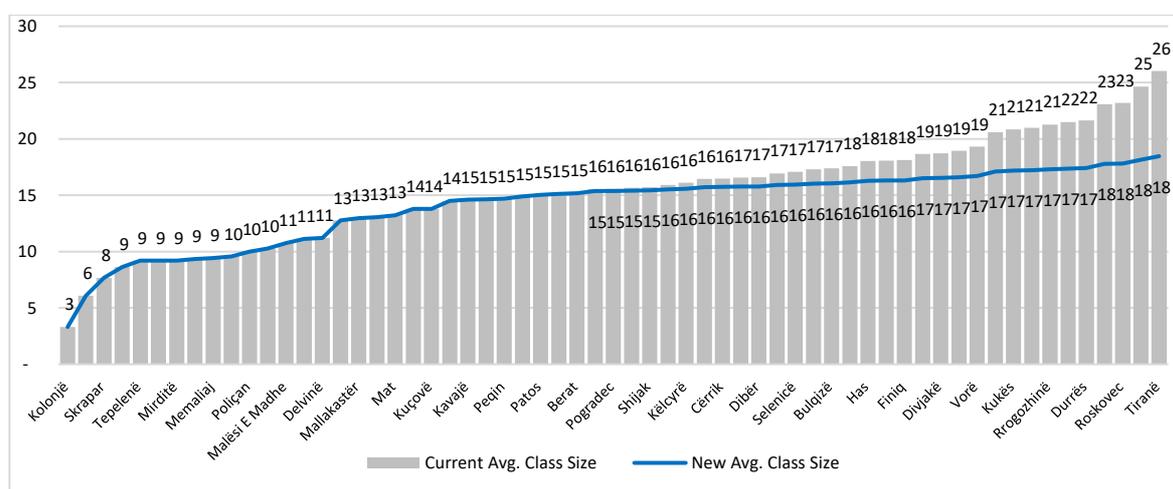


Figure 4: Projected Impact of the Preschool Education Finance Reform in Albania.

With the decentralization of the function, the MoFE and the MoESY at the national level in cooperation with local governments and their associations may initiate reform processes to further improve the financing system for preschool education. This is not in breach of local autonomy. Although preschool education has been transformed into a local government function, still, the reformation of the intergovernmental finance system lies within the Ministry of Finance, while the MoESY keeps a monitoring and oversight role.

Assessment of the Practice

Overall, the decentralization of the practice at the local level brought to light major disparities across and within municipalities in terms of radically different staffing patterns, pupil/teacher ratios, and enrollment rates. For about 3 decades radically falling birth rates and massive socio-economic changes fueled high emigration rates and rural-urban migration. These changes decreased the total number of pupils in school while pushing and pulling those who remained to different places. As a result, the existing and already uneven distribution of schools and teachers was knocked further out of alignment with the distribution of pupils.

Before the preschool education was decentralized, these problems essentially remained ‘hidden’ within the internal operations of the Albanian State. But when preschool education was made a municipal own-function, these differences – and the insufficient and uneven financial flows behind them – all became painfully visible. The publication of the funds for each municipality showed the much different treatment of municipalities and showed that actually there was no logic behind the allocation of funds to municipalities, while the law required a per pupil allocation of state budget funds.



However, with the decentralization of preschool education, Albanian municipalities have been increasing spending for education from their own budgets by more than 20 per cent, which indicates that they have taken this responsibility very seriously. The new preschool education finance reform promises to flatten such differences and disparities across municipalities. However, the reform must be effectively implemented and funded. The introduction of a new formula for the allocation of preschool funds, based primarily on pupils, as required by both the Albanian law and international good practice, constitutes a major milestone for creating the preconditions that lead to improved quality and access of preschool education. The new formula is more equitable as it allows for the funding to be adapted to the demographic and immigration and emigration changes – as opposed to the static system based on historical costs. While this reform is an important step ahead, more focus should be given to the ‘quality’ of preschool and pre-university education. The ‘PISA’ standardized tests show that students from rural areas do not perform as well as their peers from urban areas, and this requires additional investments, in particular in the ‘human’ infrastructure. Similarly, the education curricula have to be updated and further developed, in addition to the physical infrastructure of preschools and schools.

However, it is important to highlight that while preschool education is decentralized as an own local function, still local governments continue to face a strong interplay and overlapping between ‘autonomy’ in delivering their responsibilities and ‘supervision’ by higher levels of government. Education in particular is a classical case requiring significant multilevel governance, and therefore there is an even higher need to create systems and mechanisms for an open and inclusive dialogue and coordination across levels of government as opposed to supervision and excessive control.

This practice shows that while progress has been made, additional efforts are needed to support the operation of preschools, in particular in smaller/rural areas and build new ones in highly and newly urbanized areas. Equally importantly, efforts should focus also on building the human capacities at all levels and not only the physical infrastructure.

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10. Local Responsibilities and Public Services in Moldova

10.1 The System of Local Government in Moldova

Viorel Girbu, *Congress of Local Authorities from Moldova, NALAS - Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

The Republic of Moldova is organized in *rayons*, cities, villages and the Autonomous Region of Gagauzia. The administrative and territorial organization of the country is based on two levels: villages (communes), sectors (of the Chisinau municipality) and cities (municipalities) constitute the first level; *rayons*, Chisinau municipality and Balti municipality constitute the second level. Chisinau municipality is the capital city of the country and its status is regulated by the organic law. Urban localities are classified on four ranks according to a list of indicators that describe their level of social and economic development. Cities that meet specific requirements established by law could be assigned with the status of a municipality.

A total number of 32 *rayons* and 1495 localities (from which 32 are part of the Autonomous Region of Gagauzia) exist in Moldova (excluding the breakaway Transnistrian Region of Moldova). From the total list of localities, 66 are urban localities, including 53 cities and 13 municipalities and 832 are rural localities. 597 localities do not have own administration as they are part of a bigger administrative entity.

Legal Status of Local Governments

In fulfilling their competences, the local public administration authorities have autonomy, enshrined and guaranteed by the Constitution of the Republic of Moldova, the European Charter of Local Self-Government and by other treaties to which the Republic of Moldova is a party. According to Article 109 of the Constitution of the Republic of Moldova, 'public administration in the administrative-territorial units is based on the principles of local autonomy, decentralization of public services, eligibility of the local public administration authorities and consultation of citizens in the local issues of special interest.'

The public administration authorities, through whom local autonomy is exercised in villages and cities, are the elected local councils and the elected mayors. Local councils and mayors act, under the conditions of the law, as autonomous administrative authorities and manage public affairs of villages and cities. The *rayon* council coordinates the activity of the village and city councils in order to realize the public services of district interest. The *rayon* council is elected and functions according to the law.



The relations between the local public authorities are based on the principles of autonomy, legality and collaboration in solving common problems. In order to ensure local autonomy, the local public administration authorities elaborate, approve and manage autonomously their budgets and have the right to implement local taxes and to establish their amount according to the law.

(A) Symmetry of the Local Government System

For the first-level local authorities, the following own fields of activity are established:

- urban planning and management of green areas of local interest;
- collection and management of household waste, including the cleaning and maintenance of land for their storage;
- distribution of drinking water, construction and maintenance of sewage and wastewater treatment systems;
- construction, maintenance and lighting of local public streets and roads, local public transport;
- arrangement and maintenance of cemeteries;
- administration of goods from local public and private domains;
- construction, management, maintenance and equipping of pre-school and out-of-school institutions (nurseries, kindergartens, art schools, music);
- development and management of urban gas and heat distribution networks;
- cultural, sporting, recreational and youth activities, as well as the planning, development and management of the infrastructures necessary for these types of activities;
- arranging agricultural markets, commercial spaces;
- carrying out any other measures necessary for the economic development of the administrative-territorial unit;
- establishment and management of municipal enterprises and organization of any other activity necessary for the economic development of the administrative-territorial unit;
- the construction of houses and the granting of other types of facilities for the socially vulnerable population, as well as for other categories of the population;
- organization of territorial services (stations) of rescuers and firefighters, contributing, in accordance with the law, to the protection of the cultural heritage and monuments in the administered territory.

For the second-level local public authorities, the following own fields of activity are established:

- administration of assets in the public and private areas of the district;
- planning and administering the construction, maintenance and management works of some public objectives of *rayon* interest;
- construction, administration and repair of the roads of district interest, as well as of the road infrastructure;
- organization of passenger car transport, administration of buses and car stations of *rayon* interest;



- establishing a general framework for the development of the territory at *rayon* level and the protection of the forests of *rayon* interest;
- supporting and stimulating the initiatives regarding the economic development of the administrative-territorial unit;
- elaboration and implementation of the projects of construction of the interurban gas pipelines (including the medium pressure gas pipelines), of other thermo-energetic objectives with local destination;
- maintenance of primary schools, kindergartens and high schools, vocational secondary education institutions, boarding schools and boarding schools with special regime, other institutions in the field of education that serve the population of the respective district, as well as other methodical activities from the field;
- administration of cultural, tourism and sports institutions of *rayon* interest, other cultural and sporting activities of *rayon* interest;
- administration of municipal enterprises of district interest;
- administration of social assistance units of district interest;
- development and management of community social services for socially vulnerable categories, monitoring the quality of social services;
- contribution, under the conditions of the law, to the protection of the cultural heritage and monuments in the administered territory.

Local public authorities of the first and second levels, within the limits of the law, have full freedom of action in the regulation and management of any matter of local interest which is not assigned to another authority. Other competences specific to the local public authorities can only be assigned to them by law.

The competences pertaining to the central public authorities can be delegated to the local public authorities by the first and second levels, respecting the criteria of efficiency and economic rationality. The delegation of powers may be performed by the parliament. The delegation of powers may concern all local public authorities of the first and second levels (general delegation) or only some local public authorities. The delegation of powers shall be accompanied by the provision of the necessary and sufficient financial resources for their realization.

Political and Social Context in Moldova

The resident population of the Republic of Moldova at the beginning of 2019 was 2.68 million, decreasing by 1.8 per cent compared to the same period of 2018. The main reason for the decrease in the number of the resident population is negative net migration that increased from –24,600 people in 2014 to –48,600 people in 2018. As far as internal population movements are concerned, about 57 per cent of the population lives in rural areas. According to the 2014 census, about 17 per cent of the population lives in the capital city of the country, Chisinau municipality.

The general local elections, the 7th electoral exercise since the proclamation of the independence of the Republic of Moldova, took place in 2019 throughout the territory of the



country, including in the localities of Gagauzia, except for the settlements under the control of the unrecognized administration in Transnistria. The highest number of mayors come from the social-democratic Democratic Party of Moldova (261), the former ruling party of Moldova, followed by the Party of Socialists of the Republic of Moldova (206) that are currently governing the country and representatives of the opposition electoral block ACUM (172) and SOR party (43). A total number of 112 city halls are led by independent candidates and a remaining 99 city halls are led by extra-parliamentary political parties.

References to Scientific and Non-Scientific Publications

Constitution of the Republic of Moldova, 1994

Law no 764/2001 on Administrative-Territorial Organization of the Republic of Moldova

Law no 435/2006 on Administrative Decentralization

Law no 436/2006 on Local Public Administration



10.2 Local Responsibilities and Public Services in Moldova: An Introduction

Viorel Girbu, *Congress of Local Authorities from Moldova, NALAS - Network of Associations of Local Authorities of South-East Europe*

Moldova has developed framework legislation that guides the regulation of the local authority's competencies in accordance with the principles specified in the European Charter of Local Self-Government. Article 1 of the Law on Administrative Decentralization in Moldova guarantees that local public authorities have the right and the effective capacity to regulate and manage, according to the law, an important part of public affairs under their own responsibility and in the interest of the local population. In this regard, the process of administrative decentralization is guided by the principles of subsidiarity, equity among local authorities, correspondence of resources with competences, financial solidarity, institutional dialogue, partnership, and responsibility of local authorities.

The current process of developing the regulatory framework tends to build a system of attributions/transfers of competencies between central administration and local authorities, characterized by functionality, clarity, stability, correlation with available resources and administrative capacity of the local public authorities (LPAs). The aim is to provide public services in an unrestricted (improved access), efficient (as low costs as possible) and effective manner (according to the needs and requirements of beneficiaries, including vulnerable groups), ensuring a minimum level of service quality.

As a rule, decentralized competencies, such as those relating to urban planning and management, maintenance of educational institutions and activities in the cultural and social protection domains, management of the municipal enterprises, and passenger car transport, are those responsibilities that are transferred to LPAs, to provide public services according to the specific local needs and preferences of the beneficiaries. In this situation, LPAs should enjoy autonomy in the management and provision of these competencies – central public authorities should no longer use direct management and decision tools, but only indirect tools such as the development of specific public policies, mandatory quality standards, the provision of incentives and penalties (especially financial), monitoring, control, law enforcement and evaluation.

In reality, however, the implementation of the principles contained in the Law on Administrative Decentralization is not straightforward. Many, if not all the problems in this respect stem from the historical inheritance of a very fragmented system of LPAs at the communal level, a fragmentation which has been compounded by high levels of both emigration and internal migration. This has left many communes extremely small and with limited resources and capacities. Indeed, despite a symmetric decentralization model, many rural local governments are not able to provide many of the services they are responsible for, according to the nomenclature of local responsibilities. Notably, the provision of services related to the collection and management of household waste, including sanitation and maintenance of landfills; water supply distribution, construction and maintenance of sewerage and wastewater treatment systems; construction, maintenance and lighting of local public



streets and roads; local public transport is mostly lacking in the vast majority of rural LPAs and only partially available in the urban-type LPAs in Moldova. 'This situation is mainly due to limited progress in the area of financial decentralization and overall limited level of the financial resources managed by the LPAs. In 2018 over 54 per cent of the state budget revenues in Moldova were destined for transfers to other components of the National Public Budget (BPN). Local budgets are highly dependent on transfers from the state budget, with over 70 per cent of local budget revenues in 2017-2018 coming from these transfers.'²⁴³

Though all of the public services and competences of the LPAs are part of the same list approved by law, the actual degree of local decision-making autonomy differs for each competence. A major criterion that influences the level of the competences exercised by LPAs is the source of funding for the service delivery. As a result, and particularly with respect to social sector functions, most public services are managed hierarchically and are still very centralized according to the secondary legislation. A recent assessment on the progress of decentralization in Moldova points on the fact that '[a]lthough the reform of local public finances started in 2013 aimed at implementing a mechanism for forming local budgets that would increase the degree of financial autonomy of local public authorities, in the period after the reform there was an opposite trend.'²⁴⁴

In the social domain the education sector is achieving best performance from the perspective of service access. The access to education has a relative uniform coverage throughout the territory of the country. This is possible because of the significant financial support provided from the central budget in form of categorical grants and high involvement of the central authorities in the overall management of the sector. However, the situation limits the degree of control by LPAs over the service provision that is in reality a deconcentrated service rather than decentralized competence of the LPAs.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 764/2001 on Administrative-Territorial Organization of the Republic of Moldova

Law no 435/2006 on Administrative Decentralization

Law no 436/2006 on Local Public Administration

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²⁴³ Dumitru Budianschi, 'Autonomia financiară în Republica Moldova: evoluția veniturilor bugetelor locale' (Expert-Grup 2019) <https://www.expert-grup.org/media/k2/attachments/Autonomia_financiara_in_Republica_Moldova.pdf>.

²⁴⁴ Expert-Grup, 'Reforma descentralizării - spre centralizare: în perioada anilor 2016 – 2018 dependența autorităților locale de transferurile de la bugetul de stat a sporit, iar autonomia financiară s-a diminuat' (Expert-Grup, 26 June 2019) <<https://www.expert-grup.org/ro/activitate/comunicate-de-presa/item/1824-reforma-descentralizarii-spre-centralizare-in-perioada-anilor-2016-2018-dependenta-autoritatilor-locale-de>>.



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10.3 The Regulation and Financing of Local Responsibilities in the Education Sector

Viorel Girbu, *Congress of Local Authorities from Moldova, NALAS - Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

Social sector spending accounts for about two-thirds of total public expenditure in Moldova. Aside from spending on social benefits and health insurance, where financial resources are managed through specialized entities that have centrally determined budgets, much social spending is made from the budgets of the first and second-tier Local Public Administrations (LPAs). In 2019, spending on education represented 17.1 per cent of total public expenditure, with 14.8 per cent coming from local government budgets.

Financing social welfare represents a significant part of the total amount of the resources allocated to local budgets, but most of the spending (approx. 80 per cent in 2019) is for education. Mainly spending on education in local budgets is financed from categorical grants allocated by the national government. Majority of spending on education comes from *rayon* budgets. Nonetheless, 25 per cent of total spending on education comes from cities/commune budgets.

From this perspective, the management and financing of local government responsibilities in education constitute a major part of local government responsibilities and budgets and is therefore at the core of the urban-rural divide and interplay in Moldova. The practice is related to the other report sections in that it addresses issues of financing local authorities and the territorial and administrative organization of local governments.

Description of the Practice

Moldova has two tiers of LPAs, municipalities, cities and communes (first-tier) and Chisinau and Balti municipalities, and *rayons* (second-tier). The degree of decision-making authority with respect to education functions differs significantly between them. Preschool education is an own responsibility for first-tier LPAs (cities, communes) and is financed from the conditional grants transferred from the central budget, while following tiers of the general education domain are a responsibility of the second-tier LPAs (*rayons*) and are also financed from conditional grants received from the state budget. Communes play a limited role in education, contributing whatever they can from their limited own revenues and are responsible for the management of the education facilities. The situation with *rayons*, however, is different. The role of *rayons* with respect to education is perhaps best characterized as one of being representatives of the national government at the local level: *Rayons* allocate categorical grants provided by the national government for the provision of the education services at the local level. The management of the institutions responsible for the provision of the general



education public services, including preschool units, is appointed by the *rayon* level authorities. *Rayon* authorities retain also competencies in the distribution of the conditional grants allocated for the capital investment of the education sector facilities. The mechanism of allocation of the funds for the capital investment required for the development of the facilities in the educational sector is also a tool for the reconfiguration/optimization of the educational sector network of institutions. Localities that reduce the number of educational sector facilities gain more for the investment in the development of remaining educational sector facilities. As such *rayons* are effectively responsible for ensuring that the policies of central authorities are realized by the organizations (e.g., schools) that provide educational public services at the local level.

The Law on Administrative Decentralization establishes that in education, first-tier LPAs are mainly responsible for the maintenance and development of the physical infrastructure. In this sense, cities and communes are responsible for the construction, management, maintenance and equipping of preschools and extracurricular institutions (nurseries, kindergartens, art schools, music). *Rayons* – which are significantly larger than communes – are responsible for the management of social affairs of *rayon* importance at the local level and in particular for education sector. According to the law, second-tier LPAs are responsible for the maintenance of primary schools and primary schools-kindergartens, gymnasiums and high schools, vocational secondary education institutions, boarding schools and boarding schools with special programs, other educational institutions serving the population of the district. They are also responsible for the administration of social assistance units of district interest; the development and management of community social services for socially vulnerable categories; and for monitoring the quality of social services.

Current management of social sector functions at the local level remains influenced by historical practices that differ significantly from the spirit of the Law on Administrative Decentralization. The national government still controls the standard structure and functioning of all schools and educational institutions through framework legislation. Categorical grants for preschool education are provided to local governments on historical patterns and not on any type of per pupil formulas. Historical spending is based on the amount of the spent resources in the previous year adjusted to the inflation rate and relevant changes in the legislation, leading to significant disparities among localities. Introduction of a per child formula could improve efficiency in the usage of the financial resources in this domain and avoid any political interference in the allocation of funds. A per pupil formula, governing the allocation of conditional grants for primary and secondary education, was introduced in 2014.

The main function of the *rayon* departments concerned with both education and social protection is the implementation of the policy set by the national government. For example, according to the information that can be found on one of *rayon's* web page: 'the Education Department is subordinated to the Ministry of Education in administrative and scientific plan - didactic, and to the district council - in matters of financial and material insurance.' This sentence reflects the state of decentralization in Moldova: Social sector competences are mainly delegated to *rayons* whose councils have some authority with respect to the maintenance and improvement of physical infrastructure, but whose functional departments are directly subordinated to the Ministries of education and social protection. As such, *rayon* governments in the social sector essentially play the role of deconcentrated units of the



national government and are fully responsible for managing the grants and transfers provided to them by the national government.

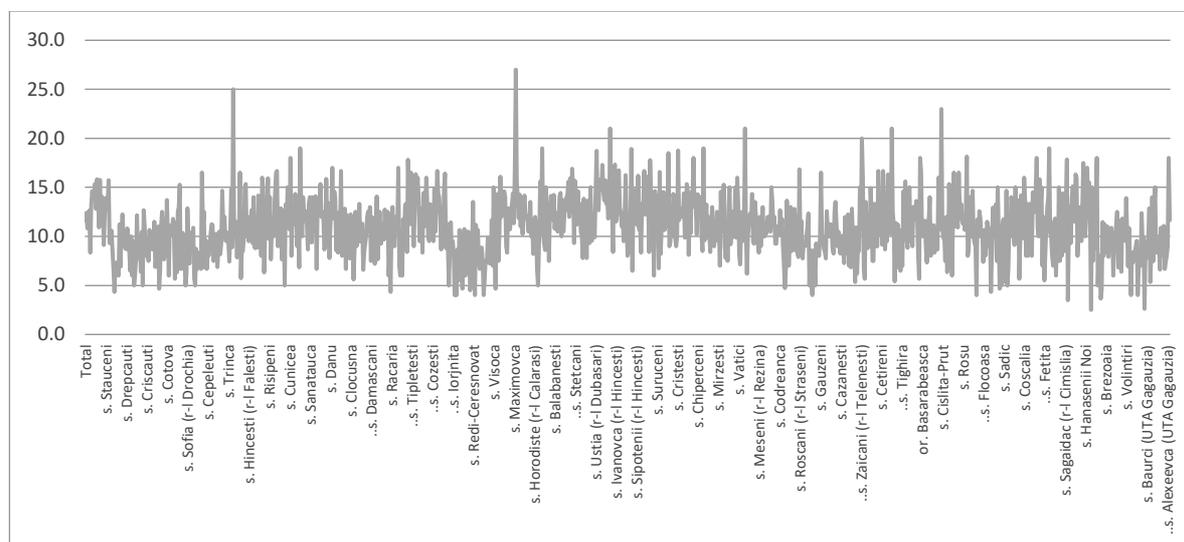


Figure 5: Average Class Size in Preschool Education in Moldova (preschool pupils per educator)²⁴⁵

The centralization in the policy promotion in the pre-school education area still does not contribute to homogenization of the provided public services. Despite Moldova has recently adopted a per pupil formula for the allocation of funding for primary and secondary education, still there are significant disparities across the country in terms of access and quality of education and specifically in the preschool education sector. These disparities are further exacerbated by strong demographic changes and social and economic developments of the past three decades across the country leading to different challenges faced by urban and rural localities. For instance, mainly urban localities are characterized by larger class sizes. This is certainly the case in the Chisinau municipality. Urban municipalities are also those who manage the higher amounts of own revenues for the financing of the educational sector. There are wide disparities across the country in terms of staffing patterns and pupil/teachers' ratios, as shown by the figure above. In 2019, average preschool class size ranged from 2.5 preschool pupils per educator (teacher) to 27 preschool pupils per educator.

²⁴⁵ Data from the National Statistics Bureau.

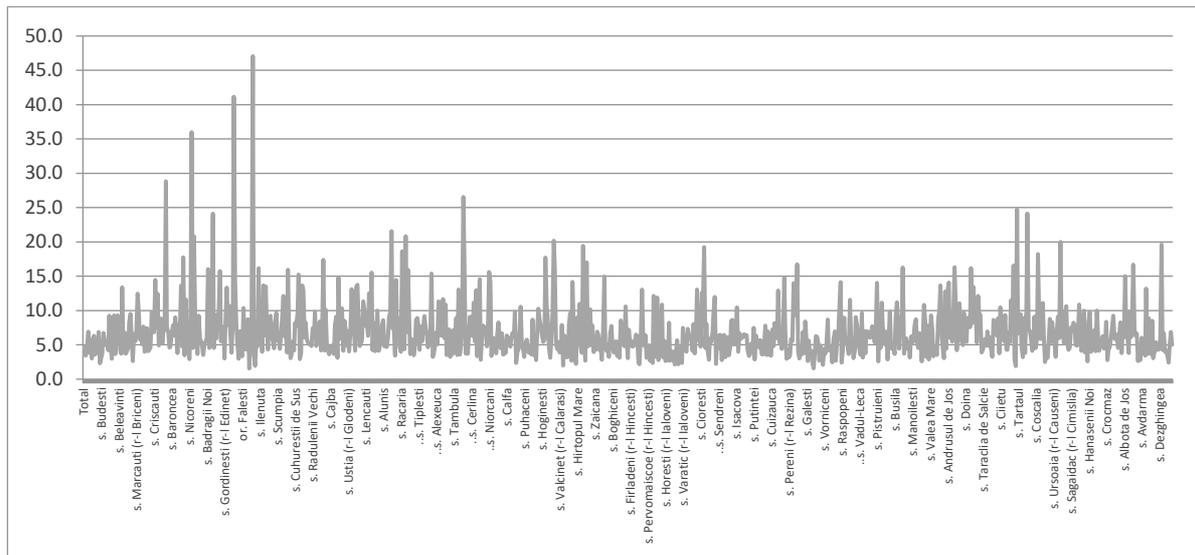


Figure 6: Class room surface per student in primary and secondary education.²⁴⁶

Like in the case of preschool education, there are high disparities among localities across Moldova in terms of classroom surface per student in primary and secondary education, with the indicator ranging from 1.6 m² to 47.1 m² per pupil, as shown in the figure above.

Assessment of the Practice

Despite of the provisions of the framework law on administrative decentralization, decisional and financial autonomy of first-tier LPAs (communes) in education is limited. The content of the relevant secondary legislation follows the historical institutional mechanism in the provision of public services at the local level. This tradition rests on a high level of centralized decision-making. The process of administrative and financial decentralization in Moldova is hindered by the high fragmentation of LPAs and the resulting limited capacity of communes to manage public services in the social domain, specifically in rural localities. Improving the financial autonomy of first-tier LPAs, fostering voluntary amalgamation and enforcing cooperation among them for the final benefit of the citizens is the major precondition in order to achieve progress in the area of decentralization of social sector responsibilities in Moldova.

There are also deficiencies in part related to (the lack of a) clear division of competencies between central and local administration and within the two tiers of local governments themselves. A 2019 report²⁴⁷ evaluating the education sector in Moldova finds that ‘[t]he mandates of central authorities, local public authorities (LPAs) and educational institutions are not clearly defined, which leads to confusion especially regarding decentralized levels’. The same report finds that ‘there is a high level of inequality between urban and rural areas in terms of access to education’.

The high emigration rate and internal migration, specifically for the rural communities is also exercising a significant influence on the educational sector. Enrolment in schools has

²⁴⁶ Data from the National Statistics Bureau.

²⁴⁷ UNICEF, ‘Comprehensive Education Sector Analysis’ (2019).



decreased significantly in the general education system, but especially in rural schools. Optimization of the school facilities network has a positive effect, but the optimization efforts are outweighed by quick population decline, leading to increasing inefficiencies.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 435/2006 on Administrative Decentralization

Scientific and Non-Scientific Publications:

UNICEF, 'Comprehensive Education Sector Analysis' (2019)



11. Local Responsibilities and Public Services in South Africa

11.1 The System of Local Government in South Africa

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Types of Local Governments

South Africa has a multilevel system of government organised at national, provincial and local level. There are nine provincial governments while the local sphere of government is constituted by 257 municipalities. The 1996 Constitution of South Africa recognises three categories of municipalities – Category A, B and C.²⁴⁸ Metropolitan municipalities (Category A) have exclusive municipal executive and legislative authority in their respective areas of jurisdiction. Local municipalities (Category B), which currently total 205, share their municipal executive and legislative authority with district municipalities (Category C) within the relevant area they fall. District municipalities exercise their municipal executive and legislative authority in an area that covers more than one local municipality. These umbrella municipalities (currently 44) were established, among other reasons, to provide support and maximise on economies of scale in areas where there are low capacity municipalities. At policy level, the three broad categories of municipalities (A, B and C) are further broken down into seven sub-categories namely:

- A - metropolitan municipalities;
- B1 - secondary cities, local municipalities with the largest budgets;
- B2 - local municipalities with a large town as core;
- B3 - local municipalities with small towns, with relatively small population and significant proportion of urban population but with no large town as core;
- B4 - local municipalities which are mainly rural with communal tenure and with, at most, one or two small towns in their area;
- C1 - district municipalities which are not water services authorities; and
- C2 - district municipalities which are water services authorities.

National departments often make use of this sub-classification when dealing with municipalities.

The Constitution assigns to local government service delivery responsibilities and a development mandate. It equips local government with a variety of powers – legislative (the power to adopt by-laws), executive, fiscal, budget and administrative powers - to enable the delivery of these responsibilities and obligations. The functional areas of local government are enumerated in Schedule 4 (part B) and Schedule 5 (part B) of the Constitution. These schedules

²⁴⁸ See Sec 155(1) of the Constitution.



list matters, such as water supply, and electricity reticulation, land use planning, municipal health, local roads, and refuse removal. The principles of subsidiarity and assignment recognised in the Constitution provide opportunities for municipalities to exercise additional functions.

Legal Status of Local Governments

Unlike in many countries, local government is recognised in the Constitution of South Africa as a sphere of government.²⁴⁹ Thus, the existence of the institution of local government is not dependent on the goodwill of the national and provincial governments. This security of existence is extended to individual municipalities which may not be arbitrarily abolished or merged. Such abolishment or merger can only take place in terms of law and subject to oversight procedures that include the role of an independent body, the Municipal Demarcation Board.

The autonomy of municipalities is constitutionally recognised and can be enforced through the courts. Municipalities have a right to govern their respective areas and this right is only limited by the Constitution. The national and provincial governments may, however, regulate the exercise of this right but subject to limitations imposed by the Constitution. For instance, such regulation mainly takes the form of framework legislation that may not go to the 'core' of municipal functions as that is reserved for the legislative authority of municipal councils. National and provincial governments are further prohibited from impeding or compromising a municipality's ability to exercise this right whether by legislative or other means (Section 151(4) of the Constitution). Thus, it can be observed that unlike in many other countries, the Constitution of South Africa entrenches the existence and autonomy of local government that is jealously guarded by the courts in practice.

(A) Symmetry of the Local Government System

As explained above, there are three categories of municipalities in South Africa – metropolitan, local and district. The Constitution allocates to all metropolitan municipalities equal powers and functions. As opposed to metropolitan municipalities that have exclusive executive and legislative authority in their areas of jurisdiction, legislation and policy defines the division of responsibilities between district and local municipalities. As stated above, within the category of district municipalities there are those that have been designated as water services authorities and those that are not.

The Constitution entrenches the principles of subsidiarity and assignment which if implemented can also result in municipalities within and across categories exercising varying powers. Section 156(4) of the Constitution requires the national and provincial governments to assign to a municipality any of their functions if the function can 'most effectively be administered locally and the municipality has the capacity to administer it'. This provision is

²⁴⁹ See Sec 40(1) of the Constitution.



being implemented with respect to some functional areas of the national and provincial governments. For example, metropolitan municipalities, which tend to have significant capacity, are already involved in the delivery of housing even though it is a national and provincial competence. Thus, there is a fair degree of asymmetry in the South African system of local government.

However, the Constitution does not explicitly state that the asymmetry at local level is strictly there to respond to the urban-rural distinction. In practice, nonetheless, district municipalities generally operate in rural and semi-rural areas while metropolitan municipalities and secondary cities (B1) govern in mostly urban areas. Thus, it can be concluded that the local government system is designed in such a way that enables it to respond or adjust to the urban-rural interplay, among other differences present at the local level.

Political and Social Context in South Africa

The ushering of a democratic era in 1994 brought hope to a country that had been ravaged by years of apartheid. Under apartheid, the state, economy and society were organised strictly on the basis of race.²⁵⁰ The system benefited whites while the majority black population, as well as the minority Indian/Asian and coloured minority groups, were marginalised, deprived of equal economic opportunities and political representation to a different degree, and the former relegated to third class citizens. Since coming to power in 1994, under the leadership of Nelson Mandela, the majority led government of the African National Congress (ANC) has been confronted with a major challenge of undoing or redressing the injustices and legacy of apartheid. A variety of transformation interventions have been adopted in line with the demands of one of the most transformative constitutions in the world, the 1996 Constitution.

These interventions have recorded successes in some areas while failures are common in a number of areas, such as spatial transformation, with apartheid spatial landscape largely remaining intact 27 years after the end of apartheid.²⁵¹ Corruption and skills deficit, among other problems, continue to undermine the capability of the state to meet its obligation and development priorities at all levels of government.²⁵² The slow growth of one of Africa's largest economies has not made the situation any better. South Africa's GDP is estimated to grow by merely 1,5, 1,7 and 2,1 per cent in 2019, 2020 and 2021, respectively.²⁵³ The unemployment rate, which in the second quarter of 2019 stood at 29 per cent, is another indicator of an economy in trouble.²⁵⁴ It is thus without doubt that the economy is failing to generate sufficient resources, at a faster rate, for the state to cater for the needs of its estimated 58,78

²⁵⁰ See Nico Steytler and Jaap de Visser, *Local Government Law of South Africa* (LexisNexis 2009) 1-3 to 1-9.

²⁵¹ Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood, 'Introduction' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019) 1.

²⁵² See Patricia Ntliziywana, 'Professionalisation of Local Government in South Africa' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019) 59.

²⁵³ National Treasury, 'Municipal Budget Circular for the 2019/20 MTREF' (MFMA Circular no 94, Municipal Finance Management Act No 56 of 2003, May 2019) 2.

²⁵⁴ Statistics South Africa (2019) <<http://www.statssa.gov.za/>> accessed 30 July 2019.



million population (mid 2019 estimate).²⁵⁵ This partially explains why poverty remains widespread, inequalities continue to deepen and universal access to basic services remains a dream for many South Africans.

The citizens have been impatient with the ANC government's performance in the last few years.²⁵⁶ The political dominance of the ANC, reflected by, among other things, its two-thirds majority in the National Assembly in the early years of the democratic era, has slowly been eroded. In the 2019 elections, the ruling party won by 56 per cent of the national vote and narrowly won Gauteng province while the opposition, Democratic Alliance, kept its majority in the Western Cape province. At local government level, after the 2016 local government elections, the ruling party is no longer in control of four key metropolitan municipalities. Of the four, one is the legislative capital (City of Cape Town), the other is the administrative capital (Tshwane) while the City of Johannesburg is the economic hub of the country. Some form of coalition governments were formed in Johannesburg, Tshwane and Nelson Mandela Bay following the failure by any of the political parties to acquire a majority in these municipalities.

The metropolitan regions and cities remain key attraction points for people from rural areas in search for better economic opportunities. By 2017, over 67 per cent of the total population of South Africa was already residing in urban areas, including cities.²⁵⁷ Consequently, rural areas have been left with a thin base to tap resources such as skilled manpower, a development which undermines their capacity to deliver. On the other hand, the infrastructure in these metropolitan areas is overwhelmed by the large-scale inward emigration and is failing to cope, as a result. For instance, a significant number of the population in these metropolitan regions still resides in informal settlements with no or limited access to basic public services. Even if such services were to be provided, a large portion of people in these areas are not able to pay due to incapacity. Thus, local government, which is positioned at the heart of state public service delivery in South Africa,²⁵⁸ continues to face a variety of challenges, which are both within and outside of its control.

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Legal Documents:

Constitution of South Africa, 1996

National Treasury, 'Municipal Budget Circular for the 2019/20 MTREF' (MFMA Circular no 94, Municipal Finance Management Act No 56 of 2003, May 2019)

Scientific and Non-Scientific Publications:

²⁵⁵ *ibid.*

²⁵⁶ See Ntliziywana, 'Professionalisation of Local Government in South Africa', above, 59, 61, 63.

²⁵⁷ See Statista, 'South Africa: Urbanization from 2009 to 2019' (*Statista*, 2020)

<<https://www.statista.com/statistics/455931/urbanization-in-south-africa/>> accessed 9 December 2019.

²⁵⁸ See Steytler and De Visser, *Local Government Law of South Africa*, above, 1-3.



Chigwata TC, De Visser J and Kaywood L, 'Introduction' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019)

Ntliziywana P, 'Professionalisation of Local Government in South Africa' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019)

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<https://www.statista.com/statistics/455931/urbanization-in-south-africa/>



11.2 Local Responsibilities and Public Services in South Africa: An Introduction

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Local government is the provider of primary services, which are essential to the dignity of all who live in its area of jurisdiction. Ensuring the sustainable provision of services and encouraging the involvement of communities in the matters of local government are some of the main objects of local government.²⁵⁹ In this regard, the Constitution calls for municipalities to strive within their financial and administrative capacity to achieve their constitutional mandate set out in Section 152. These objects are crucial in a country that seeks to rectify injustices of the previous apartheid local government- a local government system that deliberately excluded the majority of black citizens from accessing essential services. As such, both urban and rural local municipalities of the democratic local government are responsible mainly for essential services and infrastructure vital to communities' wellbeing.

The Constitution further sets out the framework for local government responsibilities. Section 156(1) of the Constitution provides that a municipality has executive authority, and the right to administer, the local government matters set out in Schedules 4B and 5B of the Constitution and any other matter assigned to a municipality by national or provincial legislation. Schedules 4B and 5B grant original powers to local government. Local government's functions must be observed in relation to the developmental mandate given to municipalities by the Constitution (Section 153).

Although at first glance the constitutional provision of local government powers and functions seems symmetrical, Section 156(1)(b),²⁶⁰ Section 155(3)(c)²⁶¹ and the compulsory assignment per Section 156(4)²⁶² of the Constitution show that there is a system of differentiation of powers and functions.

Division of Functions and Powers Between District and Local Municipalities

The relevant national legislation is the Municipal Structures Act 117 of 1998 and it must take into account the need to provide municipal services equitably and sustainably. The

²⁵⁹ Sec 152 of the Constitution of the Republic of South Africa, 1996, states additional objects of local government as providing for a democratic and accountable government to local communities, promoting social and economic development, and promoting a safe and healthy environment.

²⁶⁰ Sec 156(1)(b) of the Constitution provides that '[a] municipality has executive authority in respect of, and has the right to administer any other matter assigned to it by national and provincial legislation'.

²⁶¹ Sec 155(3)(c) of the Constitution provides that '[n]ational legislation must subject to Sec 229, make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C. A division of powers and functions between a category B municipality and a category C municipality may differ from the division of powers and functions between another category B municipality and that category C municipality'.

²⁶² Sec 156(4) of the Constitution states that '[t]he national and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if that matter would most effectively be administered locally and the municipality has the capacity to administer it'.



constitutional and legislative division of powers and provision of public services is not based on the urban-rural distinction. Legally, metropolitan, district and local municipalities have authority over urban areas. In practice, however, metropolitan and local municipalities govern in mostly urban areas while district municipalities generally govern in rural and semi-rural areas.

Section 83(3) of the Structures Act provides that a district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole.²⁶³ This means that districts are to play a supportive role and must do so by providing the bulk services and district-wide functions set out in Section 84(1) of the Structures Act,²⁶⁴ and cater for both the district and local municipalities within the district's jurisdiction. Local municipalities have the powers provided in Sections 156 and 229 of the Constitution,²⁶⁵ excluding the district powers listed in Section 84(1) of the Structures Act.²⁶⁶ This division grants local municipalities most day-to-day service delivery functions. The division of powers has not been without problems due to poorly executed mandates as a result of capacity constraints, finances, as well as duplication of services, uneven development and poor relations between the district and local municipalities.

Further, the provision of municipal services must be done in a manner that ensures community participation and accountability. Therefore, integrated development planning (IDP) was introduced through the Municipal Systems Act of 2001 as a key strategic planning instrument for service delivery in local government. The emergence of IDP is strongly linked to the early 1990s drive towards addressing the legacy of apartheid through an integrated and participatory approach to planning.²⁶⁷ Each municipality prepares an IDP in consultation and cooperation with the local community and other organs of state.²⁶⁸ This is in realisation of the fact that some municipal services must be delivered in a coordinated manner, for example, when planning for human settlement (housing), other related essential services such as roads, water, and electricity, waste removal, streetlights, public transport, and municipal health services must also be considered. Twenty-five years post-democracy, access to these municipal services has been expanded to previously marginalised communities. However, secondary data suggests an increasing trend of community protests in South Africa since the year 2010, with the highest manifesting in the Gauteng province, a province that is mainly comprised of urban local government (ULG) and deemed to be the economic hub. The reality is that of a local government battling to meet the communities' expectations as communities often exhibit signs of anger and dissatisfaction with the quality and quantity of services offered by the local

²⁶³ Act 117 of 1998.

²⁶⁴ The functions and powers of a district municipality include integrated development planning, portable water supply systems, bulk supply of electricity (transmission, distribution and where applicable, generation), domestic waste-water and sewage disposal systems, solid waste disposal sites, municipal roads, regulation of passenger transport services, municipal airports, municipal health services, firefighting services, fresh produce markets and abattoirs, cemeteries and crematoria, local tourism, municipal public works, grants given to the district (receipt, allocation and if applicable distribution) and taxes, levies and duties (imposition and collection).

²⁶⁵ These are Schedule 4B and 5B original powers, assigned powers and fiscal powers.

²⁶⁶ Sec 84(2) of the Structures Act.

²⁶⁷ Anél du Plessis (ed), *Environmental Law and Local Government in South Africa* (Juta 2017) 168. For further discussion on the people's participation, see report section 6 on People's Participation in Local Decision-Making.

²⁶⁸ Sec 29 of the Municipal Systems Act 32 of 2000.



government sphere. Based on the Constitution, the communities' expectations for municipal services are legitimate.

The Structures Act, on the other hand, provides a framework for authorisations and adjustments of functions between the district and local municipalities. The Minister of Local Government may authorise a local municipality to perform or exercise a power in respect of the water, electricity, sanitation and municipal health functions that ordinarily reside with district municipalities.²⁶⁹ Provincial MECs, on the other hand, are empowered to adjust the powers and functions from a local municipality to a district municipality or vice versa, except for integrated development planning, water, electricity, sanitation and municipal health functions, as well as grants made to district municipalities and collection of taxes or levies in respect of these functions.²⁷⁰ The adjustment can only take place after a capacity assessment has been undertaken, and the Municipal Demarcation Board endorses the adjustment. Graph 1 shows the number of authorisations that have been made and that a large number of local municipalities are performing functions that are, according to Section 84(1) of the Structures Act, redistributive in nature and are district municipality functions.

Table 19: Ministerial Authorised functions performed by Local or District municipalities

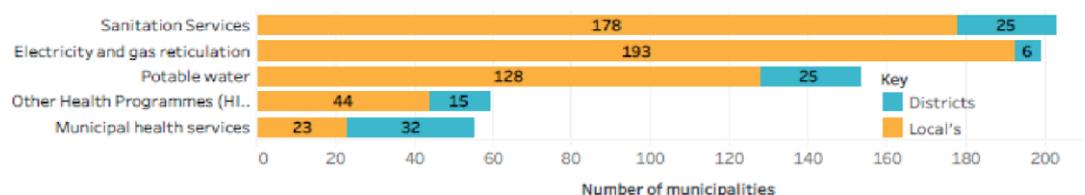


Figure 1: Authorisations made by the Minister per Section 84(3) of the Structures Act.²⁷¹

Additional Powers and Functions

The Constitution mandates the national and provincial government to assign the administration of a Schedule 4A or 5A matter to a municipality if the matter would be most effectively administered locally and the municipality has the capacity to administer the matter (Section 156(4) of the Constitution). A function can be assigned to a specific municipality or to all municipalities in general. An assignment is the secondary source of power for local government. The Constitution (Sections 99, 126 and 156(4)), and the Municipal Systems Act 32 of 2000,²⁷² set out the appropriate procedures for transferring functions to municipalities. The procedures are designed to warrant that the assignment of powers outside of the competencies set out in Schedule 4B and 5B are well placed, that municipalities are protected from unfunded mandates and that legislative and executive capacity is transferred to the

²⁶⁹ Sec 84(3) of the Structures Act. The Minister must comply with the consultation requirements set out in this provision.

²⁷⁰ Sec 85(1) of the Structures Act.

²⁷¹ Municipal Demarcation Board (MDB), 'Assessment of Municipal Powers and Function' (National Report, MDB 2018).

²⁷² Secs 10 and 10A of the Municipal Systems Act.



assignee municipality.²⁷³ Graphs 2 and 3 below show the Municipal Demarcation Board’s assessment of the number of municipalities performing functions that are originally national and provincial government functions. According to the graphs, a large number of these provincial and national functions are performed by local municipalities.

Figure 2: Performance of Schedule 4A and 5A functions by municipalities

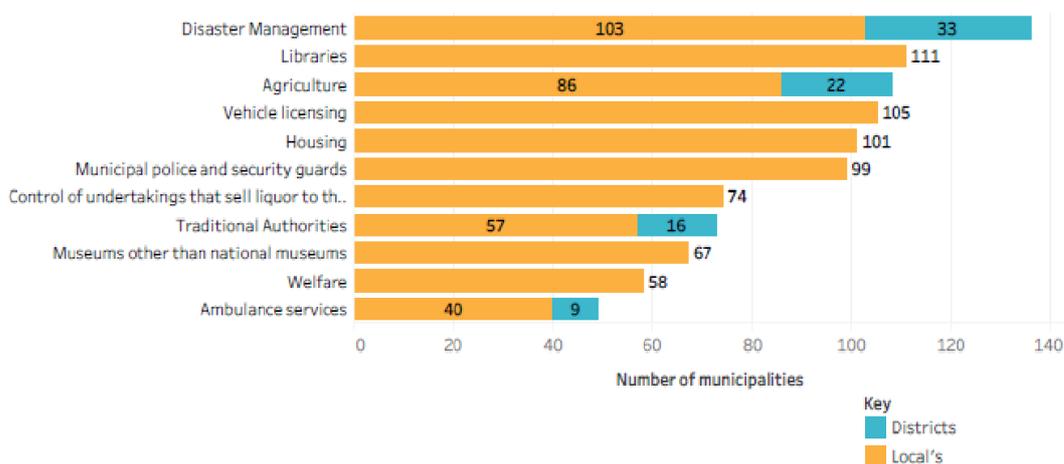


Figure 2: MDB’s assessment of the number of district and local municipalities that currently perform functions that are not local government’s original functions.²⁷⁴

Figure 3: Municipalities administering Schedule 4A or 5A functions

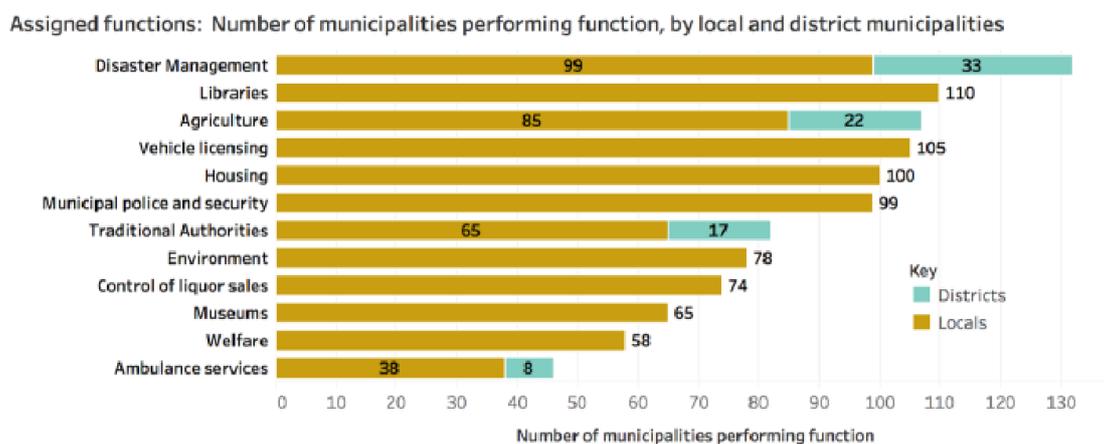


Figure 3: District and local municipalities that currently administer functions that are not local government’s original functions.²⁷⁵

Adjustments to Adapt to Changes

²⁷³ Jaap de Visser and Annette Christmas, ‘Reviewing Local Government Functions’ (2007) 9 Local Government Bulletin 13.

²⁷⁴ MDB, ‘Assessment of Municipal Powers and Function’, above.

²⁷⁵ *ibid.*



Metropolitan municipalities exercise all the original powers of local government enumerated in the Constitution. At present, they cannot adapt their provision of public services to demographic changes in their jurisdiction because there is no framework governing adjustments in metropolitan municipalities. The process of assignment provided in the Constitution could, however, be used to empower municipalities to adapt to changes. For example, municipalities want to perform more housing, public transport and health responsibilities. All these functions fall under Schedules 4A and 5A of the Constitution, making them national and provincial government functions but they could be assigned to municipalities.

Alternative Service Delivery Mechanisms

Municipalities in South Africa have the discretion to use alternative service delivery mechanisms to provide various municipal services that were previously performed internally. The section below outlines two such mechanisms that may be employed.

Use of Municipal Entities as Service Providers

Municipal entities can be established for this purpose.²⁷⁶ A municipal entity is an ‘organ of state’ and must comply with the legislative framework that applies to its parent municipality to ensure accountability, transparency and consultative processes. Municipal entities are accountable to the municipality or municipalities that established them. The municipal entity enters into a service delivery agreement with its parent municipality and must perform its duties according to the objectives set by the parent municipality. Municipal entities, unlike municipalities, function on business principles and are expected to be free from municipal problems such as inefficiency, slowness and unresponsiveness.²⁷⁷

Municipal entities are mainly used by metropolitan municipalities, some district municipalities and some local municipalities that have the capacity. The 2017-18 Auditor General’s Audit Report for Local Government shows that in the 2017-18 financial year, 57 municipal entities were operating across both urban and rural municipalities.²⁷⁸ This could be due to the scope and variety of services they have to provide, as well as the demographical make-up of the area(s) they have to provide the services in. Key issues to be considered in comparing the performance of entities with that of internal service delivery by the municipality include management capacity, the specific context of the municipality, political and community accountability, and performance monitoring and reporting. While municipal entities cannot be seen as a solution for service delivery, in certain contexts they may be more effective than internal delivery. For example, in the City of Johannesburg Metropolitan Municipality, the water and sanitation services are provided by the municipal entity Johannesburg Water.²⁷⁹ In

²⁷⁶ Centre for Applied Legal Studies (CALs), ‘Evaluating the Efficiency and Effectiveness of Municipal Entities as Municipal Service Delivery Mechanisms – A Legal Assessment’ (CALs 2010) 23. The following types of municipal entities are recognised in the Systems Act – private company (subject to restrictions), a service utility (established by a municipality) and a multi-jurisdictional service utility (established by two or more municipalities).

²⁷⁷ Felicity Kitchin, ‘Consolidation of Research Conducted on Municipal Entities in South Africa’ (2010) 4-5.

²⁷⁸ Kimi Makwetu, ‘Local Government Audit Report 2017/18’ (Auditor General 2019) Annexure 1.

²⁷⁹ City of Johannesburg, ‘City of Johannesburg Annual Report 2017/18’ 60-71.



uThungulu District Municipality, the fresh produce market function is performed by the UThungulu Fresh Produce Market.²⁸⁰

Contracting with Private Parties

Section 217 of the Constitution states the constitutional framework for procurement by an organ of state in the national, provincial or local sphere of government.²⁸¹ When procuring goods and services at a municipal level, Chapter 11 of the Municipal Finance Management Act (MFMA) comes into operation and it must be read together with the Preferential Public Policy Framework Act, as well as Chapter 8 of the Municipal Systems Act. Section 111 of the MFMA mandates every municipality and municipal entity to have and implement Supply Chain Management (SCM).²⁸² The SCM Regulations issued in terms of the MFMA lay down the requirements for the governance of procurement processes. Municipalities have to determine their own procedures and policies, which must be consistent with the legislative framework. If the contract imposes financial obligations on the municipality beyond three years, Section 33 of the MFMA comes into operation and mandates the municipality to consult the local community,²⁸³ National Treasury and the responsible national department if the contract involves the provision of water, sanitation and electricity. Both urban and rural municipalities have to follow this legislative framework when awarding business to private companies.

Municipalities also have the discretion to enter into Public-Private Partnerships (PPPs) for the provision of services²⁸⁴ and infrastructure. This discretion is, however, heavily regulated by the National Treasury and in terms of the Municipal Systems Act.²⁸⁵ At local government level, PPPs are regulated under the MFMA and its regulations,²⁸⁶ which provides a framework for municipalities and private sector partners to enter into mutually beneficial commercial transactions, for the public good. PPPs are often used for procuring capital projects and as such the process followed is intensive and requires competitive and transparent bidding, as well as the capacity for the municipality to carry out the projects. While legislation and policy do not differentiate between PPPs for urban or rural areas/government, the procedural requirements of a PPP suggest that a municipality must have the capacity to undertake the strenuous procedure before engaging in the actual substance of the partnership.²⁸⁷ A PPP has to be strongly motivated, especially with regards to the long term nature of the contract, as well as a municipality's financial viability before, during and after the PPP has been completed.

²⁸⁰ uThungulu District Municipality, 'uThungulu District Municipality Annual Report 2017/18'.

²⁸¹ Sec 217(1) of the Constitution requires the contracting of goods or services to take place in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. Sec 217(3) of the Constitution requires that national legislation prescribe a framework within which the preferential procurement policy referred to in Sec 217(2) must be implemented. The Preferential Public Policy Framework Act (PPPFA) was promulgated as a response to this constitutional imperative.

²⁸² Sec 112 of the MFMA.

²⁸³ See report section 6 on People's Participation in Local Decision-Making.

²⁸⁴ If the PPP involves the provision of a municipal service, chapter 8 of the Systems Act must also be complied with.

²⁸⁵ See Secs 76-78 and 80-81 of the Municipal Systems Act.

²⁸⁶ Sec 120 of the MFMA. Read together with the Municipal PPP Regulations (2005), the Local Government SCM Regulations (2005) and National Treasury's Municipal Services and PPP Guidelines.

²⁸⁷ See Sec 120(2), (4) and (6) of the MFMA.



One of the PPPs that have improved the lives of the citizens in the City of Tshwane was a partnership between the municipality and the South African Breweries (SAB) in 2018, where SAB rehabilitated two water pump stations – Groenkloof springs and Kentron borehole to increase the municipality's water supply. The partnership resulted in an additional 7.5 million litres of water for residents per day.²⁸⁸

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²⁸⁸ '2025 Sustainability Goals' (*Greenovation*, 16 May 2018) <



11.3 'A Re Yeng' Bus Rapid Transit Project: City of Tshwane

Lungelwa Kaywood, SALGA – South African Local Government Association

Relevance of the Practice

Twenty-five years post democracy, South African cities are still characterized by dysfunctional, inefficient, and spatially unjust settlement patterns. This places a costly transport burden on the poor communities that are settled far away from job opportunities. Therefore, the country had to explore initiatives such as Transit Oriented Development (TOD) and Bus Rapid Transport (BRT) which have proven successful in trying to create more inclusive cities and more efficient settlement patterns. Selected as the preferred practice, the BRT model has evolved from an emerging mode used mainly in developing countries to an established transportation mode providing sustainable mobility in cities throughout the world.²⁸⁹ A developing country, South Africa was not to be left behind as transport is deemed to be one of the critical success factors for the country's developing economy. As such, this project was important to the country and received the required support from various organs of state such as the National Treasury, Department of Transport, the private sector as well as the Development Bank of Southern Africa (DBSA). The practice is related to all the report sections in that it addresses the role of local government in service provision beyond basic services such as water and electricity.

The National Land Transportation Act (NLTA) provides the legal framework for the development and implementation of the Integrated Rapid Public Transport Networks (IRPTN) by the metropolitan cities in South Africa. Using the case of Tshwane City, their IRPTN strategy set out the network plan for BRT corridors and integration with rail services such as the Gautrain and PRASA commuter rail links in the short, medium and long term. The government support (in whole) was key to the success of this project. The City of Tshwane was allowed to use a portion of its grant income to cover some of the funding requirements. The project also received support from the traditional 'affected operators' in that a number of taxi drivers were trained to operate the new BRT buses which resulted in better working conditions.

Description of the Practice

Loosely translated, *A Re Yeng* means 'Let's Go', it has been operating since 2014 around the Pretoria centre and surrounding suburbs. The *A Re Yeng* buses are equipped with free Wi-Fi on board and are operated by qualified former taxi drivers recruited from the various taxi associations in the City. The bus project was rolled out in phases, culminating in the construction of 80-kilometre long dedicated lanes. Comprising of 51 bus stations that stretch from poor townships, the buses pass through the city centre and surrounding suburbs. The

²⁸⁹ National BRT Institute, <<https://nbrti.org/>>.



project provides communities with improved public transport in terms of quality, reliability and safety as well as better mobility and accessibility. The project was funded using public revenue and loans from the Development Bank of Southern Africa (DBSA). This project is relevant to report section 3 on local finances in that it had a direct impact on the local financial arrangements. The involvement of the multiple state organs as part of the project team speaks to the intergovernmental fiscal relations (report section 5) and lastly, communities have to be involved as part of the planning and budgeting processes (report section 6 on people's participation). However, the project does not adequately respond to some of the problematic realities connected with the urban-rural divide and interplay. For example, although *A Re Yeng* buses have provided better connectivity between poor townships, cities, and rich suburbs, the buses do not travel beyond the city limits, and this excludes rural communities from using them, unless they are visiting the city. Despite the need for public transport in rural areas, so far, there are few cities that are incorporating rural areas in their roll out of bus rapid transport. This is could be because cities have a greater need for mobility due to the large populations (2.921 million in Tshwane) and the huge difficulty of traffic congestion. These challenges do not exist in most rural areas. The buses would also have to operate at a profit, or at least break even, which would be difficult in rural areas having significantly lower populations, and economic activity, compared to cities. Moreover, many rural areas do not have adequate road infrastructure to service some remote areas.

Assessment of the Practice

The BRT system has been successfully implemented by 5 of the 8 metropolitan cities in South Africa and seems to have addressed the spatially unjust settlement patterns by offering accessible, affordable and attractive means of transport to a broad range of people across communities. The BRT has further offered accessible public transport for vulnerable groups such as people with disabilities and mothers with children. With dedicated bus lanes, traffic congestion was meant to reduce though the jury is still out on whether this has been realized. However, it has not been without its problems, particularly for the City of Tshwane's (Tshwane) 'A Re Yeng' BRT. It appears as though the BRT systems were seen as a panacea to public transport in South Africa as opposed to a mode that forms part of an integrated system of different modes. Van Ryneveld²⁹⁰ notes that 'public transport systems like 'A Re Yeng' are not primarily about the urban/rural linkage', which is the problem that the national government sought to address when it introduced the BRT system. He further states that 'the BRT system is about moving large numbers of people quickly through densely populated or densely trafficked areas/corridors, and by moving quickly this also reduces operating costs'. What has happened in reality is that the technology that was chosen for the BRT system was not suitable for the transport challenge that Tshwane faces, which is to transport large numbers of people from its rural spaces/sections into the urban centre. Furthermore, the fare system of BRT was too complicated and costly. As such, the BRT system has ended up not being suited to Tshwane. The City of Tshwane could have drawn far more lessons from the City of Johannesburg's BRT

²⁹⁰ Interview with Philip Van Ryneveld, independent consultant, Hunter Can Ryneveld (26 March 2021).



system which recognized the non-motorised transport system as modes to be further developed as part of this integrated system.

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11.4 The Accreditation of Municipalities to Administer Housing Programmes

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Relevance of the Practice

In terms of the Constitution, housing is a concurrent national and provincial government function (Part A of Schedule 5). This placement is rather odd and impractical considering that local government's service delivery functions are centred on the built environment, yet housing falls out of local government's competencies.²⁹¹ Communities lay their housing delivery grievances at the local government's doorsteps.²⁹² The concentration of both the economy and South Africa's population in urban areas reinforces the focus on speeding up the development of cities through housing, amongst other factors/functions.²⁹³ It is, therefore, hard to imagine how local government can carry out its developmental mandate without housing as a function, especially when housing lies at the heart of development.²⁹⁴

A portion of the housing function has partly devolved to local government through a rich body of Constitutional Court judgments (municipalities responsible for providing shelter to the homeless).²⁹⁵ In practice, however, the devolution of the full housing function has not been undertaken with an equal amount of haste or resources because municipalities cannot regulate, set priorities and determine their housing delivery strategies, as well as issues surrounding the funding of the housing function. This is because they lack the necessary legislative powers and they do not receive the housing grant directly from the national government. The housing delivery function remains an unfunded mandate for municipalities, except in the context of accreditation.

Description of the Practice

²⁹¹ Schedules 4B and 5B – electricity and gas reticulation, municipal planning, municipal public transport, water and sanitation services, refuse removal, street lighting are services that are pertinent to and attached to housing.

²⁹² Dullah Omar Institute, 'Civic Protest Barometer' (2018).

²⁹³ Department of Human Settlements (DHS), 'Revised Draft Accreditation and Assignment Frameworks for Municipalities to Administer National Human Settlements Programmes' (2017) <[https://www.salga.org.za/Documents/Municipalities/Guidelines%20for%20Municipalities/Revised_Accreditation_and_Assignment_Frameworks_for_Municipalities_to_Administer_National_Human_Settlements_Programmes_\(March%202017\).pdf](https://www.salga.org.za/Documents/Municipalities/Guidelines%20for%20Municipalities/Revised_Accreditation_and_Assignment_Frameworks_for_Municipalities_to_Administer_National_Human_Settlements_Programmes_(March%202017).pdf)> accessed 20 January 2020.

²⁹⁴ Sec 153 of the Constitution provides for the developmental duties of municipalities. See also Sec 4(2)(j) of the Municipal Systems Act.

²⁹⁵ *Government of RSA v Grootboom* 2001 (1) SA 46(CC); *Occupiers of 51 Olivia Road v City of Johannesburg* 2008 (3) SA 208 (CC); *City of Johannesburg v Blue Moonlight Properties* 2012 (2) SA 104 (CC).



The Housing Act enables municipalities to apply for and attain accreditation to administer housing programmes.²⁹⁶ Applying for accreditation is voluntary, based on a municipality's capacity to undertake the housing function, which is not a local government function as per the Constitution. The consequence of not applying for and attaining accreditation is that the housing function, if carried out, will not be funded - so it remains an unfunded mandate. The accreditation can only take place once the Member of (provincial) Executive Council (MEC) responsible for housing in the relevant province is satisfied that the municipality concerned complies with the criteria for the accreditation determined by the Minister of Human Settlements. Once a municipality is accredited, it can administer the housing programme and may exercise powers and duties relevant to the housing programme that would otherwise be performed by the national and provincial government.²⁹⁷ The MEC allocates money to the accredited municipality and the municipality remains accountable and subject to the MEC's directions. The MEC must review the accredited municipality's performance regularly and can intervene if the municipality performs poorly or does not perform at all.²⁹⁸

The rationale for the Accreditation and Assignment Framework for Municipalities to Administer National Human Settlements Programmes (2012) was the subsidiarity principle, as provided in Section 156(4) of the Constitution. The aim of the framework was 'to address various policy, constitutional and legislative aspects in order to enable municipalities to manage the full range of housing instruments within their areas of jurisdiction' and expand the role of local government.²⁹⁹ The framework targeted metropolitan municipalities mainly. To be accredited and ultimately assigned the housing functions, municipalities have to show their capacity to plan, implement and maintain the projects and programmes that are included within their Integrated Development Plans, within the three years mandated by the MFMA.

The 2012 Accreditation and Assignment Framework addresses certain legal difficulties associated with the framework for accreditation as set out in the National Housing Code.³⁰⁰ A distinction was made between accreditation and assignment and the processes to be followed are differentiated. Accreditation is formalised by way of an Implementation Protocol in terms of Section 35 of the Intergovernmental Relations Framework Act, 2005 and assignment by means of an Executive Assignment Agreement in terms of the Constitution.

Accreditation recognises that whilst a municipality has met certain criteria and standards, it still requires additional support and capacity before assuming full accountability for the administration of national housing programmes. Accreditation allows the exercise of functions by a municipality on behalf of the MEC while further capacity is being developed. The financial accountability for these functions remains with the responsible provincial accounting officer.

Assignment involves the formal transfer of the functions related to the administration of national housing programmes from the provincial MEC responsible for housing to a

²⁹⁶ Sec 10 of the Housing Act 107 of 1997.

²⁹⁷ Sec 10(2) and (3) of the Housing Act.

²⁹⁸ Sec 10(3) and (4) of the Housing Act.

²⁹⁹ Department of Human Settlements, 'Breaking New Ground – A Comprehensive Plan for the Development of Integrated Sustainable Human Settlements' (2004) Part B, Sec 5.2.

³⁰⁰ DHS, 'Revised Draft Accreditation and Assignment Frameworks', above.



municipality through the existing constitutional and legal framework for assignment.³⁰¹ Assignment moves the planning, financial and legal accountability from the assigning authority to the receiving authority. Assuming financial accountability for the housing function includes the right to directly receive the funds and the assets necessary to perform the function.

In 2017, a Revised Accreditation and Assignment Framework for Municipalities was drafted to provide the guidelines for enabling the administration of housing programmes by municipalities. The 2017 Revised Accreditation and Assignment Framework takes into account the legislative and policy shifts within the housing and broader human settlements and local government context; clarifies the roles of provinces in the accreditation process; and addresses lessons from the implementation of the 2012 Accreditation Framework.³⁰² It envisages a dual process where an accreditation eventually leads to the assignment of the housing function.

The accreditation will apply to metropolitan, local and district municipalities across South Africa; however, the focus will be on larger urban and metro municipalities due to the urgency caused by the urban sprawl. If a district municipality requests accreditation, the municipality must show that it is authorised by all or a majority of the local municipalities within its jurisdiction to act on behalf of all or some of the local councils and that it has the necessary powers and functions and financial responsibilities to ensure integrated and efficient service delivery.³⁰³

From an intergovernmental relations (IGR) point of view (report section 5), the Accreditation and Assignment Programme requires the three spheres of government to work together in the spirit of IGR. The Programme also obliges the housing sector within the spheres to liaise with various sector departments and with various organs of states as key stakeholders. The National Department of Human Settlements as the policy custodian of the Programme works with all the provinces, selected municipalities, SALGA, National Treasury, Department of Cooperative Governance and Traditional Affairs (CoGTA), as well as the Finance and Fiscal Commission (FFC) on all policy issues regarding accreditation and assignment of municipalities.

Assessment of the Practice

The Accreditation and Assignment programme is about building additional capacity in qualifying municipalities to enable municipalities to manage the housing programme. The legal and policy framework governing the accreditation and assignment of municipalities to administer housing programmes is quite detailed and technical in nature, which could have the negative effect of frustrating the entire process. Several challenges stand in the way of effectively assigning (frustrate the desire to effectively assign) legislative and administrative [housing] functions to municipalities. The most pertinent of these challenges is the lack of requisite capacity in municipalities and the subtle reluctance of provincial and national government to surrender their [housing] powers and functions to municipalities.

³⁰¹ *ibid.*

³⁰² *ibid.*

³⁰³ *ibid* 20 (Principles of Accreditation, Principle 8).



It is, however, encouraging to see how the framework links the instrument of accreditation with assignment as provided for in the Constitution. The accreditation, as set out in Section 10 of the Housing Act, starts as a delegation and ultimately leads to an assignment. The framework provides for continuous strengthening of local government through the delegation of the housing function and authority, and ultimate transfer of those functions to municipalities. The framework also acknowledges the need to tailor the terms and conditions of the assignment to individual circumstances and the varying capacities of municipalities, and in so doing takes into account the principle of subsidiarity by endorsing the use of an agreement as an appropriate manner of the assignment. While the above is encouraging, rural municipalities have high levels of backlogs in electricity, water and sanitation which are the priority of the current government; while lack of housing is a significant challenge in urban municipalities hence prioritisation of urban municipalities for the Accreditation and Assignment Programme. Furthermore, unlike their urban counterparts who face urban sprawl issues, an ever-increasing need for housing which they can generate property rates from and capacity building to strengthen their somewhat solid capacity further, rural local government will require more capacity building initiatives (in comparison to urban areas) to be implemented before they can take up the Section 10 route. This will mean their uptake of the accreditation and assignment programme will take place at a much later period, lagging behind their urban counterparts.

At present, it is difficult to assess the practice as there has not been sustainable implementation of accreditation and delegation programmes to serve as a precursor to the assignment or formal transfer of the housing function to local government. It is only fair and rational to give the (revised) Accreditation and Assignment programme an opportunity for implementation. There is a desire to move towards a time where municipalities are empowered to carry out the housing function and deliver houses to communities on a sustainable basis. Steytler revealed that 'initially national government was keen to undertake the accreditation and assignment of housing to municipalities, however, provincial government was not as keen due mainly to political resistance and the loss of funding attached to the housing function.'³⁰⁴ Harrison noted that 'provinces were responsible for housing, but now most of the responsibility seems to be shifting to local government. Provinces are now putting mega housing projects in the city peripheries, which have cheaper land, but in doing so, provinces are pushing cities into a corner to expand service delivery to the periphery. If cities were in control, this would enable them to plan land use and spatial planning much better. Accreditation is not in the Constitution, so to avoid assignment, there is level one and level two accreditation.'³⁰⁵ Taking the above into account, for the successful implementation of the Accreditation and Assignment Framework to take place the national and provincial departments responsible for housing will have to ensure that there is continued strengthening of municipal capacity; that the national and provincial departments warm up to transferring functions to local government; and that poor governance is removed.

In light of the above, some municipalities list 'housing – top structure subsidies' in their MFMA Medium Term Revenue Expenditure Framework Report Table A10, indicating that they

³⁰⁴ Interview with Nico Steytler, Professor, Dullah Omar Institute, University of the Western Cape (15 April 2021).

³⁰⁵ Interview with Karen Harrison, City Support Programme, National Treasury (12 April 2021).



administer the housing function. This table records a municipality's basic service delivery measurement. It should be noted, though, that this may not mean that the function has been formally assigned. Along with listing the function, municipalities indicated that they had spent monies on housing top structures over and above what provinces had allocated as subsidies.³⁰⁶

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Constitution of the Republic of South Africa, 1996

Housing Act 107 of 1997

Municipal Structures Act 117 of 1998

Municipal Systems Act 32 of 2000

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³⁰⁶ For example, City of Johannesburg, 'Medium-Term Budget 2018/18 to 2020/21' (May 2018) 39; Overstrand Municipality, 'Budget Report 2018/19' 45; Stellenbosch Municipality, 'Medium Term Revenue and Expenditure Framework 2018/19 to 2020/21' 41.



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11.5 eThekweni Metropolitan Municipality: Expanded Public Services during the Covid-19 Emergency

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Relevance of the Practice

Since the declaration of the state of national disaster by the Minister of Cooperative Government on 18 March 2020, and the subsequent announcement of a lockdown by the President on 26 March, municipalities have implemented various measures in response to the Covid-19 pandemic. This practice note analyses some of the measures taken by eThekweni metropolitan municipality (metro) during the Covid-19 pandemic. The words 'disaster' and 'emergency' are used interchangeably. While disaster management is a shared national and provincial government competence (Schedule 4A of the Constitution), municipalities play a crucial role during emergencies in terms of their constitutional functions (listed under Schedule 4B and 5B) such as water, sanitation, and markets. In South Africa, it is common for the younger generation to seek employment in urban centres, especially in metropolitan municipalities, in order to work and raise money, which is transferred to parents, siblings, children or the extended family in rural areas. The economic impact of Covid-19 in metropolitan municipalities will therefore have some ripple effects on the rural economy. This practice note considers the question 'what are the criteria for the allocation of responsibilities in the provision of public services during the Covid-19 pandemic' and 'how the eThekweni metropolitan municipality has adapted to the Covid-19 emergency'.

Description of the Practice

Municipal powers and functions are set out in Schedule 4B and Schedule 5B of the Constitution, where Schedule 4 consists of matters of concurrent national and provincial competence, and Schedule 5 consists of matters of exclusive provincial competence. During the Covid-19 pandemic, municipalities have had to perform a mixture of functions within their powers and assigned functions.

The Expanded Local Government Mandate under Covid-19

On 25 March 2020, the Minister of Cooperative Government and Traditional Affairs (COGTA) issued directions to municipalities, which required them to perform various functions, some falling within their existing mandate, and others being new or expanded mandates. This did not necessarily follow the normal procedure for assignments set out in Section 156(4) of the Constitution, which allows the assignment (by agreement) of functions by national or provincial government to local government, in situations where the matter would be most effectively administered locally and that the local government in question had the capacity to administer it. However, the Minister of CoGTA imposed new obligations, some of which were unfunded mandates, and not necessarily agreed to by local governments.



Water

Municipalities are required to provide potable water to all communities in order to increase personal hygiene and thereby reduce transmission of Covid-19. It must be noted that while the supply of potable water is ordinarily a municipal function, prior to Covid-19 hitting the shores of South Africa, not all communities had access to water and sanitation. For example, although nationally, 92.5 per cent of households have access to improved drinking water sources, 4 per cent of households still practice open defecation, with higher figures (12.1 per cent) in traditional dwellings and (10.3 per cent) in informal dwellings, while 1.2 per cent use the bucket system.³⁰⁷ The eThekweni metropolitan municipality (metro) has ramped up the provision of water and sanitation services to high population density settlements, rural communities, informal settlements, and public facilities. While this is a mammoth task, the metro has hastened its efforts by providing potable water sources, such as static tanks and standpipes, to help with sanitation efforts to underserved areas in eThekweni.

Food Distribution

The metro has tasked its ward councillors to distribute food parcels/vouchers to help the indigent in all its wards, with each ward receiving 1000 food parcels. However, the distribution programme is characterised by some challenges. There are allegations that the food parcels are being politicised, and are only being distributed to African National Congress (ANC) members (ANC is the ruling party) in eThekweni. Although the Mayor of eThekweni, Mxolisi Kaunda, vehemently rebutted these allegations when he accounted before the National Assembly,³⁰⁸ it may be difficult to determine what is actually happening on the ground. The second challenge is that while it is noble that the metro is providing food parcels to each of the wards, the wards do not have the same population sizes; therefore, giving each ward 1000 food parcels may not take into account the wards that have a larger number of households facing food insecurity. Last, the rolling out of the food assistance programme was delayed, leaving many households hungry. In addition to municipal ward councillors helping to identify the beneficiaries of food aid paid for by the Department of Social Development, eThekweni also paid for food aid from its own resources. The provision of food relief is generally not seen as a local government function. Social relief is rather something that can be categorised under 'Social Welfare' (Schedule 4A). However, quite a few municipalities provided food assistance in response to the need. This raises the question whether this amounts to exceeding the municipal mandate, or responding to a human rights need, but this is yet to be determined in the context of South African metropolitan municipalities.

Shelters for the Homeless

³⁰⁷ Statistics South Africa (StatsSA), 'GHS Series Volume VIII: Water and Sanitation, in-depth Analysis of the General Household Survey 2002–2015 and Community Survey 2016 Data' (StatsSA 2016) <<http://www.statssa.gov.za/?p=9145>> accessed 30 October 2020.

³⁰⁸ Mxolisi Kaunda in 'JM: PC on CoGTA and Select Committee on COGTA, Water and Sanitation and Human Settlements' (*YouTube*, 14 May 2020, at 1:32:50) <<https://www.youtube.com/watch?v=68Pcindzx5Y&t=5570s>>.



The metro has a responsibility to provide temporary shelter to the homeless at least insofar as it relates to evicted homeless persons, as decided by the Constitutional Court.³⁰⁹ During the lockdown, the metro has gone beyond this duty by providing meals and psychosocial support to the homeless, including managing withdrawal symptoms for substance abuse. The metro has also prioritised the protection of vulnerable groups having set up twelve shelters accommodating 1,704 homeless people, including women and children.

Health

Regarding health, it could be argued that eThekweni metro is exceeding its 'municipal health' mandate. On one hand, it can be argued that the sanitisation of public transportation facilities and local markets amounts to municipal health, as it constitutes 'preventing communicable diseases' as per the definition of municipal health in Section 1 of the National Health Act of 2003. It can also be argued that it forms part of the public transport and markets functions set out in Schedules 4B and 5B respectively, which are local government competencies. However, other health functions being performed by the metro exceed its municipal health mandate, for example, developing disease control systems, geo-mapping, working with epidemiologists, mobilising clinical expertise, and implementing National Institute for Communicable Diseases (NICD) guidelines through contact tracing and testing, community screening and mass testing.

Sanitation and Waste

The metro is also going beyond its regular functions of cleaning of public ablution facilities and refuse collection, and has taken on a new function of sanitising public facilities. It has increased its efforts to improve sanitation by sanitising and providing soap and sanitiser dispensers in informal settlements and public places, such as markets and taxi ranks. The metro has also distributed bar soaps and sanitisers to about 21,000 of its formal housing units.

Economic Relief/Local Economic Development

Economic relief is one of the mechanisms for local economic development, which is one of the objects of local government stipulated in Section 152 of the Constitution. Section 229 of the Constitution gives municipalities the power to levy taxes. With that comes the power to have a policy on what to levy taxes on. This then allows municipalities to decide whether to give tax holidays or not. Municipalities are permitted to levy property rates and surcharges on user fees or allow tax holidays in terms of Section 229(1) of the Constitution. The closure of national borders and the lockdown restrictions on business operations have negatively affected businesses. Tourism has been one of the hardest-hit sectors in eThekweni, which is one of the top tourist destinations in South Africa. In order to assist this sector, the eThekweni metro has made provision for owners of Bed and Breakfasts and guesthouses to apply to pay residential property rates, which are lower than commercial rates, as from 18 May 2020. However, there seem to be no rates holidays for residential or other commercial property owners. For informal

³⁰⁹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC); Jaap De Visser, 'The Enforcement of Socio-Economic Rights against Local Governments in South Africa' in Conrad M Bosire and Wanjiru Gikonyo (eds), *Animating Devolution in Kenya: The Role of the Judiciary* (International Development Law Organization (IDLO), Judicial Training Institute (JTI) and Katiba Institute 2015) 193-207.



traders, the relief comes in the form of a six-month rental holiday and a zero cost of business licencing fees for 2020/2021 financial year. It is not yet clear how the rental holiday will apply to informal traders. The metro is also moving to collaborate with online platforms, through Innovate Durban, a special purpose vehicle (municipal agency) to help township businesses deliver goods to local consumers.

The metro had initially anticipated that it was going to provide economic relief for local communities during the lockdown by reconnecting consumers whose accounts were in arrears and whose services were disconnected for being long overdue during the lockdown. However, the protracted lockdown at different alert levels, the financial pressure on the municipality, and the long wait for national support forced the metro to reconsider its benevolence, and to introduce a cut-off date (30 June) for consumers to negotiate a payment plan under debt agreement.

Assessment of the Practice

The metro has taken bold, but necessary steps in its efforts to curb the further transmission of Covid-19. It is performing various functions that exceed its mandate, such as providing food to the indigent, and public health services (beyond municipal health) using its own resources. However, it is still to be seen how the national and provincial governments will assist municipalities, such as eThekweni, to cover shortfalls in their budgets attributed to the expanded municipal functions, and to deal with economic recovery and the loss of revenue due to reduced payment of user fees and property rates. Although financial support has been promised, it may take long for it to be realised, and the real impact is starting to be seen. For example, Amathole Local Municipality in the Eastern Cape declared in January 2020 that it is unable to pay its employees, and it has since been placed under administration in terms of an intervention under Section 139 of the Constitution. While bigger metropolitan cities are more likely to weather the storm, the situation is dire for smaller local municipalities, and especially so for rural municipalities as national government is redirecting resources to other matters such as the procurement of Covid vaccines.

The Covid-19 pandemic has had an indelible impact on the revenue base of municipalities as most economic activities ground to a halt during level 5 and 4 lockdown, save for listed essential services. The closure of non-essential businesses and the restriction of movement of people, tied with job and wage losses, has tied the hands of businesses and individuals, making it difficult for municipalities to raise revenue from their own sources in order to provide municipal services. Local revenue from tourism-related activities (including from museums and art galleries) have also dried up, worsening the financial position of municipalities. According to the Mayor Kaunda's submission to National Assembly on 14 May 2020,³¹⁰ the lockdown had cost eThekweni R1.5 billion in lost revenue as of 30 April, and R565 million in unfunded mandates. Like other municipalities, the metro is performing additional functions without receiving concomitant financial resources from the national and provincial governments. For

³¹⁰ Mxolisi Kaunda in 'JM: PC on CoGTA and Select Committee on CoGTA, Water and Sanitation and Human Settlements' (*YouTube*, 14 May 2020, at 21:00) <<https://www.youtube.com/watch?v=68Pcindzx5Y&t=1260s>>.



example, the metro has expended financial resources from its own pocket towards the provision of food parcels to community members, which ordinarily is not a municipal function. This illustrates the severe impact of the performance of such unfunded mandates, especially on urban local governments, which seem to be more affected by the pandemic financially. Moreover, it is clear that shouldering the costs of additional services during the height of the pandemic was easier for eThekweni metro because it has extensive resources, as well as a broad revenue base. The situation would be much different in many local municipalities, and especially rural municipalities as noted above.

References to Scientific and Non-Scientific Publications

Constitution of the Republic of South Africa

Disaster Management Act 57 of 2002

Regulations and Directions in terms of Section 27(2) of the Disaster Management Act of 2002

National Health Act 61 of 2003

City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC)



11.6 Procurement

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Relevance of the Practice

Municipalities procure goods and services from private entities almost daily. These goods and services are often essential for ensuring the provision of basic amenities such as water, sanitation, electricity, and refuse removal. Far too often, there are problems in the way projects are designed and in the way service providers are appointed, or there are problems with the content of the agreement and transparency of the agreement. Failure to make procurement information publicly available reduces transparency and accountability. Similarly, service providers are often paid for substandard delivery, or even for delivery that did not take place at all. This has a direct impact on basic services, because municipalities enter into contracts with private entities for the provision of services such as the resurfacing of a road, delivery of water tanks, regular cleaning of toilets, or street lighting, and sometimes these services are not in fact provided. The municipalities seem not to have adequate systems in place to prevent and address these problems. However, communities are equally important here as they are well placed to assess whether a service is being delivered or not.³¹² This practice note discusses the practice of procurement and focuses on the role of local governments in entering into contracts with private companies.

Description of the Practice

To procure from a private entity, municipalities (both urban and rural) must: (1) design and advertise a project, (2) select a service provider through a fair bidding process, (3) conclude an agreement with the successful bidder which includes the details of what must be delivered, (4) monitor the actual delivery as specified in the contract, and (5) only pay when the goods or services are delivered as per the contract. The key players in the procurement process are municipalities, private business entities, communities and the national treasury. The role of the national treasury is essentially regulatory, whereas communities' role is one of monitoring and ensuring good governance through accountability and transparency.³¹³ Local government's role is in procuring services mainly from private entities and following the regulatory legal framework as discussed below.

³¹¹ We wish to acknowledge the valuable inputs and insights from Carlene van der Westhuizen.

³¹² This is discussed in report section 6.4. in relation to public participation and transparency of Covid-19 emergency procurement.

³¹³ Discussed further in report section 6 on People's Participation in Local Decision-Making.



Municipal Procurement: Laws and Regulations

The Constitution provides the basic framework for procurement as follows: 'When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective' (Section 217). Organs of state are required to implement procurement policies, and such policies may take into account the need for affirmative action and preferential allocation of contracts (Section 217(2) of the Constitution). The Broad Based Black Economic Empowerment (BB-BEE) Act 53 of 2003 regulates affirmative action. The Municipal Finance Management Act of 2003 (MFMA) and the Preferential Procurement Policy Framework Act 5 of 2000 have provided a statutory framework for procurement (including preferential procurement) for all organs of state and guide procurement at the local government level. These regulations require municipalities and municipal entities to implement a supply chain management policy that is 'fair, equitable, transparent, competitive and cost effective' (see Regulation 2(1)(b)). Regulation 36 (1) states that such a policy 'may allow the accounting officer' to 'dispense with the official procurement processes established by the policy' in a number of instances including 'an emergency', although the regulations do not define an emergency. Moreover, it is silent on what procurement information must be made publicly available during 'an emergency'. However, after the introduction of the eTender Publication Portal in 2016, the National Treasury published MFMA Circular no 83, which sets out the requirements for the publication of procurement information by municipalities and municipal entities on the portal. This circular provides detailed guidelines regarding the advertisement of tenders and the publication of awards, cancellations, deviations, and extensions to contracts on the portal.

Procurement Regulations during the Covid-19 Emergency

Since the declaration of the national state of disaster on 15 March 2020, the National Treasury has issued a number of MFMA circulars to guide emergency procurement. These circulars apply to both urban and rural municipalities in the same manner. A recent circular is MFMA Circular no 102, which requires municipalities and municipal entities to put in place additional procurement and expenditure measures to monitor interventions taken to combat the spread of Covid-19. In particular, they must undertake to:

- establish an internal system for financial control, risk management, and reporting in order to account for the funds used for the Covid-19 disaster;
- ensure that officials committing any expenditure are duly authorised or properly delegated;
- avail internal audit functions to conduct audit checks in order to pick up and prevent irregularities pro-actively; and
- monitor expenditure regularly and generate frequent expenditure reports (at least weekly) including monitoring any risks that may arise.

In normal times, procurement has to be conducted in terms of the MFMA and Preferential Procurement Policy Framework Act, and follow the relevant municipality's Supply Chain Management Policy. The normal procurement process is embedded with checks and balances to ensure transparency and accountability, and as such the process takes longer to complete.



This long process was therefore replaced with a shorter process in terms of the ‘emergency procurement’ process which allows certain checks to be by-passed, and reporting to follow long after the procurement has been completed. Some of the processes by-passed include the requirement to comply with preferential procurement which favours procurement from historically disadvantaged groups as part of its points system used when comparing service providers, for example.

These measures relate mainly to the internal control and monitoring of Covid-19 expenditure, and not to transparency in the expenditure of Covid-19 funds, thereby limiting communities’ capacity to track the use of these funds.³¹⁴

Circular no 102 also deals with the procurement of PPE items and face masks. It provides maximum prices for these items in bids to ensure that municipalities achieve value for money. The circular reiterates that municipalities may deviate from the competitive bidding process for goods and services not covered by the circular but are necessary to combat Covid-19, and this must be done in terms of Section 36 of the Municipal Supply Chain Management Regulations. It states specifically that ‘the Covid-19 pandemic is a situation that justifies the use of emergency procurement provisions’. MFMA Circular no 62 allows for municipalities to expand contracts for goods by up to 15 per cent. Circular no 102 increases the threshold to 30 per cent or R30 million for construction-related contracts, and 25 per cent or R25 million for the period of the pandemic to prevent or minimise the effects of Covid-19. Section 166(3) of the MFMA states that a contract can only be amended if the reasons for the proposed amendment have been tabled in council, and if the local community has been given notice of the intention to amend the contract and invited communities to submit representations to the municipality. It is not yet clear whether communities are being invited to make such representations in practice.

Circular no 102 (as well as the previous two circulars 100 and 101) does not make any specific mention of the publication of tender notices and bid specifications for emergency procurement. This circular does however, require municipalities to upload a schedule of questions and answers related to specific tenders on their website to ensure that all bidders receive the same information. Finally, Circular no 102 states that any public bid openings must comply with the regulations published in March 2020, under the Disaster Management Act of 2002.

On 27 May, the National Treasury released MFMA Circular no 103, which deals more broadly with preventive financial measures and internal financial controls. Section 7 of the circular focuses on emergency procurement control measures. While the section highlights that the principles of fairness, equity, transparency, competitiveness, and cost-effectiveness must be maintained, no specific reference is made to ensuring the public availability of procurement information such as bid specifications.

Finally, the directions issued by the Minister of Cooperative Governance and Traditional Affairs in terms of Section 27(2) of the Disaster Management Act contain an important provision that may assist in holding municipalities accountable, but only *after* the end of the state of disaster (which has been extended several times). Direction 6.7.3(h) provides that municipalities must

³¹⁴ See report section 6 on People’s Participation in Local Decision-Making.



‘report all procurement undertaken during the period of the state of disaster to the first council meeting after the lapsing or the termination of the state of disaster’. Reporting to the council will ensure that the information is publicly available. It is not clear what type of information must be included in the report, but communities and councillors can insist that it contains the full and detailed information, including the expansion of contracts.

Assessment of the Practice

The main object of procurement is for local government to be able to perform its constitutional obligations through contractual agreements with private entities. This object has only been partly met for various reasons, the most glaring being the absence of transparency and accountability. This has been the case in the broader procurement process prior to the Covid-19 pandemic and has only worsened during the pandemic. Prior to the pandemic, there have been numerous instances of corruption allegations, fraud and poor audit outcomes in both urban and rural municipalities.³¹⁵ It is difficult for rural communities to insist on transparency in procurement processes due to factors such as illiteracy, and even where communities are literate, bid documentation uses technical language and budget proposals that are not easily understood. There are also fewer civil society organisations to assist rural communities in this regard, in comparison to urban centres.

Additionally, although it has been imperative to use emergency procurement processes during the Covid-19 pandemic in order to facilitate an efficient and prompt response to the nationwide emergency, several challenges have come out of the Covid-19 emergency procurement processes. For example, there have been several reports of inflation of prices in contracts,³¹⁶ and corruption,³¹⁷ failure of contractors to provide services already paid for such as delivery of water into water tanks in both urban and rural areas, as well as reduced public participation due to lack of transparency and lack of access to procurement information.³¹⁸

Finally, preferential procurement presents a great opportunity for redressing the legacy of apartheid as envisaged under Section 9 of the Constitution. There has been significant uptake of this opportunity, however, there have been challenges concerning the Broad Based Black Economic Empowerment (BB-BEE), such as reports of manipulating the system by fronting previously disadvantaged persons as being part of business leadership/ownership in order to benefit from preferential procurement, without them actually being substantially involved in the running of the business. Additionally, there has also been skewed benefits to a few elites among the previously disadvantaged persons, the so-called ‘black diamonds’.

³¹⁵ Janine Erasmus (ed), ‘Understanding Corruption in Tenders’ (corruption watch 2015)

<<https://www.corruptionwatch.org.za/wp-content/uploads/2015/06/Corruption-Watch-Understanding-tender-corruption.pdf>>.

³¹⁶ Paddy Harper, ‘Blanket Scandal Exposes Potential for Covid-19 Corruption’ (*Mail & Guardian*, 16 April 2020) <<https://mg.co.za/article/2020-04-16-blanket-scandal-exposes-potential-for-covid-19-corruption/>>.

³¹⁷ Erasmus (ed), ‘Understanding Corruption in Tenders’, above.

³¹⁸ This is addressed in report section 6.4. on Transparency in Local Government Procurement during Covid-19.



References to Scientific and Non-Scientific Publications

Constitution of the Republic of South Africa, 1996

Preferential Procurement Policy Framework Act 5 of 2000

Broad Based Black Economic Empowerment Act 53 of 2003

Municipal Finance Management Act of 2003 (MFMA)

MFMA Circular no 83 on the Advertisement of Bids and the Publication of Notices in respect of Awarded Bids, Cancelled Bids, Variations and Extensions of Existing Contracts on the eTender Publication Portal

MFMA Circular no 100, Emergency Procurement in Response to the Covid-19 Pandemic

MFMA Circular no 101, Covid-19 Bulk Central Procurement Strategy for Government Institutions

MFMA Circular no 102 (with amendments), Emergency Procurement in response to the National State of Disaster

MFMA Circular no 103, Preventative Measures in response to the Covid-19 Pandemic that resulted in the National State of Disaster



12. Local Responsibilities and Public Services in Ethiopia

12.1 The System of Local Government in Ethiopia

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Types of Local Governments

The Federal Democratic Republic of Ethiopia (FDRE) Constitution has established a federal state structure composed of nine ethnic based constituent units namely: Tigray, Afar, Amhara, Oromia, Somali, Benishangul/Gumuz, Gmbella, Southern Nations, Nationalities and Peoples (SNNP) and Harari. Ethiopia is a dual federal state since Article 50(1) of the Constitution stipulates as The Federal democratic Republic of Ethiopia comprises the federal government and the state members. Local government is not explicitly stipulated by the Federal Constitution which remains almost silent. This paves the way to the constituent units to enjoy unlimited constitutional space in the area. Article 50(4) of the federal Constitution merely states that 'State government shall be established at the state and other administrative levels that they (i.e. the regional states) find necessary'. In fact, the second sentence of the article gives a specific federal mandate to the region and reads 'Adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units'. This implies the Constitution has implicitly provided for the establishment of non-ethnic local governments.

In addition, Article 39(3) states that Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits'. According to this article, local governments are established along ethnic lines for ethnic groups which are basically 'ethnic local government'.³¹⁹ Here, the Federal Constitution poses a duty on the regional states to realize genuine self-government and ample amount of decentralization of power to the local levels. Accordingly, all regional state constitutions have provisions related to local government with a relative uniformity.

As mentioned above, the constitutional recognition of local government in Ethiopia has remained debatable. Despite this debate, local governments are constitutionally recognized at least implicitly. If one gets a closer look to the provisions of the Federal Constitution, it envisaged the establishment of two kinds of local governments: ethnic and regular.³²⁰ These two categories of local governments have two distinct objectives.³²¹ Ethnic local governments

³¹⁹ Zemelak A Ayele and Yonatan T Fessha, 'The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia' (2012) 58 *Africa Today* 89, 93.

³²⁰ Zemelak A Ayele, 'The Existence of Local Government and its Institutional Security within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (UNDP and Center for Federal Studies 2015) 203.

³²¹ *ibid.*



aim at realizing the self-determination rights stipulated under Article 39(3) of the Federal Constitution. Practically these local governments are established in the name of ‘nationality zones’ or ‘special *woreda*’ in all regional states except Oromia, Harari and Somali. On the other hand, the regular local governments are established by the regional states as per the Federal Constitution’s provision of Article 50(4) in the name of *zone*, *woreda* (city/town administration) and *kebele*.

Regarding administrative structure, all regional states, except Harari³²², are composed of three levels of local governments: nationality (*zone*), special (*woreda*) and *kebele*. Nationality *zones*, *woredas*, special *woredas* and *kebeles* have three tiers of institutional structure composed of a council; administrative council and judicial body.³²³ Zones are administrative levels just below the regional state comprising a number of districts (*woredas*) or urban centers. Unlike nationality *zones*, regular *zones* are founded by ordinary legislation with no council in Amhara, Oromia, Somali, Afar and Tigray regional states. It is a deconcentrated administrative body of the regional state. The *woreda* is the local government level standing next to the zone, encompassing *kebeles* and administratively subordinate and accountable to both the zone and regional state. *Kebele* is the lowest local government level included in all regional state constitutions. There are two categories of urban local governments: cities and towns. ‘Cities’ signifies the two cities under the federal jurisdiction (Addis Ababa and Dire Dawa). There are urban centers named by the legislations of their respective regional state councils. Towns are urban centers located beneath the zonal administrative structure and ranges from small to large based on their population size. Unlike others, small and medium towns may have a *woreda* status and in each *woreda*, there is a town from which the *woreda* is administered.³²⁴

Legal Status of Local Governments

Institutional security of local government is a crucial element of political autonomy of local government.³²⁵ In order to protect the existence of local government as a sphere or level of government from the encroachment of the central government, constitutional recognition is recommended as an effective formal mechanism.³²⁶ Political autonomy also entails uninterrupted existence of local government. The constitutional recognition of local government as an autonomous level of government does not only resist the intrusions from other levels but it also enhances the political and economic role that local government ought to play. Accordingly, local government administrations are supposed to be autonomous units. However, no constitutionally entrenched functions meet the above standards in the Ethiopian

³²² Harary regional state is composed of only two levels of governments: regional state and *kebele*.

³²³ Christophe Van der Beken, *Completing the Constitutional Architecture: A Comparative Analysis of Subnational Constitutions in Ethiopia* (Addis Ababa University Press 2017) 141.

³²⁴ WSUP Advisory, ‘Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia’ (Draft Situational Analysis for Ethiopia’s IUSHS) 20.

³²⁵ Ayele, ‘The Existence of Local Government and its Institutional Security within Ethiopia’s Federal System’, above, 202.

³²⁶ *ibid.*



federal tradition. The Federal Constitution leaves this to the regional states to determine tiers, powers and functions.

As an element of political autonomy, local government functional competencies should be original, clearly defined, and development-related.³²⁷ This is usually achieved through providing constitutional guarantees and full power to local governments on those functions. Considering the dual nature of the Ethiopian Constitution, local government units do not have original functions.³²⁸ Rather their functions are determined by regional states.

(A) Symmetry of the Local Government System

Despite the fact that both typologies of local governments lack original autonomy, there is some kind of asymmetry between urban local governments and other regular (*woreda*) and ethnic (nationality zone and special *woreda*) local governments. The state constitutions constrained the councils of the latter in law-making powers. On the other hand, urban councils are empowered to issue policy and regulations of their own.³²⁹ Accordingly, medium and large towns have enjoyed special status as compared to *woreda* governments having larger population. Moreover, a kind of paradox has arisen as the city councils which are under the supervision of the nationality *zone* council have a law-making power while the latter is restricted to its specific implementation guidelines.

Political and Social Context in Ethiopia

Ethiopia had entered in to the process of decentralization before a formal federal arrangement was endorsed in 1995. The Ethiopian People's Revolutionary Democratic Front (EPRDF), the incumbent political party since 1991, encouraged the establishment of local government units along ethnic lines. This was deemed to be a necessary response to accommodate diversity which was considered to be the most pressing challenge of the country.³³⁰ Proclamation number 7/1992 was instrumental for the beginning of the first phase of decentralization (1991-2001). The Proclamation also laid down the foundation for the Federal Constitution. It had listed 64 ethnic groups to establish their own ethnic self-administration.³³¹ After ten years, the party realized that emphasizing only ethnicity leads to inefficiency in ensuring development and equitable service delivery and engaged in the further creation of new local governments and at some degree amalgamates certain of the existing ones.³³² Indeed, in 2001, the District

³²⁷ Zemelak A Ayele, 'Decentralization, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (Doctoral dissertation, University of Western Cape 2012) 55.

³²⁸ *ibid* 488.

³²⁹ Van der Beken, *Completing the Constitutional Architecture*, above, 187.

³³⁰ Zemelak A Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia' (2014) 6 Perspectives on Federalism 89, 109.

³³¹ National/Regional Self Governments Establishment Proclamation no 7/1992, Art 3, Federal Negarit Gazeta, No 2.

³³² Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia', above, 109.



Level Decentralization Program(DLDP) launched by the federal government, administrative convenience, good governance and development issues began to be the salient justifications for strengthening the decentralization process.

Currently, there are no less than 60 political parties registered in Ethiopia. Based on their constituency, political parties often classified in to three: national, regional and local parties. They also could be categorized in to three based on their political programs: EPRDF, incumbent party and composed of four ethnic based parties representing regional states of, Amhara, Tigray, Oromiya and Southern Nations Nationalities and Peoples.³³³ EPRDF's affiliates are five in number which comprise Afar, Somali, Benishangul-Gumuz, Gmbella and Harari regional states.³³⁴ These parties are ethnic based and not opposition parties following EPRDF's ideological orientation. Except a few, most of the opposition parties are ethnic based; their constituencies are regional and local governments. Ethnic based local parties are mostly oppositions mainly seeking either regional statehood or new ethnic local government status. Member parties of EPRDF are represented by an equal number of people both in its executive committees and despite the obvious difference in population size each party is supposed to represent. Moreover, many agree that the TPLF was the most influential member of EPRDF.³³⁵ The party structure which controls all levels of government and its decision-making procedures on the principle of 'democratic centralism' affected local government creation and undermines the role of regional states in creating local government systems based on their circumstances.³³⁶ Following the 2016 protests in the country an increasing party fragmentation within EPRDF has been seen. This political dynamic changed the previous centralized nature of the party and TPLF has been relegated from its core position in the party.³³⁷ Enjoying this political liberalization opposition ethnic based local parties are getting more assertive in their claim of new territorial autonomy.

A City/Town administration, as the term implies, is established in urban areas. Based on classification, urban centers of Ethiopia are classified in five categories ranging from small towns to metropolitan City of Addis Ababa based on demographic size. According to Situational Analysis of IUSHS, the population size of small towns ranges from 2,000 to 20,000 people and constitute 80 per cent of total number of towns and only 33 per cent of urban population. The medium-sized towns range between 20,000 and 50,000, and hold 25 per cent of the urban population. Large-sized towns range between 50,000 and 100,000 people. There are 13 mega

³³³ Amhara National Democratic Movement (ANDM) currently called Amhara Democratic Party/ADP/. Tigray People Liberation Front (TPLF), the Oromo Peoples' Democratic Organization (OPDO) currently called Oromo Democratic Party/ODP/, and the Southern Ethiopian Peoples' Democratic Movement (SEPDM).

³³⁴ Afar National Democratic Party (ANDP), Somali People's Democratic Party (SPDP), Benishangul-Gumuz Peoples Democratic Party (BGPDP), Gambela people's Unity Democratic Movement (GPUDM), and Harari National League (HNL).

³³⁵ Following party fragmentations, this has been confirmed by the leaders of the remaining member parties as there was no equal power balance within and TPLF took the upper hand in decision-making and even interfering in the internal affairs of each member parties.

³³⁶ Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia', above, 90.

³³⁷ Currently, the regional parties except TPLF and all affiliate parties have been merged in to one monolithic national party in the name of Prosperity Party.



towns with a population between 100,000 and 500,000 people each. Addis Ababa is the only city in the country that hosts over 500,000 with about 3.5 million residents.³³⁸

References to Scientific and Non-Scientific Publications

Legal Documents:

National/ Regional Self Governments Establishment Proclamation no 7/1992

Scientific and Non-Scientific Publications:

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— 'The Politics of Sub-National Constitution and Local Government in Ethiopia' (2014) 6 *Perspectives on Federalism* 89

— 'Decentralisation, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (doctoral dissertation, University of Western Cape 2012)

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WSUP Advisory, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia' (Draft Situational Analysis for Ethiopia's IUSHS, 2015)

³³⁸ WSUP, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia'.



12.2 Local Responsibilities and Public Services in Ethiopia: An Introduction

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Studies show that it is imperative that the functional competences of local government in the areas of service delivery are suitable and clearly defined in a constitution or statutory documents. The responsibilities should be suitable in a sense that they should be within the financial and human capacity of local government lest it should be overburdened with complex responsibilities that are beyond its capacity.³³⁹ Subsidiarity is seen as the best approach in terms of determining the suitability of a certain functional area to local government.

It is important to define local government's responsibilities preferably in a national constitution or other legislative document.³⁴⁰ This helps counter any temptation from the central government to centralize local government responsibilities. Moreover, studies suggest that the definition of the competences of local government should be clear but not be too detailed lest senior levels of government should prescribe what local government should do in the name of defining their competences thereby compromising their autonomy.³⁴¹ Clearly defining local government's responsibilities has several benefits:

- it becomes clear what services local authorities are expected to provide;
- it prevents duplication of efforts;
- it allows local citizens where to go when seeking certain public services;
- it also makes holding local authorities accountable, electorally or otherwise, when they fail to deliver on their mandates.

The 1995 Constitution of Ethiopia is silent on the functional competences of local government. Having established a dual federal system, it only lists the competences of the federal and state governments. It indeed enjoins the states to devolve 'adequate' responsibilities to local government without actually defining their responsibilities.³⁴² So, one would expect the states to define the responsibilities of local government in state constitutions. However, the state constitutions provide in general terms that local government has the power to decide on local social, developmental and economic matters without defining what those are. The question is what functional competences the states transferred to local government. Practice and other subnational legislative documents provide some indication regarding the responsibilities of local government.

³³⁹ James Manor, *The Political Economy of Democratic Decentralization* (World Bank 1999).

³⁴⁰ Jaap de Visser, *Developmental Local Government: A Case Study of South Africa* (Intersentia 2005).

³⁴¹ Francis N Botchway, 'Good Governance: The Old, the New, the Principle, and the Elements' (2001) 13 *Florida Journal of International Law* 160.

³⁴² Art 50(4), FDRE Constitution (1995).



As indicated in report section 1, there are two categories of local government in Ethiopia: the ethnic local government and regular local government. The first is established based on the federal principle that provides ethnic communities the right to self-determination. The local government units in this category are nationality zones and *liyu woredas*. These units are in general responsible for promoting and protecting the cultural identity of the relevant ethnic communities. Their responsibilities thus relate to the promotion of the language and culture of the relevant ethnic communities.³⁴³ The regular local governments are in turn divided into rural *woredas* and urban local government (cities). The *woredas*, which are rural local government units, exercise certain competences in different functional areas. The functional areas that *woredas* exercise are informed by the policy of poverty reduction which underpinned the whole decentralization program which was launched in the early 2000s. Thus, the functional areas of *woredas* include the following:

- primary and secondary education (grades 1-10)
 - adult education
 - printing and distributing primary school textbooks
 - administering primary school
- health extension services
 - constructing and administering health stations and health posts
 - administering clinics
 - controlling and preventing HIV/AIDS and malaria
- constructing wells
 - supplying drinking water to municipalities
- planning and implementing agricultural and pastoral development
 - implementing agriculture extension packages
 - constructing and administering small-scale indigenous irrigation
- constructing rural roads connecting *kebeles*
- implementing state functions in municipalities within a *woreda*

The cities have two types of responsibilities: state functions and municipal functions. The state functions are those services that *woredas* provide and are linked with poverty reduction. These include primary education, primary health care, and the like. Their municipal functions relate to typical urban services such as garbage collection, sewerage, registration of birth and death.

References to Scientific and Non-Scientific Publications

Legal Documents:

Constitution of the Federal Democratic Republic of Ethiopia (1995)

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³⁴³ Zemelak Ayele, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities* (Nomos 2014).



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12.3 Autonomy of Local Governments

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Relevance of the Practice

The 1995 Federal Democratic Republic of Ethiopia (FDRE) Constitution is the backbone of all forms of devolutions from the federal to the lowest levels of governments practiced in Ethiopia today. The Constitution under Article 1 officially establishes a federal state structure, where power is constitutionally dispersed between the federal and state governments (Articles 50, 51 and 52). After affirming the division of power between the states and federal governments, the Constitution stresses the need for devolving adequate power to the lowest levels possible. When one reads the interest of the Constitution to devolve adequate power to the lowest hierarchies of state administration (Article 50(4)) together with Article 39 that emphasizes on self-determination rights of every nation, nationality and people (NNP) in Ethiopia, it is pretty much clear that local governments will be established at grass-root levels taking into account the needs and preferences of the local community.

However, the role and status of local government in its strict sense – as the third sphere of government with their own powers and responsibilities – are not clearly delineated in the Constitution. There are few references scattered here and there in the Constitution which can be invoked for their being in equal status with the other two spheres and as a ‘separate third sphere of government’ in the Ethiopian federation. The most direct expression referring to local government in the Constitution could be Article 50(4) which reads as: ‘[s]tate government shall be established at state and other *administrative levels* that they find necessary. Adequate power shall be granted to the *lowest units of government* to enable the People to participate directly in the administration of such unit’ [emphasis added]. Even in this provision it is not clear whether local governments are seen as ‘administrative agents’ of states or are ‘independent governments’ in themselves to give ultimate decisions in their own spheres of jurisdiction. The phrase ‘other administrative levels’ may presuppose simple decentralization of power to Zones, *woredas* (districts) or *kebeles* (lowest levels of government administration in Ethiopia) by states for administrative convenience.³⁴⁴ The word ‘administrative’ also suggests the execution of certain laws and policies made at the national or sub-national level. Moreover, the powers and responsibilities to be given to these ‘lowest units of governments’ are not clearly specified in the Constitution.

One thing to be clear however is that the phrase ‘adequate power shall be granted to the lowest units of government’ suggests that the Constitution has given recognition to local government as the third sphere of government. The problem with this provision, nonetheless, is that ‘adequate power’ is not clear and it begs a question of ‘how adequate is adequate’? The

³⁴⁴ Zemelak A Ayele and Yonatan T Fessha, ‘The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia’ (2012) 58 *Africa Today* 88.



discretion is given to state governments to grant adequate power to local government that they are required to establish by the national Constitution.³⁴⁵

Description of the Practice

Generally, the Ethiopian way of devolving power to the local government under the Federal Constitution is vague and ambiguous. First, the Constitution does not explicitly provide for the ‘independent existence’ of local governments having specified powers and functions. Second, the Constitution mandated state governments only to devolve ‘adequate power to the lowest levels administrative units’ without mentioning what powers and functions to be devolved. In a nutshell, it gives the discretion to each state to devolve powers that they consider ‘adequate’. The constitutional requirement is that ‘states must devolve power to local governments’ but no mention of the kind of powers and functions to be devolved. Put differently, the division of responsibilities among the three spheres of government is not specifically given in the Constitution. Therefore, it can be said that local government under the FDRE Constitution has legal recognition but with no granting of explicit powers and functions which is left to each state. Partly emanated from the ambiguity in the Federal Constitution itself and partly from the unwillingness of states to share their powers, all regional states created administrative agents rather than autonomous self-governing local governments at lower levels until 2001.

Following the 2001 regional states’ constitutional revisions, all the constitutions of the four major regions (Amhara, Oromia, Southern Nations, Nationalities, and Peoples' Region – SNNP and Tigray regional states) incorporated local governments as third sphere of government.³⁴⁶ In subsequent years, local governments have received sub-national constitutional recognition in all member states of the Ethiopian federation. In some major regions, Amhara and SNNP regional states for instance, three levels of government were created: zones for territorially concentrated ethnic minorities, *woredas* (districts) and *kebeles*³⁴⁷ as the lowest units of government. In some other states like Oromia and Tigray, *woredas* and *kebeles* have accorded sub-national constitutional recognition but zones as mere administrative units or intermediaries between the *woreda* and regional state.

Moreover, after 2001, the four major regions (Oromia, Amhara, Tigray and SNNP regional states) decided to move important sectors of public services like health, education, water

³⁴⁵ *ibid.*

³⁴⁶ See Ayele and Fessha, ‘The Constitutional Status of Local Government in Federal Systems’, above. According to the authors, there were two major objectives for state constitutional revisions. First, they argue that ‘the changes were made not as a result of a desire to comply with the dictates of the Constitution’. It was rather dictated by some political motives. It was intended to snatch power from regional states and give it to local governments. The motive behind devolving power was to weaken state governments in order to minimize the threat of challenge against the central government from states. As stated by them, ‘one reason for the revision of the regional constitutions’ corresponds ‘with the decision to reduce the power of the regional government and particularly the presidents of regional states’. The second reason could be related to enhance efficiency and public participation by decentralizing power to local governments.

³⁴⁷ *Kebeles* are lowest levels of state administrations in the Ethiopian federation.



supply and other social sectors from the state governments to the zonal and *woreda* levels.³⁴⁸ Nonetheless, although *kebeles* are important places for citizens' easy communication, they do not enjoy such powers and functions as the *woredas* and zones.

Various city proclamations also came into being both at the federal and regional levels to enlist the powers and responsibilities of municipalities or cities. The first one being the Addis Ababa City Government Charter.³⁴⁹ The City of Addis Ababa is being recognized as a federal capital in the FDRE Constitution and its residents are entitled to self-government. Article 49 provides that 'Addis Ababa shall be the capital city of the Federal State (...) and the residents of Addis Ababa shall have a full measure of self-government'. Moreover, the Federal Constitution indicates the need for introducing other subsidiary laws to determine the power of the city and implement its self-governing rights. As a result, the proclamation was promulgated in 1997 and revised in 2003. The proclamation provides for the organization of the city government consisting of the city council, the mayor, city cabinet, city judicial organs, and the office of the city chief auditor. It also lists down the powers and functions of the city government.

Other regional states also introduced their respective city proclamations. Amhara Regional State was the first to promulgate in 2000 followed by Southern Nations Nationalities and People's Regional State in 2002, Tigray in 2003, and Oromia in 2003. The other five regional states such as Benishangul/Gumuz, Gambella, Somali, Harari and Afar introduced their city proclamations in 2006 and 2007, some of which were revised in the subsequent years.

As it is discussed above, the major purpose of the Ethiopian federal system is to accommodate ethnic diversity by granting all ethnic groups (NNP) - their own 'mother states''' with their own defined territories.³⁵⁰ However, for the implementation on the ground it is difficult – if not impossible – to grant each ethnic group with its own mother state in the federation.³⁵¹ Hence, the alternative is to establish local governments within states.³⁵² Many of the regional states,

³⁴⁸ Yilmaz Serdar and Varsha Venugopal, 'Local Government Discretion and Accountability in Ethiopia' (International Studies Working Program Working Paper, Andrew Young School of Policy Studies, Georgia State University 2006).

³⁴⁹ Proclamation no 87/1997 as revised under Proclamation no 361/2003.

³⁵⁰ Federal Democratic Republic of Ethiopia Constitution, 1995. Art 39(3), for example, illustrates that '[e]very Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in State and Federal Governments'. Art 47(4) even takes this right one step further by guaranteeing NNP the right to establish their own states at any time if they wish.

³⁵¹ This fact is clearly seen in the Constitution under Art 47(1) when it enlists only 9 national regional states (the states of Tigray, Afar, Amhara, Oromia, Somali, Southern Nations, Nationalities and Peoples, Benishangul/Gumuz, Gambella and Harari) for the more than 85 ethnic groups of the country as members of the Federal Democratic Republic of Ethiopia. It seems that only 9 ethnic groups secured their own mother-states and even in that case some of the regions are designated not in ethnic names as expected but in terms of territorial locations such as SNNPRS and Gambella. It is only Afar, Amhara, Tigray, Harari, Oromo and Somali ethnic groups that got their own mother-states in the federation.

³⁵² In Southern Nations, Nationalities and People's Regional State (SNNPRS), for instance, 56 officially recognized ethnic groups are lumped together to form one integrated region. Hence, 14 zones and 8 special *woredas* were formed to accommodate the interests of various ethnic groups to have their own mother-states or realize their constitutional self-rule rights.



with few exceptions,³⁵³ are heterogeneous comprising several ethnic groups in their jurisdictions. In those states with ethnic heterogeneity, one can find two types of local governments; ordinary/regular and ethnic local governments.

The regular local governments, usually called *woreda* in Amharic (equivalent to the English term district), are established across the board and their main aim is to enhance public participation through direct or indirect involvement in local affairs.³⁵⁴ They are formed on the basis of population size, territory and administrative convenience in order to bring government closer to the people with an ultimate goal of enhancing good governance and democracy.

Ethnic local governments, on the other hand, as their name suggests are designed for the purpose of accommodating ethnic interests at the local levels. They are not intended for administrative convenience but their main purpose is to provide self-rule rights for territorially concentrated ethnic groups. Depending on their population size, these local governments are named differently. Those with fewer in population size are called as *liyu woreda* (an Amharic term to mean special district) and those local governments whose population is bigger and its territory larger is termed as nationality zone. In the latter case, it may consist of more than one *woreda*.

With regard to hierarchical structures, the regular *woredas* are accountable to zones, which are intermediaries between local governments and the regional state. Special *woredas* and nationality zones on the other hand are directly accountable to regional states.

In Oromia, all local governments are regular/ordinary as the regional state is meant to be for the Oromos. In this context, zones are intermediaries with no elected councils and executives. Amhara and SNNP, on the other hand, follow a different approach of organizing local governments. Some of the local governments are ordinary while others are special intended for accommodating ethnic groups other than the dominant ethnic group in the region. The Amhara Regional State, for instance, has two types of zonal administrations: functional and nationality zones. Functional zones are those intermediaries between self-governing local governments and the regional state that do not have their own elected councils and executives. Nationality zones, on the other hand, are established as part of a local government for those ethnic groups other than the numerically dominant Amhara ethnic group in the region. They include the Agew Awi Nationality Zone (for the Agew ethnic group), the Wag Himra Nationality Zone (for the Agew ethnic group but not territorially contiguous to Agew Awi), the Kemant Nationality Zone (recently established for the Kemant ethnic group) and the Oromo Nationality Zone (formed for ethnic Oromos of the Amhara region). There are also special *woredas* for those ethnic minorities whose population number is very small. Argoba special *woreda* is one practical example established for ethnic Argoba in the region. In SNNPRS, almost all zones (14 in total) are ethnic in nature but some are multiethnic comprising more than one ethnic group. There are also special *woredas* for very small ethnic groups.

³⁵³ The states of Tigray, Oromia, Afar and Somali are relatively homogenous although they also host different ethnic groups within their jurisdictions. The remaining five regions (Amhara, Gambella, Harari, Benishangul/Gumuz and SNNP) are heterogeneous where they are obliged to form ethnic-based zonal, *woreda* and *kebele* administrations in order to accommodate ethnic minorities.

³⁵⁴ Zemelak A Ayele, 'The Politics of Sub-National Constitutions and Local Government in Ethiopia' (2014) 6 Perspectives on Federalism 89.



Assessment of the Practice

As Ayele argues, for a local government to be considered adequately empowered, at least the following elements should be fulfilled: it should have constitutionally defined functional competencies, its administration must be elected democratically, it must empower local communities to control their own affairs and must be financially empowered.³⁵⁵

Despite the constitutional design for devolving power at the lowest level, the practice on the ground in Ethiopia shows that local governments are still far behind achieving their intended purposes. One of the many constraints that local governments encounter in fulfilling their responsibilities is a lack of sufficient financial resources and autonomy to decide on their expenditure priorities. In principle, although they have the autonomy to spend the money they received as block grants from the regional government, it is stipulated by the regional government in the form of financial guidelines how and when to spend. Some minimum requirements are imposed from above to spend on capital investment.³⁵⁶ More than that, most of the block grants are spent on recurrent expenditures in the form of salaries for their employees. They also lack adequate taxing powers from local sources as most of the tax rates are determined by the regional governments.³⁵⁷ Lack of trained manpower both in the bureaucracy and the professional field is also another challenge local governments face. *Woredas* are also considered as subordinates and administrative agents of the upper level of government and hence lack autonomy in the decision-making process.³⁵⁸

Lack of Political Autonomy

Politically, the country was ruled by a centralized and hierarchical system for a long period of time. Immediately before 1991, the country was ruled under the military junta where power was concentrated at the center. There was a single party called Workers' Party of Ethiopia and a multiparty system was totally alien to the country's political history. In sharp contrast to the previous regimes, the Constitution allows for a multiparty system where power is to be obtained through fair, competitive and free elections. More than five consecutive elections have been held since 1991. Nonetheless, it is the Ethiopian People's Revolutionary Democratic Front, the incumbent party, that won all the elections. The ruling party is usually accused of election rages and of never having conducted free and fair elections.³⁵⁹

The ruling party dominates all state structures from the federal all the way down to local government levels. The government introduces various laws that narrows down the spaces for political competition and restricts the involvement of political parties in elections. Hence, the

³⁵⁵ Zemelak A Ayele, 'Local Government in Ethiopia: Adequately Empowered?' (LL.M thesis, University of the Western Cape 2008) 15.

³⁵⁶ Tilahun M Fenta, 'Local Government in Ethiopia: Practices and Challenges' (2014) 2 Journal of Management Science and Practice 71.

³⁵⁷ Ayele, 'Local Government in Ethiopia: Adequately Empowered?', above.

³⁵⁸ Fenta, 'Local Government in Ethiopia: Practices and Challenges', above.

³⁵⁹ Leonardo R Arriola, 'Ethnicity, Economic Conditions, and Opposition Support: Evidence from Ethiopia's 2005 Election' (2008) 10 Northeast African Studies 115.



country is slowly moving towards a de facto one party rule which was witnessed in the hundred per cent victory of EPRDF during the 2015 election. The party channel is the most widely used system of intergovernmental relations and a mechanism of enforcing laws at all levels of government instead of using other formal state structures.³⁶⁰ Officials at the local level are more loyal to their party than to the local electorate. This is because their positions are secured by their loyalty to the party rather than by the trust they have from the local community. *Woreda* officials are seen as agents of the ruling party and used as instruments of controlling dissent at the local level.

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Addis Ababa City Government Revised Charter Proclamation no 361/2003

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— and Fessha YT, 'The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia' (2012) 58 *Africa Today* 88

³⁶⁰ Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia* (revised edition, Wolf Legal Publishers 2007).



12.4 Sanitation and Hygiene Service Delivery in Urban Local Governments: A Federally Integrated Practice

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Relevance of the Practice

One of the basic responsibilities of local government is sanitation and hygiene. Given rural areas are administered under *woreda* government, and state constitutions do not provide clearly defined functions to it, *woredas* have no stipulated functions pertaining to sanitation and hygiene in rural areas. As a matter of practice however, they have several functional competencies in which ‘implementation of health extension services’ is mentioned.³⁶¹ As one of the package of this function, the health extension employees work on improving the sanitation and hygiene conditions of the rural population. On the other hand, the federal and state legislations provide relatively clear competencies over sanitation and hygiene to urban centers. This entry has focused on issues of sanitation and hygiene service provision in urban local government.

Being centers of development activities, urban centers in Ethiopia had been engaged in delivering these functions. National policies and proclamations were also promulgated to guide and regulate such activities.³⁶² However various measures have not taken to improve sanitation conditions of the urban people in harmony with the existing policies and legal issues.³⁶³ Moreover lack of an integrated waste management approach is identified as the main problem pertaining to sanitation and hygiene.³⁶⁴ In response to this drawback an Integrated Urban Sanitation and Hygiene Strategy (IUSHS) was launched in 2017 by the federal government. IUSHS could be identified as a non-legislative policy document having its own criteria for categorizing urban centers which are supposed to be fell under state functions.

There are also considerable gaps and overlaps in institutional roles and responsibilities at national, regional, city and town levels. For example there is an overlap of responsibilities between the Ministry of Environment and Forestry and the Ministry of Water in relation to the control of solid and liquid waste being discharged into water bodies, especially by industries

³⁶¹ Zemelak Ayele and Solomon Negussie, ‘The Constitutional and Legislative Framework for Local Government in Ethiopia’ (2018) 5 Ethiopian Journal of Federal Studies, 33.

³⁶² A National Solid Waste Management Proclamation no 513/2007 dealing comprehensively with all aspects of Solid Waste Management (SWM) is being used in all its federal and states. The authorization in setting rules, laws, regulations and standards as well as imposing penalties for non-compliance regarding the management of solid waste is given to the ‘Federal Environmental Protection Authority’ which adopts the National Environmental Policy. The Ministry of Health is also responsible to play a principal role in issues related to ‘Public Health and Sanitation’ for which SWM is part and parcel of it. Ministry of Urban Development has also ‘Urban Solid Waste Handling and Disposal Strategy’ vis-à-vis its main ‘Urban Development Policy’.

³⁶³ Hayalu Desta, Hailu Worku and Aramde Fetene, ‘Assessment of the Contemporary Municipal Solid Waste Management in Urban Environment: The Case of Addis Ababa, Ethiopia’ (2014) 7 Journal of Environmental Science and Technology 107, 118.

³⁶⁴ *ibid.*



and hospitals.³⁶⁵ The replica of this overlap has witnessed up to the lowest level of urban local government. These are resulted from the presence of initiatives, policies, strategies and programs which are conflicting each other.³⁶⁶ Moreover there is a clear implementation gap in regulation and enforcement except the availability of guidelines and manuals.³⁶⁷ The above ministries and Ministry of Urban Development are regulatory bodies pertaining to sanitation and hygiene. Even though regulation has been discharged enforcement is very low.³⁶⁸ Moreover such institutions undertake various reforms without considering ways of treating the overlap of responsibilities existing among them.

Considering the above problems and the presence of demanding requirement of urban sanitation and hygiene an immediate intervention was needed. As a result, IUSHS was launched to integrate multi sector and multilevel coordination and efficiency.

This report entry examines the content of the strategy document and its implementation activities on (of) urban local governments³⁶⁹ in light of the institutional features of local government more specifically political autonomy and central supervision and co-operation. The latter feature has cemented an opportunity to relate this report entry with report section 5 which deals with intergovernmental relations.

Description of the Practice

In the late 2017, IUSHS was launched to integrate multi sector and multilevel coordination and efficiency regarding sanitation and hygiene service delivery. According to the strategy document, urban sanitation institutional arrangements shall include high level coordination, integration and alignment at the federal, regional and town level. Even though other sectors are part of it, those which should play front line role in the implementation of IUSHS are: the Ministry of Health, the Ministry of Urban Development and Housing, the Ministry of Water, Irrigation, and Electricity, and the Ministry of Environment, Forestry and Climate Change.

In order to increase efficiency and avoid responsibility overlap problems, a steering committee was established at all levels. However, the federal and regional steering committees are key components for improving the profile of urban sanitation. The basic structure encompasses the following sectors of respective federal and regional levels: Health, Water Irrigation and Energy, Urban Development and Housing, Environment and Forestry as well as Culture and Tourism. Their major responsibilities, apart from supervision, are: facilitate inter-sectoral and platforms that are involved in urban sanitation and hygiene management; review and endorse

³⁶⁵ WSUP Advisory, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia' (Draft Situational Analysis for Ethiopia's IUSHS) 30.

³⁶⁶ FDRE, 'Integrated Urban Sanitation and Hygiene Strategy', above, 12.

³⁶⁷ *ibid.*

³⁶⁸ *ibid.*

³⁶⁹ Urban centers or urban local government signifies in this paper town and city governments both at federal and regional state level. The Situational Analysis of IUSHS has classified urban centers in to 5 categories ranging from small towns to metropolitan City of Addis Ababa based on demographic size.



the national/ regional/ strategic development plan and annual consolidated integrated urban sanitation and hygiene plans and budgets.

The structural arrangement at town level composes the following sectors: heads of Water Utility, Education Office, Finance Office, Urban Development Office, Women's Association, Youth Association and representatives of NGOs, development partners, business community, health facilities representative and micro credit organizations. These have responsibilities to: prepare plan for launching sanitation and hygiene promotional activities along with budget, joint plan of action and responsibilities based on the framework of this sanitation master plan document

Autonomy of Urban Local Government

In establishing the five categories of urban centers, the strategy document uses clear criteria (population size) for the purpose of sanitation and hygiene service delivery.³⁷⁰ It sounds good pertaining to institutional security of the existence of local government. However, criteria are not congruent with those the regional states' proclamations adopted to establish urban centers. Accordingly, the mandate of the federal government remained questionable since it encroaches against the autonomy of the regional states to establish administrative structures of their own.³⁷¹

IUSHS provides more detail and clear functions to each category of urban centers regarding to sanitation and hygiene service delivery which is guided and coordinated by structural arrangement as discussed above. These functions are given as a minimum service package and technology defined for each category of urban center. The package is used for first start up and then each urban administration will expand sanitation services based on their power to plan and implement. Nonetheless, the strategy does not introduce new directions which enhance the decentralized autonomy of town and city governments.

It is common in many federal systems that the federal government has provided a benchmark through framework laws for those other orders of governments to meet or achieve more. At the same time, there is the principle of mutual non-interference over the respective competencies of orders of governments in federal systems. Hence, one level of government cannot dictate the other to do this and that. Despite this, the policy documents and proclamations enacted by the federal government empower the federal ministries to encroach at the expense of regional states' and urban centers' jurisdiction. In this case the IUSHS and Solid Waste Management Proclamation are prominent. While the IUSHS did as it established urban local governments and set their respective competencies, the Waste Management Proclamation establishes 'Environmental Protection Agency' to control the implementation of action plans issued by the same proclamation at the lowest administrative units of urban administrations. The designed plans in the proclamation go beyond setting benchmarks and prescribe what type of waste is going to be managed in what ways. Such detailed prescriptions

³⁷⁰ According to Situational Analysis of IUSHS, the population size of small towns ranges from 2,000 to 20,000 people. The medium-sized towns range between 20,000 and 50,000. Large-sized towns range between 50,000 and 100,000 people. There are 13 mega towns with a population between 100,000 and 500,000 people each. Addis Ababa is the only city in the country that hosts over 500,000 with about 3.5 million residents.

³⁷¹ The Federal Constitution has no supremacy clause in time of inconsistencies of laws of both levels of governments. However, as a matter of practice the federal one prevails over the regional states.



made by the strategy document and proclamation are actions beyond the mandate of the federal government. There is no constitutional basis for the federal government to do this and apart from the two federally administered cities, Addis Ababa and Dire Dawa, solid waste management is the function of the states. This might result in conflict of jurisdiction between the two levels or infringes the both the autonomy of the states and urban local governments.

Central Supervision

Central supervision encompasses four elements: regulation, monitoring, support and intervention and its rationale is to ensure: the proper and legally functioning of local government; equitability and uniformity in the distribution of service across the country and national priorities are not compromised by local government autonomy.³⁷² One of the rationales for the adoption of IUSHS is the issue of supervision. The strategy document has included the four components of central supervision powers. The one-year plan implementation report of the two fore front ministries, Ministry of Urban Development and Ministry of Health, concentrated on the issues of supervision.

The national steering committee has the power to set national standards, guidelines, quality indicators and time frame. This will be cascaded to the regional steering committee and until the lowest level of urban government. Towns are expected to assign urban sanitation standards that are aligned with national standards and options. Each relevant institution is obliged to establish a focal person at all levels who is responsible to oversee that the minimum standard is achieved. IUSHS is highly directed to capacity building of town and city administrations to effectively discharge sanitation and hygiene service delivery. Preparing domestic and abroad trainings is the mandate of the national steering committee. Moreover, as one can observe from the one-year accomplishment reports, each responsible ministry has been giving capacity building programs. Though not clearly put whether the regional or the federal one will intervene, it has been stated as 'uptake of services will be conducted for mismanagements after support'.³⁷³

Intergovernmental Cooperation

Considering the inevitable nature of overlap of power and interdependence between orders of governments IGR comes to play in federations. However, there is a concern that claims little attention was given to the importance of involving local government in inter-governmental cooperation for development.³⁷⁴ The desire for inclusion of local government is associated with the need for cooperation and harmonization of policies on shared programs. Local government activities should be in line with those of the national and state policies and strategies and national policies must take into account the interests of local government.³⁷⁵ However the IUSHS does not establish a kind of forum for participation of all levels of government in discharging sanitation service. The steering committees are established by following the formal state structure: federal-state-city/town-kebele. The only interaction is happened when the

³⁷² Yonatan T Fessha and Zemelak A Ayele, 'Who's the Boss? Questioning the Constitutional Authority of Federal Regulation of Local Government' (2016) *Ethiopian Journal of Federal Studies*, 85-86.

³⁷³ WSUP, 'Integrated Urban Sanitation and Hygiene Strategy', above, 50.

³⁷⁴ Zemelak Ayele, 'Decentralisation, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (doctoral dissertation, University of Western Cape 2012) 71.

³⁷⁵ *ibid* 72.



state or federal government appeared during the time of supervision or training. Hence one can argue that, the nature of relation is co-coordinative rather than co-operative given that local governments are hierarchically subordinate to the regions.

Assessment of the Practice

The IUSHS has developed to give guidance in the future intervention to avoid the problems discussed in the first part of this report entry. The strategy document noted that the successfulness of the intervention is determined by the effectiveness of institutions in managing urban sanitation in various categories of towns and follow up the implementation of the program in an integrated manner. However, beyond the commitments mentioned the achievement of the aspired goal is determined by the institutional features that are deemed likely to enhance the prospect of a decentralization program for achieving development.³⁷⁶ It is too early to evaluate the performance of the strategy since only one year passed the memorandum of understanding is signed by the concerned federal institutions.

However, if one takes a closer look in to the national strategy documents and a year implementation report, it is somewhat less promising to achieve the aspired goals: development and democracy. City and town administrations are supposed to be autonomous administrative units. The strategy document does not have sensitive provisions regarding urban local government autonomy rather it prescribes the roles and responsibilities of thereof. Certainly, inconsistency is happening between the type of urban local governments established and the criteria used by the federal and the regional states. As a result, the encroachment of the former powers against the latter is inevitable. In addition, as all local governments are controlled by the ruling party, in fact current fragmentations led to uncertain prospects; its decisions have infringed the roles of local legislatures.

Despite the autonomy of local government is crucial in achieving socio-economic transformation at grass root level, there are also negative effects of autonomy including inequity, corruption, elite capture and the like.³⁷⁷As a result, in most decentralized and federal systems supervision and intergovernmental cooperation has been used by the senior governments. The strategy document and its implementation reports are directed to supervision and alignment functions. It emphasizes intergovernmental coordination without an institutional arrangement which gets together the levels of governments. The institutional arrangement is aimed only to avoid overlap and discrepancies between sectoral institutions. Hence it is safe to say that the practice reflects central supervision rather than intergovernmental cooperation.

References to Scientific and Non-Scientific Publications

³⁷⁶ These institutional features are: political autonomy, fiscal autonomy, administrative autonomy, and central supervision and co-operation.

³⁷⁷ Ayele, 'Decentralisation, Development and Accommodation of Ethnic Minorities', above, 67.



Legal Documents:

Federal Republic of Ethiopia Solid Waste Management Proclamation no 513/2007

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12.5 Responsibilities for and Practices of Urban Land Use Planning in the City of Adama

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Relevance of the Practice

Adama is one of the rapidly urbanizing secondary cities of Ethiopia with a comprehensive master plan since 2004. The city is, however, characterized by rapid but mostly informal urbanization which in turn reveals the ineffectiveness of urban land use planning implementation. In so far as half of Adama's municipal revenue comes from urban land related incomes, urban land use planning is the key source of municipal revenue that very much determines the municipal service provision. Assessing the practice of urban land use planning in Adama is therefore relevant for a number of reasons. Firstly, it shows the responsibility of the urban local government (ULG) in urban land use planning. Secondly, it identifies which level of government actually regulates urban land use planning, and to what extent the virtues of decentralization have gone to the local level. Thirdly, since urban land use planning is a multilevel issue that cannot be addressed by a single urban local government, it is the nature of horizontal and vertical relations that determine the implementation of the land use plans at the ULG level.

Description of the Practice

Adama Land Use Planning before the Adoption of Federalism, Pre 1991

The first land use plan for Adama was prepared by the Italian colonial force³⁷⁸ in 1937. This plan had envisioned the segregated urban settlements for the foreigners and the local community. It was in 1971 that the master plan for Adama was prepared by the then Department of Municipalities of the Ministry of Interior under the imperial regime. This later plan lasted for two and half decades and entirely guided the city during the military or military regime (1974 to 1991). According different sources,³⁷⁹ the 1971 land use plan had played important roles in the urban growth of Adama, especially in the areas of social services, industries, infrastructure, housing, and trade. The southward expansion of Adama was mainly attributable to the influence of the 1971 Master Plan. As highlighted above, the planning for Adama was initially an imposed type of planning, as it was first introduced by the colonial force, Italians. It was by and large this imposed plan that guided the city till 1971 which was by itself prepared by the support of Italian architects under the highly centralized unitary state of

³⁷⁸ Italy occupied Ethiopia from 1936 to 1941.

³⁷⁹ Adama Revised Master Plan (2004); Addis Mebratu, 'Spontaneous Development of Urban Centers, An Analysis of the Transformation Process of Adama and its Primary Commercial Centers' (PhD thesis, Addis Ababa University 2006) 31.



Ethiopia. Before the adoption of federalism, suffice it to state that the urban land use planning of Adama as elsewhere in Ethiopia was simply a top-down design of rulers and the architects they recruited.

Urban Land Use Planning of Adama in Post 1991

After the adoption of the federal system in Ethiopia, the power over (urban) land is shared between federal and regional states. The Federal Constitution separates the power over land into legislative and administrative powers. Legislatively, the federal government has the power to 'enact laws for the utilization and conservation of land' (Article 51(5)). The same Constitution (Article 52 (2d)) grants the power 'to administer land and other natural resources in accordance with federal laws' to regional states.

In the Ethiopian federation, the urban policy in general and the urban land development and Management (ULDM) in particular were adopted in 2005 and 2011, respectively. Prior to the formulation of ULDM policy in 2011, the urban land lease laws were proclaimed without a specific policy framework.³⁸⁰ Since 1991, the federal government has enacted three land lease holding proclamations.³⁸¹ The most recent Urban Land Lease Proclamation no 721/2011 is considered as one of the policy interventions of the federal government to create a steady source of revenue for municipalities that in turn could improve municipal service provisions as well as allow to control informal settlements beyond the local development plan and master plan. This lease was also enacted to improve the urban land governance system through developing the necessary urban land information system.

At the federal level, the Federal Ministry of Urban Development and Housing Construction (MUDHCo) is mandated to implement the urban land development policy. To this end, Article 32 of the Urban Land Lease Proclamation no 721/2011 grants the following powers and functions to the MUDHCo: (i) to follow up and ensure the proper implementation of the land lease proclamation in all regions and city administrations; (ii) to provide technical and capacity building support to regions and city administrations; (iii) to adopt and follow up the implementation of a national standards real properties data base; and (iv) to prepare model regulations, directives and manuals to be issued for the implementation of these proclamations. In fact, Article 33(1 and 2) of the same Proclamation states that the regional states have the power to administer urban land.

The federal government has also enacted the Urban Planning Proclamation no 574/2008 which aims to regulate and guide urban centers by sound and visionary urban plans to bring about a balanced and integrated national, regional and local development. The objective of the proclamation was to promote well planned urban centers; to regulate and facilitate development activities in urban centers. The Urban Planning Proclamation sets several principles,³⁸² need to be considered in the processes of urban plan initiation and preparation, including: conformity hierarchy of plans; shared national vision and standards, capable of being

³⁸⁰ Berhanu Kefale, 'Urban Cadastres for Urban Land Governance: A Socio-Technical Analysis' (ITC thesis, University of Twente 2015).

³⁸¹ The first was 'a Proclamation to Provide the Leasehold of Urban Lands', no 80/1993; the second was Re-Enactment of Urban Land Lease Holding Proclamation no 272/2002; and the recent is Urban Land Lease Holding Proclamation no 721/2011.

³⁸² Art 5 of the Urban Planning Proclamation no 574/2008.



implemented, consideration of inter-urban and urban-rural linkages; ensure public participation, transparency and accountability. The power to initiate an urban plan is not, however, conferred on any level of government.³⁸³ The practice obviously shows that the initiative mostly come from the regional state and federal governments. The final draft of any urban plan (structure and local development plans) has to be ‘deliberated upon and approved by city councils and communicated to the concerned regional or federal authorities’.³⁸⁴ The same article has granted the power to suspend the (approved) urban plan to the regional state or federal government if the plan is found non-conforming to the principles set out by the Urban Planning Proclamation no 574/2008.³⁸⁵

The Urban Planning Proclamation no 574/2008 empowers the Ministry of Urban Development and Housing Construction on urban planning preparation, strategies, manuals, standards, guidelines, checklists etc. The respective regional urban development and housing bureaus are given the mandate to implement the urban plans according to the framework set by the ministry. Moreover, the MUDHCo can evaluate the urban planning institutes of the regions; identify the good experiences and can offer harmonized urban planning preparation and quality control; organize urban planning information centers; and make the urban land information, documents and file accessible throughout the country. Thus, the ultimate power to revise urban plans has vaguely been granted to the upper level governments – regional state or federal.

Oromia regional state, the region that defines Adama as one of its first grade cities,³⁸⁶ has decentralized the land administration to the city through the City Proclamation no 65/2003.³⁸⁷ Article 8(2(d)) of the Proclamation no 65/2003 states that the city administers urban land and houses in accordance with the law. Besides, the city has the power to prepare, revise, update and implement its city plans. Urban land supply and delivery is one of the municipal functions which are assigned to the city by the regional city proclamation. Since the adoption of the federal urban land law and policy in 2011, the regional State of Oromia has gone through a number of urban land institutional and regulatory reforms. On the positive side, the regional State of Oromia has already undertaken a number of reforms to improve the administration of urban land and to implement the urban land use planning in the region. To this end, two regulations³⁸⁸ and several directives³⁸⁹ have been issued towards implementing the federal urban lease policy.

³⁸³ Art 13(3) of the Proclamation no 574/2008 states that ‘chartered cities and urban administrations as well as the concerned regional and federal authorities’ can initiate urban plan.

³⁸⁴ Art 16(1) of the Urban Planning Proclamation no 574/2008.

³⁸⁵ Art 16(2) of the Urban Planning Proclamation no 574/2008.

³⁸⁶ According to Proclamation no 65 /2003, which establishes ULGs in Oromia, first grade cities are those cities with a population above 90,000. The population size of Adama city as of the most recent census of 2007 is 220,212.

³⁸⁷ Establishment of Urban Local Governments of Oromia Proclamation no 65 /2003.

³⁸⁸ Regulations no 155/2013 and no182/2016.

³⁸⁹ Directive no 3/2016 for creating Land holding Property Registration and Organization of the Land Information in Oromia; Directive no 4/2016 for Revising the Directive for Implementing the Regional the Urban Land Lease Regulation in Oromia; Directive no 5/2016 on Regularizing the Urban Land Use without Deeds and Illegal Holdings in Oromia, OUDMA, BoUDH; Directive no 6/2016 for Urban Land Service Delivery in Oromia.



Prior to 2013, the land management and administration was under the responsibility of the City of Adama and run along with the municipal service delivery functions. However, with the coming of the third Urban Land Lease Proclamation no 721/2011, the regional State of Oromia has established a separate Urban Land Development and Management Agency (hereinafter the Agency). The general manager and deputy manager of the Agency are nominated by the President of the Oromia regional state and appointed by the administrative council of the region.³⁹⁰ According to the proclamation³⁹¹ that establishes the Agency, the Urban Planning Institute of Oromia is also accountable to the Agency. The *Caffee*, regional parliament of Oromia, determines the powers and functions of the Agency, while the regional cabinet enacts the regulation for the implementation of the Proclamation no 179/2013. On its side, the Agency prepares the directives for the implementation of the urban land development and management. Nonetheless, the model regulation template, directives, and operation manuals are elaborated by the Federal Ministry of Urban Development and Housing.

Adama Urban Land Use Plan since 1995

Rural local governments are explicitly recognized by the Regional State Constitution of Oromia, but this does not apply to urban localities. In the first phase of decentralization from 1991 to 2002, urban local administrations of the region were simply subsumed under rural district and zonal administrations. Under Proclamation no 26/1999, for example, the City of Adama was designated as ‘Special Zone.’ This status has made the town administration directly accountable to the region, and there exists no other administrative structure between the city and the region. This was, however, changed in the period after 2001/2 with the launching of a second wave of decentralization for the implementation of development policies. A number of city proclamations were issued by the regional state councils and the *Caffee* created the city administrations through city proclamations.

In 2003, the designation of Adama as a town was abandoned by the Proclamation no 65/2003. This proclamation sets the council-mayor model of municipal governance for Adama.³⁹² Accordingly, the mayor should be elected by the city council from among its members, and the mayor is accountable to the city council and the President of the Oromia region. This was later amended by Proclamation no 116/2006 and the mayor’s accountability to the city council was abrogated, and the appointment and accountability of the Mayor of Adama has been granted to the President of the regional State of Oromia.³⁹³ No doubt, the appointment and upward accountability of the mayor hinders local democracy as the selection of the mayor is not anchored in the local electorates. The challenge of this mechanism of mayorship has been practically observed in the case of Adama because there have been several changes of mayors short of the five years’ tenure period of the city councilors (one mayor has averagely served for about six months since 2009). It has resulted in weak level of institutionalization in the sense that the key positions like the mayor are unstable and the institutional memories are

³⁹⁰ Establishment of Oromia National Regional State Urban Land Development and Management Agency Proclamation no 179/2013.

³⁹¹ Art 16(1) of the Proclamation no 179/2013.

³⁹² Art 10 of Proclamation no 65/2003.

³⁹³ Art 7 of Proclamation no 116/2006 for amending the of Proclamation no 65/2003 for the Establishment of Urban Local Governments of Oromia.



perturbed by the time an individual vacates from the position. As highlighted above, the legal status of Adama as an urban local government could be interpreted as a means by which the political elites, from above, control the city in general and the land use plan in particular.

In another registry, with the introduction of federalism and/or decentralization policy, one would not expect the urban planning to remain the same as it was during the centralized unitary system of Ethiopia. It appears in this light that the 1971 master plan for Adama was revised in 1995, the year when federalism was formally adopted, by the National Urban Planning Institute (NUPI). This revised plan could be criticized in the sense that it did not introduce 'major changes to the original one'.³⁹⁴ Unlike the previous land use plans under the unitary regime, the 1995 master plan by NUPI is claimed to have brought 'balanced expansion of Adama to the north and south'.³⁹⁵

In practice, the city's land use change and urbanization had been against the NUPI 1995 master plan. The plan proposed an expansion of the city to all directions of the built-up areas at the time. But in practice the expansion was predominately to the north. This shows that the city had expanded regardless of the 1995 revised master plan.³⁹⁶

Adama got the most comprehensive master plan in 2004. This plan has developed the city area up to 13,650ha from 4520ha under the NUPI 1995 master plan. According to the study by the Adama 'Revised Master Plan Project Office of 2004', all the previous plans couldn't effectively delineate the city boundary. This loophole gave rise to 'illegal selling of land by the farmers in the municipal boundaries delineated by previous Master Plans'. Nonetheless, even after the city has started to apply the lease law and to implement the 2004 revised master plan, the formal expansion could not catch up with the informal expansion. The city has been experiencing the highest levels of informal expansion amounting to 1,595.68ha in 2010, 1,366.01ha in 2011 and 1,138.34ha in 2012.³⁹⁷ Adama had a formal expansion of 60ha in 2013 but the city has experienced unprecedented informal expansion of 758.89ha in the same year. Information from the Adama city's Urban Land Development and Management Agency reveals that there were above 28,000 informal holdings round about the enactment of the urban land lease holding Proclamation no 721/2011. In 2017, the estimate amounts to more than 40,000 informal holdings which could account for about 40 per cent of the housing units that exist in Adama city and the number is not showing any decline. At present, the information from the city shows that nearly half of the settlements in Adama are informal.

Assessment of the Practice

Despite its comprehensive master plan as of 2004, the City of Adama has been undergoing rapid but mostly informal urbanization. This shows that the urban land use plans have not been effectively implemented. To this cause, a number of factors could be identified but four major

³⁹⁴ Mebratu, 'Spontaneous Development of Urban Centers' 31.

³⁹⁵ Adama Revised Master Plan (2004).

³⁹⁶ *ibid.*

³⁹⁷ State of Ethiopian Cities Report, Ministry of Urban Development, Housing and Construction (MUDHCo) in collaboration with Ethiopian Civil Service (2015).



factors are worth noting. The first reason is related to the urban land policy and law making frameworks. The competency of the federal government has not been restricted to urban land policy and law making as established by the Constitution, but engaged in setting the regulatory frameworks for urban land use planning and administration. The instruments of urban land policy implementation, including regulations, directives, manuals and checklists, came from above, the MUDHco. That said, little room has been left for the regional states in designing and implementing urban land policy in general and urban land use planning in particular.

The second reason is related to the frequently changing but insecure legal and administrative status of Adama. This condition has resulted in weak institutionalization of urban land use planning. The third is accounted for by the top-down urban planning approach. As indicated by the urban planning law, which was enacted in 2008, the power to initiate an urban plan is not conferred on any level of government. If, however, the plan is found non-conforming to the principles set out by the Urban Planning Proclamation no 574/2008,³⁹⁸ the power to suspend it lies with the regional state or federal government. The ultimate power to revise an urban plan has therefore been granted to the upper level governments – regional state or federal. Besides, the place of the local people and the autonomy of the urban center have not been explicitly framed throughout the regulations, directives, standards and manuals. This has put ULG in the weakest position with regard to the urban land use planning. Hence, the supra-local orders of government- regional state and federal- have been using urban planning as point of intervention and regulation from above.

Last but not least, the political exigency of Oromia and the party system have contributed to the ineffective implementation of urban land use planning in Adama. When the most comprehensive master plan of Adama was designed in 2004, there was a huge political push from the federal and regional state leadership to implement the plan for political and electoral contingencies.³⁹⁹ Moreover, it has been said that the length of tenure of the Mayor of Adama primarily depends on his/her loyalty to the ruling party and the regional state executive, not on accountability to the city council or the electorate.

Given the rapid and mostly informal expansion of Adama as described above, the informal land acquisition and construction of squatters are relatively pervasive in the surrounding rural local government of Adama- outside the city's municipal boundary. On the one hand, the City of Adama cannot administer the land outside its municipal boundary because the land is under the rural local government of Adama. On the other hand, the farmers have the right to transfer their land use rights or sell their use rights or inherit their land holdings to anybody they like. Consequently, as the expansion of urbanization of Adama city is increasingly approaching to them, farmers in the surrounding rural administration are subdividing their farm lands and selling plots to informal seekers anticipating that the government would take their land either for free or with meager compensation payments.

A committee comprising the city and surrounding rural administration is often established for identifying the intensity of informal settlements and to report on the condition of informality

³⁹⁸ Art 16(2) of the Urban Planning Proclamation no 574/2008.

³⁹⁹ Around 2003 to 2005, there was an attempt to shift the capital of the region from Finfinnee/Addis Ababa to Adama. This unpopular project was, however, abandoned the region's seat was brought back to Finfinnee following the victory of opposition party over Finfinnee in the 2005 National election.



at the fringe to the city. Such ad hoc committees were often established through party channel and personal networks for handling mutual concerns of controlling informal land acquisition and settlement. This, therefore, shows that there has been a weakly institutionalized urban and rural governments' relation for managing land use planning between urban and rural local governments.

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12.6 Solid Waste Management in the City of Bahir Dar: A Matter of Capacity and Public Awareness

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Relevance of the Practice

Municipal Solid Waste Management (SWM) is a major issue of concern in local government service delivery. One of the problems in this service is related to the fact that many developing countries continue to urbanize rapidly. One of the challenges that the Ethiopian cities, particularly Bahir Dar city, face is the problem of SWM in particular. The Federal Democratic Republic of Ethiopia Solid Waste Management (FDRE SWM) Proclamation no 513/2007 defines solid waste and SWM as follows: 'Solid waste' implies anything that is neither liquid nor gas and is discarded as unwanted. 'Solid waste management' means the collection, transportation, storage, recycling, or disposal of solid waste, or the subsequent use of a disposal site that is no longer operational. This report entry is intended to assess the municipal service delivery of SWM in Bahir Dar city administration, in the Amhara National Regional State. By so doing, the provision of SWM service is discussed in relation to the capacity of the municipality to discharge its function and the issue of public participation. In fact, public awareness has crucially affected the participation of the people in general and in SWM in particular.

Description of the Practice

Bahir Dar is one of the fast-growing tourist destination cities in Ethiopia. It is also the hub of commercial activities in the northeastern part of the country so that daily waste generation is increasingly sharply. In most states, the issue of SWM is a function of local government. In the same vein, the Bahir Dar city government has a legal mandate to organize the proper waste collection and disposal systems at sub-city and *kebele* level.

Apart from the city administration, the institutional arrangements and the main stakeholders in the SWM system in Bahir Dar include: the Regional Amhara Bureau of Environmental Protection, Land Administration and Use (BoEPLAU), the Regional Amhara Health Bureau (BoH), the United Nations Development Programme (UNDP) and the Federal Environmental Protection Authority (EPA).

In Bahir Dar city, solid waste is generated largely from three sources, namely (i) households, (ii) commercial activities, and (iii) institutions and street sweeping. Despite the involvement of a private company, an enormous amount of solid waste is collected by the micro and small enterprises through door-to-door collection. According to a report prepared by the city, the composition and generation rate of the waste in tons per day were residential (54 per cent), commercial (24 per cent), and institutional and street sweeping (4 per cent). This clearly shows that residential areas are the primary generators of waste. However, the current waste



collection capacity is not matching waste generation. Studies showed that the quantity of solid waste generation of households in Bahir Dar city was significantly affected by household size and household aggregate income. This is due to the growth of the population, expansion of industrialization, and rapid urbanization disposal that the city is going through.

In the door-to-door collection system, each house owner is expected to put solid waste in baskets or any kind of bags at the door side. The collectors pick up the solid waste along the door side, street sides, and pedestrian walkways using pushcarts and transport it to temporary storage sites for the trucks to finally take the waste to its final disposal point. However, the regularity of solid waste collection services is uneven. According to recent studies, only 27 per cent of households received SWM services from municipality waste collectors weekly. The remaining 9 per cent, 15 per cent, and 6 per cent households received solid the service within 15 days, 21 days and once in a month, respectively, and 43 per cent per cent of households never had access to solid waste collection, transportation, and final disposal into landfill services.

Lack of public awareness and cooperation are found to be the main causes of problems concerning SWM. Before 2015, public awareness pertaining to SWM was deemed to be low. Despite some visible gaps witnessed these days, there is a considerable increase in public awareness towards SWM, particularly in regard to keeping and handling one's household waste until the collectors take it and using street side bins, after the city administration, via *kebele* levels (the lowest level), engaged in a public awareness campaign. However, the city administration does not keep its awareness creation to the level those residents are able to acquire holistic environmental awareness. This limitation has attributed to lack of strong regulatory mechanisms and resource allocation which prohibited increased public awareness through training and sensibilization and eventually punishment to improve the performance of SWM service provision.

Previously, the payment rate of collection fees was low (about 50 per cent) as the awareness of the public towards SWM (was) is low. This problem is currently relatively alleviated after integrated work has been done with other sector offices. In fact, the payment collection task has been undertaken by the water and sanitation office of the city administration. On water bills, each household is intended to pay about ETB 30 (EUR 0.55) per month for the solid waste disposals service fee.

Assessment of the Practice

The practice of provision of municipal SWM service in Bahir Dar city has been affected by problems related to institutional capacity and low public participation. The regularity of the solid waste collection service is uneven. This is due to partly the low number of solid waste collectors due to a low salary. Service fees and the provision of incentives must be re-considered to enhance the payment of solid waste collectors, and to enhance the participation of private sector and non-governmental organizations as well as the community to manage this problem.



The city administration has no clear regulatory mechanism of SWM in determining the type of waste and disposal as well as ways of treatment. There is neither a legally determined site for the solid waste collected from the aforementioned sources using pushcarts nor standard transfer stations in the city.⁴⁰⁰ There are issues that prompted the municipality to re-think its public participation schemes and regulatory performance in SWM. People in residential areas, industries, hotels, and health centers still pay less attention to SWM and they dump waste along the roads and in open spaces or burn it insensitive to environmental issues. Standard solid waste transfer stations need to be set and there is a need for the promotion of environmentally friendly alternatives such as compost production as well as the establishment of systems and techniques to enhance efficiency to match the amount of waste generation with that of collection and disposal capabilities. To this end, institutional capacity building is deemed to be necessarily accompanied by access to training and education programs for every stakeholder in SWM.

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13. Local Responsibilities and Public Services in Argentina

13.1 The System of Local Government in Argentina

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Types of Local Governments

Argentina is a federal country consisting of 23 provinces and the Capital City of Buenos Aires as a federal district. Their autonomy is enshrined in the Constitution of 1853, which was last time reformed in 1994. According to the Federal Constitution, provinces can vote their own constitutions and laws. They have the power to elect their authorities and organize their own administrations, even in areas of justice and security. In addition, provinces have broad constitutional autonomy in fiscal and spending functions. A delineation of powers between central government and the provincial states is based on the general principle that all provinces have the power of those competences not expressly delegated in the Constitution to the federal state.

The third tier is composed of local governments. As the provinces have a political, administrative, judicial, and financial autonomy, the scope of municipal autonomy is determined by the province in which they are located. That translates into a wide range of definitions and configurations for local governments. Several municipal governments, depending on the provinces, have the authority to draft municipal charters (usually depending on the size of their populations). In some provinces, municipalities include only urban areas around cities, leaving rural areas under the jurisdiction of provincial governments. This translates into serious challenges for the delivery of social services. In others, municipal governments may include several cities and rural areas too.

Departments are an administrative division between provinces and municipalities, which do not have policy functions nor fiscal responsibilities. They mainly have a cadastral and statistical role, but in some provinces, they are also electoral districts to elect provincial representatives.

The adoption of federalism and a decentralized system of government that recognized autonomy to subnational units was the result of civil wars in the 1820s, after independence, and the only possible way to solve the political and economic conflicts in a country of enormous territorial extension.

Legal Status of Local Governments

Both the national Constitution, as amended in 1994, and most of the provincial constitutions explicitly recognize the autonomy of municipalities. According to Article 123 of the Argentine



Constitution, '[e]ach province dictates its own Constitution, in accordance with the provisions of Article 5 ensuring municipal autonomy and regulating its scope and content in the institutional, political, administrative, economic and financial order.' The sanction of several municipal charters (*cartas orgánicas municipales*) marks a progressive increase in the decision-making capacity of the municipalities. But this contrasts with limited administrative capacities to provide services (many of them decentralized at the provincial level) and scarce public resources and tax powers to finance their expenses (mostly concentrated at the national level).⁴⁰¹

(A) Symmetry of the Local Government System

Although the Argentinian Constitution establishes a substantial autonomy for subnational tax powers, in practice the provinces have delegated large amounts of responsibility to the national government for the collection of revenue (income taxes, sales, special taxes and taxes on fuel). The resulting revenue concentration contrasts with a process of decentralization of expenditure whereby the responsibility for key social functions is in the provincial hands. The only activities that are the exclusive competence of the national authorities are those related to defense and foreign affairs. In the areas of economic affairs, public security, and social infrastructure, the national government shares responsibility with the provinces, while the latter have exclusive competence in primary and secondary education and local (municipal) organization and services. The Constitution defines a wide area of public services for which national and provincial authorities can participate in the legislation and provision of public services, although the tendency in the last two decades has been for the national government to decentralize direct administration of those functions to the provinces. Therefore, the provinces are currently in charge of most social expenditures (including basic education, health services, poverty programs, housing) and economic infrastructure. Despite this, the national government maintains a significant regulatory power in many of these areas and manages some programs within these sectors, such as social security, social programs for poorer households, and complementary educational programs that subsidize poorer schools.

Given this decentralization of spending and fiscal centralization, there is a high degree of vertical fiscal imbalance. Argentina addresses this large vertical fiscal imbalance through a complex system of intergovernmental transfers. The most important component of this system is the revenue sharing agreement (called *coparticipación*), which is the process by which part of the revenues collected by the central government are transferred to the provinces. Over time, the system has redistributed revenue from the richest central region to the most backward provinces in the northwest and northeast. It has also favored richer and low-density Patagonian provinces. Despite this, the system has corrected part of the large regional income asymmetries among provinces in Argentina. We have to bear in mind that regional inequalities in Argentina are enormous. Formosa, for instance, has a GDP per capita more than 10 times lower than the City of Buenos Aires (2,256 versus USD 23,439). Although it has corrected

⁴⁰¹ Monica Iturburu, 'Municipios Argentinos: Potestades y restricciones constitucionales para un nuevo modelo de gestión local' (2nd ed, Instituto Nacional de la Administración Pública 2000) 33.



regional income inequalities, the revenue transfer system has not had a substantial impact on provincial and local welfare indicators, as most social functions depend on the provinces (and are strongly correlated with provincial spending, particularly in social areas).

Political and Social Context in Argentina

The main parties that govern the provinces are the Justicialist Party (PJ), *Cambiamos*, which is the alliance governing the national government (formed by the Radical Civic Union, or UCR, Republican Proposal, or PRO, and other minor parties), and a constellation of minor parties, including the Socialist Party and provincial parties. *Cambiamos* governs four provinces (Buenos Aires, Corrientes, Jujuy and Mendoza) and the City of Buenos Aires. The PJ (in one of its several factions) governs 14 provinces (Catamarca, Chaco, Córdoba, Entre Ríos, Formosa, La Rioja, La Pampa, Salta, San Juan, San Luis, Santa Cruz, Tierra del Fuego, Tucumán, and Santiago del Estero). The socialists govern one province (Santa Fe) and provincial parties govern the other four provinces (Chubut, Misiones, Neuquén and Río Negro). Argentina has 1922 municipalities⁴⁰² governed by these and other national, provincial or local parties.

According to the last census, Argentina has 40,117,096 inhabitants, out of which more than 91 per cent (36,517,332) live in urban areas and the rest (3,599,764) in rural areas. More than 19 million live in 10 cities of more than 500,000 inhabitants, the largest being the metropolitan area of Buenos Aires (with 12,806,866 inhabitants and 31.9 per cent of the population).

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Iturburu M, 'Municipios Argentinos: Potestades y restricciones constitucionales para un nuevo modelo de gestión local' (2nd ed, Instituto Nacional de la Administración Pública 2000)

⁴⁰² Iturburu, 'Municipios Argentinos', above, 80.



13.2 Local Responsibilities and Public Services in Argentina: An Introduction

Lucas González, *Universidad Nacional de San Martín*

In Argentina, as in all developing countries, access to local services is a trenchant social issue. The place where you are born determines a large part of your wellbeing, including the probability of not dying at birth, living a longer and decent life, and having access to basic and good quality health, education, and security.

Some figures could give an idea of that link between place of birth and wellbeing. Infant mortality in Formosa is three times larger than in Tierra del Fuego or Buenos Aires.⁴⁰³ Life expectancy in the Province of Chaco is 5 years lower than in Neuquén.⁴⁰⁴ The illiteracy rate in Ramon Lista (13.5 per cent), one of the poorest departments in Formosa, it is 64 times higher than in the Comuna 14, Capital (0.21 per cent).

Improving living conditions of the poorer population plays a fundamental role in achieving sustainable development, and these living conditions depend on the access to basic services, which in most cases depend on subnational units of government. The relevance of this report section to the project is twofold. In the first place, the access to services is significantly influenced by the urban-rural divide. The latter area has extremely low levels of access to most services. It is important to note, however, that not all urban centers enjoy basic service provision across their territories, but coverage in urban areas is considerably larger.

In addition, access to services in Argentina involves the three existing levels of government. In the first place, the federal government plays an obvious role in oversight and regulation. The public services regulative bodies are autonomous agencies within the scope of the executive branch, that check on the quality of provision by private or public companies, which are bestowed with the task of providing and extending public services networks. The provincial (second tier) and local levels play key roles, because the provision of public services has been decentralized to the provinces since the late seventies, and most provinces implemented some form of local decentralization. Therefore, provincial and local governments are in charge of delivering most social services.

Local public service provision in Argentina is an ideal topic to be explored due to its linkages in combination with at least three crucial issues. First, coordination and cooperation in federal countries is relevant because several layers of government are involved in the process of public service provision. It is therefore closely linked with report section 5 on intergovernmental relations of local governments. Secondly, it is also important to take into account that, besides the role of the public sector, local public service provision also depends on the role of civil society. Thirdly, it is also influenced by particularistic interests.

⁴⁰³ Instituto Nacional de Estadística y Censos (INDEC), 'Tasa de mortalidad por mil habitantes, según grupo de edad y sexo. Total del país. Años 2012-2016' (INDEC 2016).

⁴⁰⁴ Instituto Nacional de Estadística y Censos (INDEC), 'Tablas abreviadas de mortalidad 2000-2001. Total País y Provincias' (Documento de Trabajo del Programa Análisis Demográfico No 146, INDEC 2017).



Firstly, provision of local services in Argentina is an ideal opportunity to analyze intergovernmental coordination and cooperation (or conflict) in a federal country. The provision of local services in the country depend on the coordination and collaboration between multiple levels of government. At the national level, despite recent advances in a clearer definition of responsibilities, the institutional framework continues to lack coherence and coordination between federal actors is poor. Being a federal country, the provinces are responsible for delivering most social services, including basic health, primary and secondary education, and public security. The large political, fiscal, and administrative autonomy of the provinces results in a great diversity of institutional arrangements and administrative capacities for the provision of these basic services, and others such as drinking water and sewerage.

Second, the provision of local services is not only a function of coordination or collaboration between units of government. In other words, it does not only depend on the role the public sector pays. Collaboration and even pressures from community organizations and economic interests are also critical factors to consider. In the literature there is a certain consensus that collaboration between the public and private sectors and civil society is fundamental to improve access to services.⁴⁰⁵ On the other hand, a growing urban segregation generates differentiated access to goods and services. For Heller and others,⁴⁰⁶ the place of residence determines the level of basic services to which a person is entitled, generating a 'differentiated citizenship', with unequal access to essential services, such as health, education, and economic opportunities. This research project explicitly focuses on the role of social organizations in allowing the most disadvantaged sectors of society to access resources in possession of the richest sectors.

Thirdly, we argue that the provision of local services also depends on the role of economic interests. When economic elites capture the local state, different sectors of society will be more likely to have differentiated access to services. By state capture we understand a scenario in which politicians are intimately related to dominant economic sectors at the local level. More specifically, where a given local unit has a predominant economic sector, provision of local services is more likely to be either limited or skewed in favor of the dominant economic sector, compared with local units enjoy a diversified economic structure.

Of course, the phenomenon of the concentration of economic power and its impact on the political process occurs in all countries to varying degrees and at different levels of government within each country. However, in developing countries the levels of economic power concentration of economic power can lead to excessive overrepresentation of the interests of the powerful, which at its turn affects the level of legitimacy the regime enjoys. Countries with low levels of development (and relatively poorer districts within these countries) have fewer resources for the development of state infrastructure and lower levels of institutionalization that make capture easier, more likely and intense.

⁴⁰⁵ See, for instance: Robert Putnam, Robert Leonardi and Raffaella Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press 1993) 99.

⁴⁰⁶ Patrick Heller, Partha Mukhopadhyay, Subhadra Banda and Shahana Sheikh, 'Exclusion, Informality and Predation in the Cities of Delhi' (Working Paper, New Delhi Centre for Policy Research 2015).



In short, public service delivery in Argentina provides an ideal setting to explore state capacities and coordination among levels of government in federal countries, the effect of community organization, and of economic concentration (or diversification) and their effects in the provision of basic services; which at its turn speaks also to democracy and legitimacy.

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Putnam R, Leonardi R and Nanetti R, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press 1993)



13.3 Access to Public Services in Two Patagonian Oil Towns

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Relevance of the Practice

Initially we select two local governments in which there are very different forms of intergovernmental fiscal relations, initiatives for community organization, and pressures from economic elites. Both are oil towns in Patagonia but one of them receives substantial shares of fiscal revenue from the oil it produces, has an active and mobilized civil society, and more autonomous provincial and local states, which are less influenced by pressures from the powerful oil sector. The other oil town is the opposite: receives few revenues from the oil it produces, civil society is less active and coordinated, and the provincial and local governments are very much captured by the oil sector. Access to services in the main urban area as well as in the surrounding rural areas in both of them are radically different.

Description of the Practice

Las Heras is a quintessential oil enclave. It is in a remote location in the middle of the Patagonian steppe, 768 km. away from the capital city of the province and 135 km. away from the next medium size city, Caleta Olivia. Las Heras and Caleta Olivia are part of the Gulf of San Jorge oil basin (together with other oil producing cities, such as Comodoro Rivadavia and Pico Truncado). Las Heras had a population of 17,281 inhabitants according to the last census (2010) and grew at an average annual rate of 7.5 per cent during the last decade.

Most of the people in the town work in the oil economy, by far the most important activity in the region. Oil salaries are high. A wellhead operator, a low-skilled job, earns a minimum salary of about ARP 70,000 (or USD 4,400; exchange rate for May 2017), 5 times the salary in the public sector. But only part of these high salaries is spent in town; and few oil royalties are redistributed across the provincial territory. Although some of the oil workers live in Las Heras with their families, a large proportion of them are either young single males who live in town alone or males living in town without their families.⁴⁰⁷ These workers transfer part of their salaries outside town (and even the province, to their own provinces, mostly in the north of the country). The managers of the oil companies tend to live in upper middle-class neighborhoods in Comodoro Rivadavia or Rada Tilly, located 200 km. away from Las Heras.

Few royalties from oil are re-invested in Las Heras. The provincial government collects them and only 7 per cent of the total is redistributed to municipalities across the province. According to the latest data available (up to September 2017), the provincial government collected about

⁴⁰⁷ Interamerican Development Bank (IADB)-Fundación YPF, 'Las Heras Sostenible. Hacia un desarrollo urbano con identidad' (IADB-FYPF 2014b) 23.



ARP 678 per capita in oil revenues,⁴⁰⁸ but only a small share of it is allocated to Las Heras: ARP 53.5 per capita.⁴⁰⁹ With a modest budget and large social needs, the municipal government allocates almost all its revenues to current spending (mostly salaries). Capital expenditures (i.e., public works) are almost exclusively from federal investments.⁴¹⁰ Most of the collected oil rents go to a unique provincial account (*Cuenta Única del Tesoro*, CUT). The provincial government decides its allocation with little oversight from the provincial legislature (largely dominated by the incumbent party) or other subnational control institutions (the Court of Auditors, or *Tribunal de Cuentas*, has three members representing the incumbent party and one from the opposition). Political institutions do not favor either the redistribution of oil rents or social accountability. As a result, most of the budget is allocated to current spending, and most of it geographically located in Río Gallegos. Santa Cruz is one of the provinces with the largest share of public employment as a share of the total employment (51.6 per cent in 2015). Rents from oil extracted almost 800 km away from the political capital of the province help finance part of it. It is very difficult for citizens and local social groups to put pressures on provincial politicians who are this far away from town and who are the ones deciding where most of the rents would be allocated.

This oil enclave concentrates income in a small part of the provincial territory (mostly the provincial capital city) and redistributive institutions do not reallocate revenue across it. This enclave economy has developed few linkages with the rest of the provincial economy and has had a weak impact on access to better local services in town, rural areas around it, and across the province.

In terms of services, Las Heras has few hotels and restaurants, most of which are poor quality and quite expensive for national standards. The city also lacks a public transportation system, which causes problems for communications both inside and outside the city.⁴¹¹

There are serious deficits in the provision of health and education services. Las Heras has also a high housing deficit, 41.4 per cent in 2013, compared to the capital city, Río Gallegos (6.3 in 2010) and has a very high informality of property domains (27 per cent) due to a large process of informal occupation of land in the city. Only 36 per cent of the inhabitants have access to sewerage and waste collection does not reach 60 per cent of the households with the required frequency.⁴¹² Poor welfare standards and large inequality in Las Heras are correlated with high levels of violence: there are 12.7 homicides per 100,000 inhabitants (more than twice the national average of 5.3 in 2015) and 263.5 robberies with violence per 10,000 inhabitants.⁴¹³

This oil enclave has produced enormous resources, but its wealth is mostly spent in the administrative and political center of the province, without provincial political institutions

⁴⁰⁸ Or a total of about USD 186 million (or ARP 3.4 billion) in these 9 months of 2017.

⁴⁰⁹ Data provided by the Ministry of Economics, Finance and Infrastructure of the Province of Santa Cruz (Ministerio de Economía, Finanzas e Infraestructura, Provincia de Santa Cruz 2018).

⁴¹⁰ Interamerican Development Bank (IADB)-Fundación YPF, 'Las Heras Sostenible. Hacia un desarrollo urbano con identidad' (IADB-FYPF 2014b) 101.

⁴¹¹ Interamerican Development Bank (IADB)-Fundación YPF, 'Las Heras Sostenible. Hacia un desarrollo urbano con identidad' (IADB-FYPF 2014b) 89.

⁴¹² *ibid* 23.

⁴¹³ *ibid* 99.



redistributing significant amounts of rents to non-oil producing areas and social sectors being able to exert meaningful pressures for accountability.

The other case is Añelo, an oil town located in the Patagonian desert, part of a geological formation called the Neuquén Basin. It is similar to Las Heras in that it is highly dependent on oil. But there are important differences among them. The first difference is that the institutions for revenue sharing redistribute a larger share of oil revenues from oil-producing to non-producing regions. The Province of Neuquén doubles the share of oil rents redistributed from producing to non-producing districts of Santa Cruz (13.5 per cent compared to 7). The provincial government of Neuquén collects about ARP 1012.7 per capita (latest data available for 2014). Añelo, for instance, received ARP 254.7 per capita, almost five times the amount of oil rents per capita that Las Heras gets. These funds are reinvested across the province to improve welfare indicators as well as to promote and give basic infrastructure to other economic activities. Consequently, local governments receive more funds from revenue sharing, which enables them to better target social needs and demands for infrastructure both in urban and rural areas.⁴¹⁴

Another important difference is that this locality employs a large number of workers from the region and from the large metropolitan area of Neuquén, Plottier, and Cipolletti. Several workers either live in this oil town or commute to the larger cities. The hydrocarbon production in the Vaca Muerta shale oil fields led to the creation of 5,000 jobs in Neuquén, of which, Añelo absorbed about 20 per cent.⁴¹⁵ The entire oil and gas sector generated a total of 57,253 jobs in the province (14,109 direct and the rest indirect and induced),⁴¹⁶ compared to only 1,831 in Santa Cruz (during 2013).⁴¹⁷

More jobs, more community organization, larger and more active unions also mean more societal demands and pressures on politicians. Neuquén systematically ranked as one of the most socially conflictive and mobilized provinces in Argentina during 2009-2017 (data available for this period).⁴¹⁸ These societal pressures are targeted not only to provincial but also to local politicians. Differently from Las Heras's, local politicians in Añelo have a larger local budget to target local social needs and demands for infrastructure, more oil rents redistributed from the province, and face more societal and sectorial pressures to deliver public goods and services.⁴¹⁹ All this impacted on better welfare standards in the city and its region, despite its enormous population growth (its population skyrocketed from 1,742 inhabitants in 2001 to 6,000 in 2015).

⁴¹⁴ Interamerican Development Bank (IADB)-Fundación YPF, 'Añelo Sostenible. Innovación para la Planificación de la Ciudad' (IADB-FYPF 2014a) 77f.

⁴¹⁵ *ibid* 69.

⁴¹⁶ *ibid* 20; Instituto Argentino del Petróleo y del Gas (IAPG), 'Análisis y Proyección de Impactos Económicos Esperados del Desarrollo de los Hidrocarburos No Convencionales en Argentina. Cuantificación de Impactos Económicos del Desarrollo en Escala de Vaca Muerta en la Provincia de Neuquén' (IAPG 2014).

⁴¹⁷ Interamerican Development Bank (IADB)-Fundación YPF, 'Las Heras Sostenible. Hacia un desarrollo urbano con identidad' (IADB-FYPF 2014b) 53.

⁴¹⁸ 'Informes sobre Conflictividad Social' (annual reports, Diagnóstico Político 2009-2016); 'Informes sobre conflictividad local' (annual reports, Observatorio Económico ACIPAN 2013-2017).

⁴¹⁹ Añelo's mayor, Darío Díaz, confirmed these sectoral and citizens' pressures for more and better public services in town in an interview during fieldwork in April 2016.



Health and education services in Añelo are limited. But the main difference with Las Heras is that there is a great variety of complex health services in the nearby City of Neuquén, as well as tertiary institutes and technical schools in nearby towns, including two national public universities within 100 km.⁴²⁰

The housing deficit in Añelo is 27 per cent according to the 2010 census (compared to 41.4 per cent in Las Heras in 2013).⁴²¹ But the Municipality of Añelo granted pieces of land for 180 social housing units and plans to grant 370 more to cover it.⁴²² On top of that, the provincial government expanded substantially its capital spending in the region during the oil boom.⁴²³ About 72 per cent of households have access to good quality running water, and the sewage network covers 46.6 per cent of households in the city;⁴²⁴ ten percentage points more than in Las Heras.

As indicated in an official report, ‘poverty indicators are more related to structural problems of urban growth and settlement than to issues related to lack of employment, resources, and access to education’.⁴²⁵

Assessment of the Practice

Oil towns in Neuquén, particularly Añelo, have redistributed a larger share of their wealth to the rest of the province, have an active and mobilized civil society, and more autonomous provincial and local states. This is very different to what happened in Las Heras, where oil rents are concentrated in a distant and quite socially isolated administrative center, civil society is less active and coordinated, and the provincial and local governments are very much permeated by the oil sector. As a result, access to services in both of them are radically different; the oil town in Neuquén has contributed to improve welfare indicators across the province and in the other case, only economic sectors closely related to the extractive activities and the central government collecting rents seem to have reaped the benefits of natural resources wealth.

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- ‘Informes sobre Conflictividad Social’ (annual reports, Diagnóstico Político 2009-2016)

⁴²⁰ *ibid* 71.

⁴²¹ *ibid* 66.

⁴²² *ibid* 67.

⁴²³ ‘Cuenta de Inversión’ (annual reports, Gobierno de Neuquén 2005-2014); Lucas González, ‘Oil Rents and Patronage: The Fiscal Effects of Oil Booms in the Argentine Provinces’ (2018) 51 *Comparative Politics* 101, 112.

⁴²⁴ Interamerican Development Bank (IADB)-Fundación YPF, ‘Añelo Sostenible. Innovación para la Planificación de la Ciudad’ (IADB-FYPP 2014a) 55ff.

⁴²⁵ *ibid* 69.



Iturburu M, 'Municipios Argentinos: Potestades y restricciones constitucionales para un nuevo modelo de gestión local' (2nd ed, Instituto Nacional de la Administración Pública 2000)

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13.4 City-Planning Agreements in Córdoba

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Relevance of the Practice

The selected practice is the implementation of City Planning Agreements in Córdoba, an instrument that enables public-private articulation for urban development projects with modifications to current regulations. On the grounds of an insufficient municipal budget, the local government uses this instrument to obtain financing for public works and services in exchange for flexibility in 'too rigid' urban planning regulations. The Agreements are instruments that have been used in many cities with great diversity of modalities and results. In addition, local governments view these initiatives with great interest due to their high possibility of replicability, but often ignoring the conditions under which they are applied and the results they achieve. The analysis of this case allows us to investigate some of its outcomes, not only in relation to land planning and use, but also in relation to how it is articulated with municipal financing, transparency and accountability, as well as the mechanisms of articulation with local actors.

Description of the Practice

In Argentina, more than 90 per cent of the population resides in urban centers. The City of Córdoba is one of the 5 most important metropolitan agglomerates, with a projection to the year 2019 of 1,446,201 inhabitants.⁴²⁶ With 576 km², it is one of the largest cities in Latin America and includes both urban and rural areas within its territory. Local regulations differentiate them by land use. Being large and diverse, the city lacks an urban planning tool to regulate the use and occupation of land. The city has three ordinances⁴²⁷ to do that.⁴²⁸ Precisely, these norms can be modified applying the Urban Planning Agreements (Ordinance no 12077 approved in 2012) by the local council.

Due to the rigidity and lack of updating of regulations, there were also negotiations between the public and private sectors that led to exceptions prior to this ordinance. The main goal was to make real estate projects viable. The objective and official argument for the approval of the Urban Planning Agreements was to regulate them and make them more transparent to avoid

⁴²⁶ Secretaría de Planificación Territorial y Coordinación de la Obra Pública, Argentina Urbana, 'Plan Estratégico Territorial' (Ministry of the Interior, Public Works and Housing 2018) https://www.argentina.gob.ar/sites/default/files/plan_estrategico_territorial_2018_baja.pdf.

⁴²⁷ Ordenanza de Fraccionamiento del Suelo [Soil Fractionation Ordinance] no 8060/86, Ordenanza de Ocupación del Suelo en Áreas intermedias y periféricas [Soil Occupation Ordinance in Intermediate and Peripheral Areas] no 8256/86, Ordenanza de Uso del Suelo [Land Use Ordinance] no 8133/85.

⁴²⁸ María Beatriz Valencia, 'Articulación Público-Privada en Intervenciones Urbanas para el Desarrollo Urbano Sustentable. Lineamientos para su implementación en un contexto de Gobernanza – Convenios Urbanísticos Córdoba' (Master Thesis in Environmental Governance and Urban Development, FAUD UNC 2020).



discretion. The ordinance establishes three fundamental objectives: (i) to provide the municipal government with management tools to favor the development of the city, promoting private investment, in concurrence with plans, programs, works and actions of public interest; (ii) to promote public-private cooperation as well as among different public jurisdictions; (iii) to achieve urban and structural transformations more quickly and without using only public resources.

The negotiation process takes place between actors from the private sector and the municipality, especially from the Urban Development and/or Planning area, with some intervention from other areas only by request. But the reports and recommendations from them were not always taken into account. The City Planning Agreements must be approved by the local council. However, many times the requests were presented without leaving time to read them in detail and less so to allow for debates, being approved by making use of the automatic majority that the incumbent party has in the council.⁴²⁹

Since the enactment of the ordinance, 31 Agreements of a very diverse scale, type and location were approved, involving 2,107 hectares of land in plots between 4,000 m² and 753 hectares.⁴³⁰ These agreements enabled the construction of nearly 10 million covered square meters, generating great benefits for the private sector in exchange for a few concessions for the city, which represented meager revenues compared to the budget for public works of the Ministry of Urban Development.⁴³¹

Most of the agreements extended the urban sprawl to the limits of the city territory, in areas without services or urban equipment, with a large environmental impact for water streams. Through these agreements, private investors occupied more than 1,800 hectares of rural land and areas for industrial use, which ended up being part of the residential urban land market, increasing their value up to 10 times, thus limiting access to productive activities and affordable housing for vast sectors of the population. Other projects were located in the urban area, but in areas with already collapsed public services. These developments increased densities from 50 to 500 houses per hectare in neighborhoods that had previously only 25. This had an impact on both the provision of services and neighborhood identities because, although the Agreements include the obligation of the private actor to build infrastructure on the land of his undertaking, the services and maintenance of the infrastructure are in charge of the municipality.⁴³²

⁴²⁹ Organic Chart, Governability Clause (Art 137) if 'the party that has won the most votes does not occupy half plus one of the seats' it is ensured with the absolute majority because 'the party to get the most votes is entitled to half plus one of the seats' means that the role of representing citizenship seems to be undermined to become a representation of the Executive Branch.

⁴³⁰ Portal de Gobierno Abierto, Municipalidad de Córdoba, 'Registro de Convenios Urbanísticos_071019' <https://docs.google.com/spreadsheets/d/13re_dZZICTibpV8oSAFHtsbttiRNLwqMF8l7ZQAYMCg/edit#gid=1459675868>.

⁴³¹ María Beatriz Valencia, 'Informe de Convenios Urbanísticos Córdoba a 7 años de su puesta en vigencia' (2019).

⁴³² María Beatriz Valencia, 'Concertaciones y convenios urbanísticos' *La Voz del Interior* (12 July 2012); Cristina del Campo and María Beatriz Valencia, 'Los Objetivos de Desarrollo Sostenible, Una nueva oportunidad en la gestión de las ciudades' (2020) 31 *Revista Iberoamericana de Derecho Ambiental y Recursos Naturales*.



Furthermore, only two of the projects complied with the Public Hearing instance required by the Provincial Environmental Law.⁴³³ One of them had to be held in two sessions due to the number of registered speakers, and the other was held in a town near the City of Córdoba, with very little publicity and assistance. In both, the opposition to the project from neighbors and experts were not answered by those responsible of the projects and the environmental licenses were finally granted.

Assessment of the Practice

Although the City Planning Agreements are valid tools for urban management, it is essential to pay attention to the details of its implementation. There are many aspects that could be evaluated in relation to the fulfillment of the stated objectives:

- They do not help regulate, increase transparency, and reduce discretion; they have increased it.
- They do not favor the development of the city; they have only promoted private investment, translating in practice into a model for real estate growth.
- There has not been cooperation among public actors at different levels of government, nor was the metropolitan inter-municipal coordination strengthened. They were only negotiated with private sector actors to make interventions with greater benefits for them.
- They did not contribute to achieving urban and structural transformations since most of the public works generally benefit the urban projects by the private investors.
- The city has missed the opportunity to obtain land for social or community purposes.
- Many of the agreements did not specify deadlines and guarantees of compliance and citizens cannot verify them because there are no transparency mechanisms. There are also no possibilities to quantify the impact on public resources, to monitor the destination of the funds, and the budget for public works. Furthermore, they do not consider other associated environmental and social costs in the medium and long term connected to the extension and maintenance of services and equipment.
- The ordinance does not include any form of citizen participation existing in Argentina for the approval of the Agreements and the aforementioned 'governance clause' is probably violating republican principles of the division of powers.

For all these reasons, we can conclude by saying that the current application of urban development agreements in the City of Córdoba does not guarantee their use in favor of the public interest. It would be possible to modify these results if changes were introduced in the ordinance and the procedures, but this does not seem to be on the political agenda in the short term.

⁴³³ Loteo 'Los Ombúes', Malagueño, 23/2/2016

<<https://secretariadeambiente.cba.gov.ar/proyectosingresados/aviso-proyecto-emprendimiento-urbanistico-loteo-los-ombues-zona-urbana-la-localidad-malagueno/>> and Urbanistic Project 'Distrito Las Artes' located in a venue known as 'ex Batallón N° 141', Córdoba, 14/06/2016
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13.5 Córdoba Connectivity Plan: Government Deployment of Infrastructure to Equalize Territorial Opportunities

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Relevance of the Practice

Information and Communication Technologies (ICT) created a ‘Digital Revolution’,⁴³⁴ in which Internet has become a human right.⁴³⁵ Public policies to extend connectivity along territories are fundamental. Internet penetration is still a challenge for the peripheral and rural areas of Argentina.

The selected practice, based on the Province of Córdoba Connectivity Plan, provides evidence about different strategies of territorial connectivity and digital inclusion. The case is an example of a public policy in which the development of infrastructure is linked to a process of digital inclusion. It seeks to provide citizens with knowledge of the use of the internet as a tool for social and local development.⁴³⁶ The practice highlights the interconnection between public policies in the quest to make resources more efficient.

The case also reveals the dependence on infrastructure investment of the local level and the need of territorial articulation with multiple stakeholders, including private sector and civil society, to cover a highly fragmented and diverse territory.

Description of the Practice

The Province of Córdoba has a high degree of administrative fragmentation compared to other provinces, encompassing 427 local governments, while the average number of municipalities per province in Argentina is 91.⁴³⁷ This fragmentation is related to a diversity in socioeconomic indicators and geographic regions, which become the basis for inequalities among localities in the province.

⁴³⁴ Martin Becerra, ‘Revolución digital: ciudadanía y derechos en construcción’ (Cuadernos SITEAL 2015) <http://www.tic.siteal.iipe.unesco.org/sites/default/files/stic_publicacion_files/tic_cuaderno_ciudadania_20160_210.pdf>.

⁴³⁵ Alix Aguirre and Nelly Manasía, ‘Derechos humanos de cuarta generación: Inclusión social y democratización del conocimiento’ (2014) 14 *Télématique 2* <<https://www.redalyc.org/pdf/784/78435427002.pdf>>; Pedro López López and Toni Samek, ‘Inclusión digital: un nuevo derecho humano’ (2009) 172 *Educación y Biblioteca* 114 <<https://core.ac.uk/download/pdf/11886312.pdf>>.

⁴³⁶ Juan Benavides and others, ‘Impacto de las Tecnologías de la Información y las Comunicaciones (TIC) en el Desarrollo y la Competitividad del País’ (Fedesarrollo 2011) <<http://www.repository.fedesarrollo.org.co/handle/11445/180>>.

⁴³⁷ OECD, ‘OECD Territorial Reviews: Córdoba, Argentina’ (OECD Publishing 2016) <<https://doi.org/10.1787/9789264262201-en>>.



In relation to connectivity, 69.5 per cent of households in Córdoba have access to broadband internet. However, within the universe of households that do not have broadband access, 50.6 per cent only have mobile connection.⁴³⁸ Although the software industry in the province has grown significantly,⁴³⁹ most ICT companies are still concentrated in urban areas, mainly in the capital. That leaves rural and peripheral areas out of the opportunities offered by the development of technological sectors.

The 'Córdoba Connectivity Plan' is a public policy aimed at 'educating creative and innovative citizens capable of developing their localities in the context of the digital revolution'.⁴⁴⁰ This plan consists of, first, infrastructure investment (e.g., a fiber optic network) to guarantee connectivity throughout the provincial territory, linking rural and urban schools, hospitals, and public buildings of the 427 local governments of the province. Second, a digital inclusion initiative which seeks to reduce the digital gap in access, use, and appropriation of technologies.

A previous infrastructure investment built the first fiber optic network in the City of Córdoba in 1999. The Secretary of Connectivity created the Córdoba Connectivity Plan in 2018 and, in 2020, the Córdoba Connectivity Agency, a public-private state unit. Its main goals were to expand connectivity infrastructure, integrating it with other national and provincial fiber optic networks, and to promote digital literacy.⁴⁴¹

To optimize the allocation of resources, and achieve greater penetration in the territory, the government used the gas pipeline to lay the fiber optic network. This strategy highlights the alternative of interconnection between public policies when the execution of two or more political actions requires considerable investment, in the quest to make resources more efficient.

The Government of Córdoba also coordinated efforts with the Provincial Energy Enterprise, the national government, cooperatives, and private entities to take advantage of previous infrastructure investments.

The connectivity plan has been complemented by two other initiatives. First, Citizen Connection Spaces, which are places where citizens have free access to the internet in waiting rooms of provincial public hospitals, museums, cultural centers, and other public offices and open spaces in towns of the provincial countryside. The provincial government provided internet connection to public offices and spaces in the 427 local governments of the province. These actions provided internet access for peripheral and rural areas of the province.

Second, the digital inclusion initiative democratized access to ICT, seeking to reduce the digital gap in access, use, and appropriation of technologies, strengthening digital knowledge and skills, mainly in vulnerable sectors of the population. It includes training courses in basic abilities to use ICT, and hackathons for digital alphabetization for older adults, women, people

⁴³⁸ Dirección General de Estadísticas y Censo de la Provincia de Córdoba, 'Hogares con acceso a banda ancha' (*Dirección General de Estadística y Censos*, 2019) <<https://estadistica.cba.gov.ar/marco-de-bienestar-2/>>.

⁴³⁹ Córdoba Technology Cluster and Economic Trends, 'Monitor TIC' (March edition, 2018) <https://files.gfiles.me/uo/aps2812/_u/2018-4/monitor_estadistico_tic_-_2018_04_v02.pdf>.

⁴⁴⁰ Connectivity Córdoba Plan, Law no 10,564/2018.

⁴⁴¹ Law no 10,737/2020.



in rural areas, and with disabilities. These actions are carried out in collaboration with universities, civil society organizations, and technological entrepreneurs.

Assessment of the Practice

The Córdoba Connectivity Plan laid out a network of more than 2,300 km of fiber optic. It connected 100 per cent of the provincial hospitals, more than 3,000 schools, more than 200 open spaces and more than 300 public agencies. In addition, more than 65,000 people have already accessed digital literacy programs.⁴⁴² The challenge is to deepen those training initiatives for citizens in order to make them capable of participating in the growing digital economy, not only appropriating existing technologies, but also contributing to the generation of technological development in their localities.

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⁴⁴² Government of the Province of Córdoba, 'Memoria de Gestión Gubernamental 2019' [Government Management Report 2019] and 'Memoria de Gestión Gubernamental 2020' [Government Management Report 2020] <<https://gestionabierta.cba.gov.ar/>>.



14. Local Responsibilities and Public Services in India

14.1 The System of Local Government in India

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Types of Local Governments

In India, institutions of local government exist at two levels, local *panchayats* or councils in the rural areas and municipalities in the urban areas. At the rural level, *Panchayati Raj* Institutions (PRIs) consist of three levels: *gram panchayats*, *panchayat samitis* and *zilla parishads*.

A *gram panchayat* can be translated as village council or jury as it is the only grassroots-level institution of PRIs' formalized local self-governance system in India at the village or small-town level. It consists of an elected *sarpanch* (head) and five to twelve elected members. The *gram panchayats* are responsible for the creation of annual development plans, the budget for construction, repairs and maintenance of community assets, *khadi* and village industries⁴⁴³, adult and non-formal education, public health, poverty alleviation, education, cultural activities, rural housing and electrification, promoting agriculture, social welfare and public distribution scheme.

At the intermediate level, the *panchayat samitis* (block panchayats) operate. They work at the *tehsil* or *taluka* level⁴⁴⁴ known as development block and provide a crucial link of communication between *gram panchayat* and district administration. They are also known as *mandal parishad*, *mandal panchayat* and *taluka panchayat* and are primarily made of four-

⁴⁴³ Village and *khadi* industries are based on the concept of *Swadeshi* wherein the use of labour is central and the use of capital is limited, underlying the concept of self-reliance in the economy. These industries rely on local raw materials and local production at small scale.

⁴⁴⁴ There are two constitutional amendments, 73rd and 74th passed in 1992 which provide a whole scenario of the different levels of local governments at rural and urban level. The 73rd amendment states a three-tier system of *panchayati raj* at the village *panchayat* (*gram*), block (intermediate) level (*panchayat samiti*) and district levels (*zilla parishad*) for a population of more than 20 *lakh* (2 million). *Gram* or village *panchayat* consists of *gram sabha* and members of the village *panchayat* directly elected by the people and headed by the *pradhan* (elected head) village council (*gram sabha*) consist of all the members of the village. Each *gram panchayat* is assisted by four committees that is *samata samiti* (committee for welfare of women and children, scheduled caste and tribes and other backward classes) *vikas samiti* (committee for development in agriculture), *shiksha samiti* (education) and *lokhit* committee (public health and public works). In between *gram panchayat* and *zilla panchayat* is *panchayat samiti* (committee) which forms the main chain of communication between the two. The next level of local government is *zilla parishad*, consisting of all the elected representatives of *gram panchayat* and elected representatives from territorial constituencies in the panchayat, members of legislative assembly and legislative council

The 74th Amendment consists of three bodies of urban governments – *nagar panchayat* which is primarily constituted when the village transitions from rural to urban, municipal council for smaller urban areas, municipal corporations for larger urban areas. Municipal committees are also assisted by ward committees which makes a two-tier system.



member ex officio bodies bringing together all *sarpanchas* of the development block, the members of parliament (MPs) and MLAs (members of legislative assembly) of the area, and sub-divisional officer (SDOs).⁴⁴⁵ The functions of the *panchayat samitis* are agricultural and land improvement, establishment of primary health centers and primary schools, water and sanitation, village infrastructure (construction of roads etc.), establishment of cooperative societies, water and irrigation management, promotion of animal husbandry, dairy and poultry, social welfare, social activities, technical training, poverty alleviation, promotion and development of cottage and skill industries.

The third level is the *zilla parishad* (district council). *Zilla parishad* or the district council is an elected body consisting of members from state legislatures and the Parliament as explained later. The ex officio chief executive officer of the *zilla parishad* is the additional deputy commissioner who is either from the Indian Administrative Services (IAS) or Provincial Civil Services (PCS) appointed in the state. The *zilla parishad* consists of mainly elected members from demarcated constituencies, the chairpersons of *panchayat samitis*, MPs and MLAs. The member of the *zilla parishad* also acts as chairperson of the *parishads* (councils) that fall in their constituencies from which they are elected for a term of five years. The functions of the *zilla parishad* are planning and administration of development projects for the district, delivery of services and facilities to the village, promotion of agricultural projects such as training new techniques of farming, horticulture, rural housing, electrification, animal husbandry and dairy, promotion of small-scale industries, health and hygiene, education and social welfare. In all the levels of local governments, there are reserved seats for women, scheduled caste, scheduled tribes and other backward classes.

All the institutions of local self-government operate under the principle of democratic decentralization. The rationale of democratic decentralization was to create PRIs in a multi-level framework of governance which are autonomous, democratic and financially strong. It was a step away from a top-down approach to local governance in order to provide self-administration to people in the rural areas. The twenty-nine functions and responsibilities of the PRIs which have been stated above are all enshrined in the Indian Constitution in the Article 243G. The functions are listed in the eleventh Schedule of the Constitution.

At the urban level, there are three types of local bodies, the *nagar nigam* (municipal corporation), *nagar palika* (municipality) and *nagar panchayat* (town *panchayat*). The status of an area decides the provision and implementation of urban local bodies. For an area transitioning from rural to urban, a city council is required. In small urban areas a municipality is required and in large urban areas a municipal corporation.⁴⁴⁶ The functions and powers of urban local bodies vary from state to state. Municipal corporations work and directly interact

⁴⁴⁵ The districts in a state are divided into sub-divisions and the sub-divisional officer (SDOs) oversees these divisions. The SDO is responsible for the administration of these divisions in the districts. There can be two kinds of roles. One in which they are in charge of office work and another, in which they are not bound in an office but are overseeing a range of works such as communicating with people, overlooking implementation of government schemes.

⁴⁴⁶ Transitioning areas are defined based on how fast a town is developing due to industrialization or agricultural growth or secondary services. The criteria of population and the level of administrative functions is considered too, as big cities such as Delhi, Mumbai and others will have a municipal corporation and smaller towns will have municipalities.



with the state governments. The head of the corporation is the mayor and the principal executive officer is the municipal commissioner. Municipalities interact with the respective state government through the district collector. The head of the municipality is the president elected by the members of the *palika*. The state government appoints officers such as health or sanitation Inspectors to provide assistance to the president. City councils have a chairman and ward members. The functions assigned to urban local bodies are urban planning and management, provision of health services, education, water management, waste disposal and sanitation, public infrastructure, birth and death registrations, poverty alleviation and delivery of social services.

Legal Status of Local Governments

To realize the goals of democratic decentralization, the government amended the Constitution and passed the 73rd and 74th Amendment Act in 1992. The important aspects of the act were the three-tier system of *panchayati raj* for all states exceeding the population of two millions, the holding every five years of *Panchayat* elections, the reservation of seats for women, scheduled castes and scheduled tribes, the appointment of a state finance commission to make recommendations in cognizance with the financial powers of the panchayat and the establishment of district planning committees (DPCs) to prepare development plans for the district as a whole. It also foresaw the establishment of a state election commission to help state governments conducting periodic elections to the PRIs. Similarly, for urban local governments, the 74th Amendment provides a three-tier structure of governance with the municipal wards as the territorial constituencies forming the basic unit of urban local governance.

The scope of powers and functions enshrined in the Constitution envision PRIs to function as institutions of local self-government and to operationalize the devolution of powers which is central to the principle of democratic decentralization. The scope and powers entrusted to PRIs base themselves in the ideals of economic development and social justice. In accordance with the constitutional amendment, the state governments repealed the then existing acts. The 73rd Amendment Act was further extended to the scheduled areas and areas predominantly occupied with tribal population. It was extended through the provisions of *Panchayat Extension to Scheduled Areas Act, 1996*.

For the urban local bodies, 74th Amendment Act was adopted in 1992 enjoining the government of the day to ensure continuity of the municipalities through a periodic five-year election. Similar to the *Panchayati Raj System*, the urban local bodies have a three-tier system, including the above-mentioned municipal corporations, municipalities and town *panchayats*. The composition of these councils is decided by state governments respectively. There are reservations of seats for women, scheduled castes, scheduled tribes and other backward classes.

(A) Symmetry of the Local Government System



The rural and urban government bodies do not have exactly similar scopes of responsibilities. The former are more entrusted with tasks of being regulators, administrators and providers of various services at the local level. The latter have two sets of parts to play. One, the municipal corporation must deliberate on matters related to budget, taxation, pricing of services and others, and two, the municipal commissioner is the executive head and exercises control on various departments such as finance, health etc. For example, the urban local bodies have to look at the jurisdictional domain of various urban areas, their judicial powers, implementation of policies and plans as per the 74th Constitutional Amendment. Despite their differences regarding modes of functioning and the devolution of the powers and authority, both rural and urban local bodies aim at enabling people's participation as a sign of democratic citizenship.

Political and Social Context in India

India has a multiparty parliamentary system of democracy with representatives at the local, state and national levels contesting elections and participating in democratic decision-making process. Both national and state level political parties are involved in the local level governance through their elected representatives in both rural and urban forms of local government. Local government in India is a state subject, however, the central government holds a supervisory role to guide, encourage, engage and assist the states to promote local government and development. Political participation in *panchayati raj* elections has a long tradition of great leaders like Jawaharlal Nehru, Sardar Vallabhbhai Patel and Subhash Chand Bose who took active leadership in municipal politics. Thus, politics at local government provides a gateway to national level politics and thereby initiates an active involvement of national and regional parties. The presence of national, state and regional parties at the level of local government maintains a strong party presence which has its bearing on national and state level politics. Political parties are the essence of parliamentary democracy and their role in local governments strengthens the roots of democratic decentralization. According to the World Bank report, in India 65.97 per cent live in rural areas⁴⁴⁷ and 34.03 per cent of the population lives in urban areas.⁴⁴⁸

Local governments have had a tremendous effect in the realization of democracy at the grassroots and at the level of municipalities in the urban areas. Conducting elections at the lowest tier of government has added to the vibrant political culture of India. The trickling down of democratic decentralization and power has entrenched the roots of democracy, however, its substantive realization has many hurdles to cross.

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14.2 Local Responsibilities and Public Services in India: An Introduction

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The Ministry of Housing and Urban Affairs (MoHUA) and the Ministry of *Panchayati Raj* (MoPR) are responsible for urban and rural local governments, respectively. For the efficient delivery of services and to oversee civic affairs, various reforms have been introduced to strengthen the work of urban local governments. These reforms are introduced from time to time by successive governments in power. These various reforms are decentralization of authority, power, functions and finances to lower levels of government. This leads to democratic decentralization of local governments providing them greater autonomy in their everyday functions and duties.

The Ministry of Housing and Urban Affairs (MoHUA) is responsible for the holistic development of urban areas and it primarily looks over issues of governance and infrastructure. One of the major responsibilities of MoHUA has been the reform of public services so as to ensure the smooth functioning of the projects and their sustainability once they are completed. Two prominent urban missions are Atal Mission for Rejuvenation and Urban Transformation (AMRUT) which is responsible for urban planning, implementation and governance for improving service delivery and the *Pradhan Mantri Awas Yojana* (PMAY) which is an initiative to ensure affordable housing for all. Missions mean initiatives and projects that have clearly defined objectives, timeline for their completion, set targets, expected outcomes and delivery mechanisms well in place before the completion of the missions.

The State Municipal Acts govern the urban local governments and each state has its own municipal act. The central government directs the states to enact the municipal acts so that the framework, functions and power can be assigned to the local urban governments. The basic structure of the act is the same; however, it varies from state to state depending upon the state in question and the local government. The variation in the provisions of the Municipal Acts depends on the size of the state, population of the state, and also depends on the socio-economic activities of the state.⁴⁴⁹

According to the 73rd and 74th constitutional amendment acts, there are compulsory and voluntary provisions which have to be followed by the state governments, while formulating their own local self-government acts. These variations could be related to subjects like the constitutional provisions related to the reservations for scheduled castes, scheduled tribes and women.

Municipalities have the power to draft by-laws for better implementation of administrative functions. The various responsibilities and provision of public services by local urban bodies

⁴⁴⁹ For example, the Municipal Corporation of Delhi provides civic amenity services to both the rural and urban areas, whereas the Chennai Municipal Corporation services only the urban areas. To elaborate further, Delhi's rural areas have been rapidly urbanized and the need for rural classification was negated in the year 1989.



are public health and sanitation, medical relief, public works, education, development and administration.

Local governments are solely responsible for the delivery of services to a range of citizens with the collaboration of various organizations. These could be voluntary organizations, self-help groups of various kinds funded by the government or non-government organizations funded privately or through large national and international organizations and donor agencies.

The national and state level governments have also started smart cities initiatives which consider the use of information and communication technologies (ICTs) and use of special purpose vehicles (SPVs). Smart Cities programs focus on the central role of local government as important decision makers in implementing projects based on planning and growth of cities and their connectivity issues pertaining to the road and transport infrastructure. This involves connecting rural and urban cities and towns through projects like National Highway Authority of India (NHAI).

The rural local governments have the same structure except in scheduled and tribal areas which are legally exempted from the implementation of the *Panchayati Raj Act*. The *Panchayat Extension to Scheduled Areas (PESA) Act, 1996* with few modifications is also applicable in tribal areas. Regional or district councils have been mandated to officiate work and protect indigenous customs and traditions.

Local responsibilities and public services differ from state to state. The fundamental responsibilities and services that the state is responsible for is the provision of infrastructure facilities like the sanitation, management of waste, building of roads and public conveniences, projects to alleviate poverty and distress, economic development and growth. At the grass root level, it involves participation from the local communities, especially women. Programs involving the community participation like the National Rural Livelihood Mission (NRLM) have been to some extent a success.

To achieve the United Nations Sustainable Development Goals (SDGs), the central government started – with a role of the states in implementation – the National Institution for Transforming India (NITI) which was responsible for the completion of seventeen SDGs in August 2017 including a wide range of responsibilities for Urban Development and *Panchayat Raj* Ministries., the latter dealing with the local self-government in the rural areas administered under the Ministry of Local Self-Government known as *panchayati raj* as stated above.

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14.3 School, Educational Services and their Delivery Mechanisms

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Relevance of the Practice

Sarva Shiksha Abhiyan (SSA) is the flagship program of the Government of India for elementary education. It was launched in 2001. It aims to provide universal elementary education to children between the ages of 6 to 14 years. SSA is the main mechanism through which the Right of Children to Free and Compulsory Education Act (RTE) is implemented. RTE was passed in 2009. It has a time bound aim of achieving universalization of elementary education as mandated by the 86th amendment of the Indian Constitution. The Ministry of Human Resources Development looks after the SSA program. It is implemented by the state and central government. The other aims and objectives of SSA are universal access and retention of children in the schools, bridging gender and social category gaps in education and to increase the learning outcomes of children. These goals are aligned in accordance with legally mandated norms and standards and free entitlements stated by the Right to Education Act, 2009. A principle point of functioning for SSA is the interventions of various ministries and the merging of various programs. The Ministry of Health and Family Welfare and State Health Department are responsible to provide services to Model Cluster Schools and to conduct health checks ups. The Ministry of Human Resource and Development is responsible for providing mid-day meals and ensuring age appropriate admissions. The Ministry of Women and Child Development focuses on pre-school learning and enrolment by extending integrated child development services to the children enrolled. The state public works department looks after the basic infrastructure of the schools

SSA has broadly four approaches: access and retention, infrastructure development, providing quality education and equality. SSA in India has been in operation since 2001. At the level of implementation, SSA has failed to achieve the desired results. Lack of proper infrastructural facilities and appropriate funding has derailed the policy to achieve the desired results. The biggest obstacle to the realization of SSA goals has been the privatization of education. It will be interesting to see how privatization of education has adversely affected the *panchayati raj* institutions' function of providing education. In many instances the government supports this step. This has further widened structural and human disparities as privatization of education has hindered the realization of the time-bound goal of universalization of education.

The universalization of education through the SSA program has both rural and urban governments being part of it through a variety of delivery mechanisms. The rural-urban divide, its structural hierarchies and socio-cultural practices get widely clear when it comes to the delivery mechanisms of the educational system in the country. A country with low level of literacy and income distribution along with huge population size, cultural diversity of having to deal with hundreds of languages and dialects, with astonishing poverty continuing throughout the country and the goal of universal education have been difficult objectives to achieve both



by central and state governments since independence. Therefore, both the rural and urban bodies at the local governmental levels have continued to struggle with various delivery mechanisms of education over the past several decades.

Description of the Practice

SSA is a program about the community ownership of the school educational system by involving the *Panchayati Raj* Institutions (PRIs), school management committees, village education committees, parents' teachers' association, and the tribal autonomous councils. It provides a unique kind of partnership between the central, state and the local government with an opportunity for the states and thus for local governments to devise their own design and vision of school education. Since the primary objective is to increase the school enrolment of children in the age group of 6-14 years, it is imperative for the local governments to include a large number of actors in this task. Apart from the government appointed teachers and employees in the schools, there are a number of non-government organizations, private trusts, educational bodies, community service organizations and individual professionals who have been made part of this mission of providing free and compulsory education to children particularly belonging to poorer strata of the society.

The program includes the midday meal, stipend for girl students, school sanitation and hygiene, modernization of *madrasas*⁴⁵⁰, *panchayat* level educational committees, and the residential-schools for girls. Since the target sections are children from poor and disadvantaged sections of the society, particularly Muslims, scheduled castes, scheduled tribes, and stakeholders are drawn from diverse backgrounds such as the state government including local level government institutions, international non-government and government organizations, local non-government organizations, various focus groups, associations, charitable organizations and social welfare bodies of various kinds. The government constituted committees to manage and distribute funds, to look into the misappropriation of funds, misuse of school premises and facilities and the poor quality of education being imparted in the schools of rural areas and urban areas. Absenteeism of school teachers and education providers is a wide-spread phenomenon throughout the country, even if it seems to be more prominent in rural areas. Lack of competence and adequate training of the school teachers, insufficient staff and personnel in these schools and low level of incomes of the school teachers are other impediments in realizing the objectives of SSA.

Assessment of the Practice

Bringing SSA under the ambit of the Right to Education Act as a fundamental right has a huge constitutional mandate associated with it. It is also important to keep in mind how the New

⁴⁵⁰ A *madrasa* is a college for Islamic education and instruction. The instruction primarily focuses on the study and understanding of religious laws and practices of Islam. The *madrasas* are normally built inside a Mosque or attached to it.



Education Policy (NEP) 2020 once again focuses on the need to strengthen and reinforce the objectives of universalization of education. It now covers more than two million primary and one million upper primary schools. The opening of schools in the neighborhood, appointment of additional teachers, free textbooks, free school uniforms, a small stipend, separate toilets for girls, teacher-training manuals and teachers' sensitization programs are some of the concerns and practices being put in place by the different government agencies.

A major consequence of the program has been the increasing divide between English and non-English medium schools both in the rural and urban level schools. The global value of English language and its marketability has adversely affected the school education imparted in the mother tongues of children. Despite several efforts on the part of the government, the failure rate of school children, their incompetence in subjects being taught in the schools and their lack of interest are primarily due to the cultural and social deficit and vacuum created by this divide between English and Indian languages as media of instruction. Several studies have shown the adverse cognitive effects of this divide among school children. It is more adversely felt in rural areas as the level of exposure to English in everyday life is minimal compared to the children in urban areas. They are at a disadvantage which is further entrenched as in the countryside, the main medium of instruction is Hindi.

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15. Local Responsibilities and Public Services in Australia

15.1 The System of Local Government in Australia

Carol Mills, *Institute for Public Policy and Governance, University of Technology Sydney*

Types of Local Governments

Australia is a federation with three levels of government: the Commonwealth (federal/national), states and territories; and local government. Local government is established through the separate constitutions of each state and one territory. Therefore, although councils perform similar functions, there are effectively seven different governance systems across the country.

The size of councils in Australia varies dramatically. The largest is Brisbane City Council in Queensland which serves a community of just over one million people, covers an area of 133,809 ha⁴⁵¹ and has an operating budget of over AUD 3 billion.⁴⁵² In stark contrast, Sandstone Shire Council, in Western Australia, has a population of 81 residents living in an area covering 3,266,650 ha,⁴⁵³ comparable to the size of Belgium at 3,300,000 ha.⁴⁵⁴ Sandstone's expenditure in 2020 was AUD 5.6 million.⁴⁵⁵

Reflecting the country's British administrative heritage, local governments across Australia are typically referred to as a 'council', 'city' or 'municipality', 'shire' or 'town' depending on factors such as their size, location, or history. 'County councils' also exist as incorporations of, and controlled by, two or more local governments; established to deliver services usually across rural areas.

Currently there 537 local governments in Australia. This has been reduced from its peak of 1,000 due to ongoing structural reform aimed primarily at improving efficiency and effectiveness. Reduction has mostly been obtained through the process of amalgamation.

Despite often being strongly resisted by local communities and councils, amalgamations have been a significant policy in most Australian jurisdictions over the last two decades. Opposition to amalgamations has been based on numerous factors, such as concerns about loss of local identity and scepticism about purported efficiency gains. Both arguments were central to opposition to the most recent round of council large scale mergers that took place in New South Wales in 2016. At that time the state government pushed a highly controversial program

⁴⁵¹ Information retrieved from the Australian Bureau of Statistics (2019).

⁴⁵² Information retrieved from Brisbane City Council (2020).

⁴⁵³ Information retrieved from the Australian Bureau of Statistics (2019).

⁴⁵⁴ Information retrieved from World Bank (2015).

⁴⁵⁵ Information retrieved from Shire of Sandstone (2020).



that was only partially finished, and ultimately abandoned, after community and council resistance derailed the process in a number of locations.

Local government in Australia has traditionally performed a regulatory role, including planning and building approvals, dog and cat management, and food and health inspections. Whilst they tend to have a narrower remit than in many other comparable countries, they also play an important role in community infrastructure such as the provision of local roads and waste management. In recent decades many councils have also extended their economic and community services to include childcare, youth programs, libraries and sport and recreation facilities, and community health activities.

Legal Status of Local Government

Local government is currently not formally recognised in the Australian Constitution. Whilst there has been attempts to amend this, including two referendums, its legal status remains dependent on state legislation. Many of its powers and responsibilities are subordinate to state and national governments, and there is often significant overlap of policy and programs.

These structural arrangements place limits on local government service delivery responsibilities and earnings. Local governments raise revenue from a range of sources including user charges, fines, developer contributions and income from properties, with utilities, waste and recycling services representing the most significant portion of own-revenue raised. However, the only form of tax they can charge is rates. Larger councils have significant income earning capacity and are able to generate around 80 per cent of their income, including waste and recycling charges. In contrast, much smaller councils are increasingly dependent on state and federal government grants.

Commonwealth grants have played a significant role in funding local government since the mid-1970s. However, the historic interpretation of the Australian Constitution was such that funds can only go *via* the state authorities. In this context, funding from the Commonwealth for local government purposes is 'tied', meaning that the state and territories do not have any discretion in how it is to be used. This arrangement was made more complex by a 2009 High Court of Australia decision (*Pape v Commissioner of Taxation*) regarding the Commonwealth's powers to authorise one-off payments to taxpayers. That decision was seen by many to limit the Commonwealth's ability to directly fund local government and remains contentious.

(A)Symmetry of the Local Government System

Australian local governments (councils) are led by elected officials. Generally, elected members act as formal decision-makers for strategic plans, policies and budgets prepared by the executive leadership staff of a council. The nature of these plans is often set out in state and territory legislation.

One form of elected official is the councillor. In addition to their strategic decision-making duties, councillors are also responsible for appointing and overseeing the performance of the



general manager/chief executive officer in accordance with an employment contract. This has become a contentious issue in several locations, with some local governments experiencing a high turnover rate amongst their chief executives. This has created numerous concerns, ranging from claims of councillors excessively interfering in operations, to perceived tenure uncertainty making it difficult to attract quality staff.

Another form of elected official is the mayor. The mayor is typically a ceremonial figure and in most cases is chosen from within the cohort of councillors to act on a rotational basis. There are, however, some differences across the country. For example, mayors in Queensland (and now increasingly in other jurisdictions) are mostly directly elected and have wide powers to prepare major policies and budgets.

Voting in local government elections is compulsory in all locations, excluding South Australia, Tasmania and Western Australia. Councillors are usually members of a political party and local government elections are party political, with the major political parties being represented and generally holding a majority. This is particularly the case within metropolitan areas. In fact, local government is often seen as a training ground for political aspirants. In rural areas, candidates are more likely to run independently, although they may be a member of a political party on a personal level.

Political and Social Context in Australia

The geography of Australia, and its cultural, social and economic history, present specific challenges to local government. This has led to councils lacking a uniform capacity to deliver services.

Rural and regional Australia is facing wide-ranging challenges including an ageing local population, poor infrastructure, limited education and employment opportunities, the drift of young people to urban centres, and more. In many rural towns, local councils provide a significant role as a major employer and service provider within the community therefore their sustainability is central to community wellbeing. This is less likely to be the case in a metropolitan location. Therefore, the role of local government within the community varies greatly, depending on a number of external factors.

The Australian Local Government Association (ALGA), the peak body for councils, identified 5 priority areas in its 2020-23 Strategic Plan which provide a useful guide to issues of contemporary importance to the sector. These are: financial sustainability; roads and infrastructure funding; waste; community resilience and climate change.

The Commonwealth has supported local government through a series of grants programs, as previously mentioned. Much of that funding is for infrastructure. For example, the current main initiatives focus on roads (AUD 7.3b between 2000 and 2019) and regional and community infrastructure. However, in 2016 the total value of Commonwealth grants equated to just 7 per cent of the amount spent by local government nationally. In its 2019 national election proposals, ALGA called for further funding for these programs in addition to health and wellbeing, digital, and Indigenous community funding.



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15.2 Local Responsibilities and Public Services in Australia: An Introduction

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The changing demands on Australian local governments has seen them progressively evolve over time. What was once viewed as a sector narrowly focused on ‘services and property’, is now far wider reaching. Promotion of social, economical, environmental and cultural wellbeing of the communities they govern is now seen as the delivery of core purpose. This has been a response to rising citizen expectations of public services and the devolution of service delivery tasks from higher levels of government to local governments.

Concurrently, local government services have become subject to increased regulatory requirements from other levels of government, particularly in core areas such as asset management, land use planning, and community and strategic planning. The costs of providing and maintaining services have also increased faster than revenue. The net effect has been that local governments now provide a wider range and higher standard of services, such as sporting, cultural and community care facilities, under increasing regulatory and financial constraints.

Recently, attempts have been made to understand and articulate this expanded and more complex service delivery task for contemporary local governments (see table below).

Table 1: Illustrating the expanding role of local governments in services.

Economic and community development	Operation of tourist centres and facilities Provision of grants to local groups to provide services Events and promotions
Sustainable land use	Development approvals Building approval and certification Management of public land
Protecting the environment	Preventing pollution or restoring degraded environments Providing environmental programs Strategic planning
Community services	Library services Community events Aged care Early childhood education and care
Public health and safety	Waste collection and management Water and sewerage services Preparedness and response to natural disasters

When considering the evolving nature of local government service delivery, several functions may be distinguished:

‘Core’ local government functions: Whilst core functions differ across jurisdictions, there is an expectation that local governments provide core services to a minimum standard before others are considered. Examples of these include building approval and certification, waste collection and management, and cultural and recreation services.



Services delivered in competition with other providers: For a range of reasons, local governments have chosen to deliver services in competition with other providers. Examples include childcare and commercial car parks. These activities can also generate new revenue sources.

'Market gap' services: Particularly in rural areas, local governments often face pressure to provide services that are not economically viable. This viability, or lack thereof, is commonly due to small population numbers and few-to-none alternative providers. Examples include medical clinics, airports, produce saleyards, abattoirs and cemeteries.

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15.3 Provision of Services in Regional and Rural Areas

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Relevance of the Practice

Australian local governments traditionally perform a range of regulatory functions including building certification, land use planning, development approvals, domestic pet management, parking, food and health inspections. While they continue to remain narrower than in many countries, there has been a progressive expansion of roles. This includes a growing range of economic, social and environmental services such as child care, youth programs, libraries, sport and recreation facilities, business development, environmental management and community health.

Rural and urban local governments in Australia provide very different kinds of services reflecting community needs and goals. The institutional frameworks which govern the local government system in Australia's states and the Northern Territory must accommodate very different kinds of organisation. A one size fits all approach can act as a constraint to councils in terms of their operation and the division of responsibilities between elected councillors, the organisation and the community, particularly in rural and regional areas.

Description of the Practice

In many rural areas, local governments provide services that would normally be offered by the market or by state government. For example, Brewarrina Shire Council has partnered with Charles Sturt University to provide free dental services to its residents; Gilgandra Shire Council in New South Wales (NSW) provides a range of community services such as homelessness services and aged care; and, the Town of Esperance in Western Australia (WA) provides a wide range of aged care services. Additionally, the provision of primary health care (General Practitioners, nurses etc.) in rural areas of Australia is often viewed as insufficient. In response to this, rural local governments have created alternative solutions. Some provide infrastructure for GPs to use, others run their own medical practices. For example, Sandstone Council in WA provides a nursing post and access to doctors via the Royal Flying Doctor service. The Western Australia Local Government Association (WALGA) recently carried out a survey of regional health services in the state. Based on the outcomes of this survey, WALGA recommended that a further engagement be carried out with local governments to clarify effective and self-generated solutions which other local governments have implemented to recruit and retain health professionals to their areas.

Assessment of the Practice



Little is known about the extent or innovation of the new approaches local governments are taking to meet the needs of their rural communities. More research is required to better understand this practice, and how rural councils can best be supported to secure the services their communities require.

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16. Local Responsibilities and Public Services in Malaysia

16.1 The System of Local Government in Malaysia

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Types of Local Governments

Under the Federal Constitution of Malaysia 1957, there are three levels of government: federal, state and local. Local government is designated under Schedule 9 as a state matter. Nonetheless, local government is governed by uniform legislation in the form of the Local Government Act 1976 (LGA) and other statutes such as the Street, Drainage and Building Act 1974, and the Town and Country Planning Act 1976 (TCPA). It should be noted that this uniformity only applies to the 11 states of West (otherwise known as ‘Peninsular’) Malaysia, and not to the East Malaysian states of Sabah and Sarawak on the Island of Borneo, which have different legal systems from that of West Malaysia, as well as different legal and administrative history, statute laws generally, and extent of state autonomy compared to the states of West Malaysia.⁴⁵⁶ Accordingly in this report, to avoid laborious double coverage and potentially confusing, varied responses on each issue, this report is confined to West Malaysia, although federal statistics necessarily apply to Malaysia as a whole, and cannot usually be broken down.

The historical development and the present structure of local government are set out in detail in report section 4. Malaysia has three types of local governments, namely, city councils (18), municipal councils (38), and district councils (94). Apart from these three types of local council, there are six special-purpose local governments designed as ‘development authorities’.⁴⁵⁷ There is only one level of local government, and local councils are accordingly not placed under higher-level authorities other than the state and federal governments, and there are no intermediate organisations of any kind.

These types of council are somewhat differently structured but perform the same functions. District councils, which cover rural areas, are the most recently created, and it is only since the 1976 reforms that all rural areas in West Malaysia have become areas governed by local authorities.⁴⁵⁸ District councils will be seen in this report to be under-privileged compared to the two kinds of urban council, being relatively poorly endowed and empowered in practice compared to the other two types of local government. This is in spite of the fact that their

⁴⁵⁶ Local government in Sabah is governed by the Local Government Ordinance 1961, and the equivalent legislation in Sarawak is the Local Authority Ordinance 1948, the Kuching Municipal Ordinances 1988, and the City of Kuching North Ordinance 1988.

⁴⁵⁷ See below, Section 3 on the (A)Symmetry of the Local Government System.

⁴⁵⁸ For more detail on the 1976 reforms, see the introduction to the Structure of Local Government in Malaysia, report section 4.1.



functions are exactly the same, albeit applied to smaller populations. Accordingly, it is difficult to differentiate between rural and urban local government in the absence of any clear markers and a lack of literature encountered in this project that is devoted to district councils as opposed to all councils. To take just one example, the issue of practice regarding public-private partnerships is distinguished⁴⁵⁹ between states that are part of the federal government's consortia arrangements and states that are not; there is no distinction between urban and rural councils. The urban-rural divide in terms of treatment is a deep and historic one in Malaysian local government, and is of course a very symptomatic of countries like Malaysia that have been in the throes of rapid development and the intense urbanization that goes with it. Despite the fact that, as we shall see, local governments exercise a wide range of powers, a number of factors inhibit the autonomy of local governments. These factors will be examined further in this report, especially in report section 5 on inter-governmental relations (IGR).

First, local government elections are not required by the Constitution, and have been suspended since 1965, so that there is no local *self-government*, and no *right* as such to local self-government.

Secondly, as a consequence of this, local councillors are appointed by the state governments, and appointments are usually, although not always, made on the basis of party allegiance to the party in power at the state level; this does not seem to depend on whether that party is in government or in opposition at the federal level. Accordingly, local government is stitched into the patronage-based, clientelist system that characterizes Malaysian politics, rendering it especially unlikely that local councillors will decide against the desires of the state government.⁴⁶⁰ This factor is critical.

Thirdly, state governments have powers under the LGA, Section 103, to give directions of a general character to local governments; this power is expanded even further on occasion in practice to directions of a specific character.

Fourthly, policy on local government is coordinated amongst the various states by the National Local Government Council, a federal body set up under Article 95A of the Constitution, which gives much power to the federal government to control the operation of local government despite it being a state matter.

Fifthly, as is that case in most countries, it is universally acknowledged that local government finance faces considerable challenges, except in some wealthier areas such as Penang and Selangor. Local government finance is discussed further in report section 4 on local government structure.

Taken together, these five factors restrict considerably the freedom of operation of local governments. Under report section 5 on IGR the report introduced as an example the 'SPICE' episode, set out in detail in a recent book by a former Penang councillor, Lim Mah Hui. In this episode the state government went beyond its powers, in making decisions regarding a

⁴⁵⁹ See report section 3.2. on Urban Cleansing and Privatisation.

⁴⁶⁰ Lim Mah Hui, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020).



contract to build a new conference centre, that were properly within the jurisdiction of the local government.⁴⁶¹

Legal Status of Local Governments

List II of the Federal Constitution's Ninth Schedule recognises local government as function of the state governments, but, acting under a provision in the Constitution (Article 76) for effecting uniformity amongst the states, Parliament passed the LGA in 1976, and this statute governs local government in West Malaysia. Accordingly, the local government system is legally and constitutionally entrenched, even though there are no elections.

Local government authorities are legal persons in the form of bodies corporate and may sue or be sued in their own rights as well as being subject to judicial review under administrative law with respect to their acts and decisions. In a recent example, a district council was held to have exceeded its powers by amending a valuation list and charging rates to a company not included in the original list.⁴⁶² Powers not specifically allocated to the federal power under the Constitution lie with the states; however, local government powers have to be specifically granted by statute and they are subject to the overriding principle that local authorities cannot act *ultra vires*, that is, beyond the powers they are given by statute. Local government powers nonetheless include any powers that are *reasonably incidental* to the statutory powers they enjoy. This is specified in the LGA, but is also a well-known principle in common law systems.⁴⁶³

(A) Symmetry of the Local Government System

Local government is the lowest level of Malaysia's multi-layered system of government, employing only 7 per cent of all public employees. Nonetheless, local government functions such as development control, public housing, roads and transport, parks and public places, and public nuisances are extremely important aspects of both urban and rural living and the environment.⁴⁶⁴ The three types of local authority represent a basically symmetrical system, all local authorities performing the same functions. They are all under state control, except for the Federal Territory of Kuala Lumpur, which is under federal jurisdiction. There are six special-purpose development authorities focused on development in specific areas at the local level, which are under federal, not state, control. These are the Federal Territories of Putrajaya and Labuan, Pengeran and Johor Tenggara Local Authorities in Johor, the Tioman Development

⁴⁶¹ *ibid.*

⁴⁶² *Majlis Daerah Hulu Selangor v United Plantations Bhd* [2021] MLJU 1205, Federal Court. For a striking recent example of judicial review, see *Perbadanan Pengurusan Trellises & others v Datuk Bandar Kuala Lumpur & others* [2021] 2 CLJ 808, Court of Appeal. This case is discussed in detail in report section 6 on people's participation in local decision-making. And for the juristic nature of local authorities, see LGA, Sec 13.

⁴⁶³ LGA, Sec 101(hh); see Andrew Harding, 'Planning, Environment and Development: A Comparison of Planning Law in Malaysia and England' (2003) 5 *Environmental Law Review* 231.

⁴⁶⁴ Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/Bloomsbury, forthcoming 2022) Chapter 5.



Authority in Pahang, and the Kulim Hi-Tech Industrial Park Local Authority in Kedah. The Iskandar Regional Development Authority is also discussed under report section 4 on local government structure, but this authority acts only in a facilitative way and does not exercise statutory powers over specific local government functions in its area.

Political and Social Context in Malaysia

Currently more than two thirds of Malaysians live in urban areas, and these (municipal and city councils) correspond to most of Malaysia's 'local government areas', that is, those areas (now encompassing all of Malaysia's territory) that have local authorities as defined by the LGA, Section 3. Over the last four decades Malaysia's developmental state under the 'Vision 2020' policy has instrumentally recreated the country as an industrialised one, transforming it from a largely agricultural society into an urban and suburban one.⁴⁶⁵

Rural areas are under the authority of district councils, which are still administered with respect to local functions by something resembling the colonial system of district officers.⁴⁶⁶ District officers are appointed by, and are responsible to, either the state government or the federal government, depending on the state in which the authority lies. The district officers are chairs of the district councils, which are advised by various committees of specialists. The districts, that is, rural areas, have never at any point had representative local government. Nonetheless, the district councils perform equivalent functions to those of municipal and city councils. They are also under-funded compared to urban authorities. This is typical facet of uneven development in many countries. As Singaravelloo reports,

'Financial strength is proportional to the size of the local authority. Larger local authorities have a larger population and economic base that provides the revenue needed to finance their activities. Smaller local authorities, however, especially district councils, have smaller populations and economic activities that can only contribute a small amount to their revenue. Examples of local authorities with a critical population size in 2010 were Majlis Daerah Lenggong (13,378), Majlis Daerah Pakan (Sarawak) (15,139), Majlis Daerah Pengkalan Hulu (15,878), Majlis Daerah Kuala Penyu (Sabah) (18,958), Majlis Daerah Jelebu (26,608), Majlis Daerah Labis (32,540), Majlis Daerah Cameron Highlands (34,510). The smaller revenue base is not even sufficient to provide the basic services that local authorities are assigned to deliver.'⁴⁶⁷

The National Physical Plan and the National Urbanisation Plan⁴⁶⁸ emphasize urbanization, which is seen as Malaysia's major priority and problem. This indicates that rural areas are of

⁴⁶⁵ Andrew Harding, 'Law and Development in Malaysia: A Vision Beyond 2020?' in Salim Ali Farrar and Paul Subramaniam (eds), *Law and Justice in Malaysia: 2020 and Beyond* (Thomson Reuters 2021).

⁴⁶⁶ Jagdish Sidhu, *Administration in the Federated Malay States* (Oxford University Press 1980).

⁴⁶⁷ Kuppaswamy Singaravelloo, 'Local Government and Intergovernmental Relations' in Noore Alam Siddiquee (ed), *Public Management and Governance in Malaysia: Trends and Transformations* (Routledge 2013) 211.

⁴⁶⁸ *ibid.* 214.



low political concern. It is suggested that any reintroduction of local government elections and any revisiting of state and local government powers should embrace district as well as urban councils, and address squarely the needs of rural communities.⁴⁶⁹

Local councils consist of between eight and 24 persons who are appointed by the state governments from amongst prominent citizens resident in the locality for terms of three years.⁴⁷⁰ Councillors have therefore tended to reflect the interests of the political party or parties in power at the state level; in West Malaysia at least, political parties operate at the national level and there are no purely local parties, although obviously some parties are perceived as being stronger in some specific areas or originated therefrom (e.g. Parti Gerakan is associated with Penang). With regard to Kuala Lumpur, since it is a federal territory, the *Datuk Bandar* (mayor) is appointed by the federal government for a period of five years, and the *Dewan Bandaraya Kuala Lumpur* (Kuala Lumpur City Council) is placed under the Prime Minister's Department.⁴⁷¹

Reforms to the local government system, especially regarding elections in some urban areas, were promised by the Pakatan Harapan (PH) government, which left office on 1 March 2020. The present Perikatan Nasional (PN) government has not stated any intention in this regard, but meanwhile the country has been under emergency rule (from 12 January to 1 August 2021) due to the Covid-19 pandemic. Under the Emergency (Essential Powers) Act 2021, all elections were suspended; this ordinance has now been revoked.⁴⁷²

Despite the stability enforced by the Malaysian Government's largely successful efforts to improve the economic standing and opportunities of the majority Malay/Muslim population (around 60 per cent of the population of 32 million), there still exists a strong ethnic social division which in recent years has tended increasingly to be expressed via religious affiliation (Muslim and non-Muslim).⁴⁷³ Under the Constitution, Article 160, a Malay is defined in terms of adhering to Islam as well as using the Malay language and Malay customs. This ethnic factor has had a considerable impact on local government, as successive governments have declined to reintroduce local elections in spite of strong demands, especially in mixed urban areas, for local democracy.⁴⁷⁴ The often-stated reason is that local democracy is likely to inflame inter-ethnic tensions.⁴⁷⁵ Nonetheless, the 14th general election in May 2018 was conducted entirely without violent incident anywhere in Malaysia, indicating a level of political maturity that belies the fear of ethnic violence, most evident in the tragic events of 13 May 1969 (see below), reemerging.

⁴⁶⁹ The most recent proposals in this regard, by the PH government in July 2018, mentioned only reintroducing local elections in some densely-populated urban areas; in any event these were not acted upon. See, further, Danesh Prakash Chacko, *Reintroduction of Local Government Elections in Malaysia* (Bersih & Adil Network Sdn Bhd. 2021).

⁴⁷⁰ LGA, Secs 3 and 13.

⁴⁷¹ Federal Capital Act 1960, Secs 4 and 7.

⁴⁷² Emergency (Essential Powers) Ordinance 2021, Secs 12-13.

⁴⁷³ Dian AH Shah, *Constitutions, Politics and Religion in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge University Press 2017) 10.

⁴⁷⁴ Mah Hui, *Local Democracy Denied?*, above.

⁴⁷⁵ This issue is discussed in detail in report section 6 on people's participation in local decision-making in Malaysia.



Since significant changes in the law and socio-economic policy in 1971, spurred by the 13 May incident, the majority community (styled *bumiputera*) community, comprising Malays and natives of Sabah and Sarawak, have benefited from special quotas in certain areas such as education and employment opportunities.⁴⁷⁶ This system has impacted local government in various ways discussed later in this report.

References to Scientific and Non-Scientific Publications

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Hussain AA, *Local Government: Theory and Practice in Malaysia* (Dewan Bahasa dan Pustaka 2002)

Lee GB, *Urban Planning in Malaysia History Assumptions and Issues* (Tempo Publishing 1991)

Mah Hui L, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020)

Phang Siew Noi, *Local Government System in Malaysia* (Dewan Bahasa dan Pustaka 1996)

⁴⁷⁶ There is vast literature on this issue but see, e.g., Lee Hwok-Aun, *Affirmative Action in Malaysia and South Africa: Preference for Parity* (Routledge 2021); Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/ Bloomsbury, forthcoming 2022) Chapter 3.



16.2 Local Responsibilities and Public Services in Malaysia: An Introduction

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Local authorities play a very important part in public life in Malaysia. Their responsibilities include planning and development control,⁴⁷⁷ public housing, parks and public places, public nuisances, garbage collection and disposal, a wide range of other environmental functions, local transport, including bus routes and taxi licensing, and roads other than highways. As is discussed in the report section on local finances, some services are provided via public-private partnerships, many of which are policy-orchestrated by the federal government.

Housing and planning are closely interrelated and form the most significant area of government activity that local governments control. In a rapidly developing and rapidly urbanizing country these functions are some of the most important that are carried out at any level of government. They are counter-balanced by the environmental powers of local authorities, which attempt to minimize the adverse effects of rapid development. These include powers over water pollution, public nuisances, transport and markets, as well as general planning powers (see section 6 below).

As has been noted above, Malaysia is an ethnically divided country, and, while Malays are in a large majority in rural areas, urban areas are generally more evenly divided demographically between members of Malay and non-Malay (mainly Chinese and Indian) communities. Allocation of housing and profit-making opportunities (in respect of development projects and public contracts) are sensitive issues, and one reason for the continuing refusal to reintroduce local elections is the possibility of political exploitation of inter-ethnic issues at the local level. For example, local authorities are responsible for business licensing and allocation of permits for establishing places of worship. The role of local authorities in the period of the pandemic (March 2020 to date) has proved to be critical in terms of coordination of local government with state and federal government powers via local powers over infectious diseases and business licensing. However, such coordination has often proved to be defective in practice.

Under the dominance of the Barisan Nasional (BN) government (1957-2018) demands for reintroducing local government elections were easily suppressed. Since 2018 political fragmentation, accompanied by the need to deal with the pandemic, has hampered deep attention to policy questions such as the future of local government. At the time of writing the stability of the present PN Malaysian government, having a razor-thin parliamentary majority, is very much in doubt, and the pandemic obstructs the holding of general elections. The system of local government is undoubtedly in need of reform, but any concerted reform process seems a very remote possibility at the present time.

⁴⁷⁷ For some more detail, see report section 6 on people's participation in local decision-making.



References to Scientific and Non-Scientific Publications

Tayeb A and Por HH, 'Malaysia: Improvised Pandemic Policies and Democratic Regression' in Victor Ramraj (ed), *Covid-19 in Asia: Law and Policy Contexts* (Oxford University Press 2020)

Harding A, 'Constitutional Trajectory in Malaysia: Constitutionalism without Consensus?' in Michael Dowdle and Michael Wilkinson (eds), *Constitutionalism beyond Liberalism* (Cambridge University Press 2017)

Mah Hui L, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020)



16.3 Planning, Housing Development, and the Ethnic-Preference System

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Relevance of the Practice

As has been discussed above, ethnic differences are a driver of much policy in Malaysia. From 1971 Malaysia implemented an ethnic-preference policy in favour of the economically disadvantaged majority Malay and also Sabah-Sarawak native (indigenous) population, commonly referred to as *bumiputera* (sons of the soil). This policy was designed to redistribute wealth and opportunity to these communities.⁴⁷⁸ Part of the policy was to ensure adequate housing for *bumiputera* citizens, and accordingly it became usual for new housing developments to offer discounts to *bumiputera* purchasers. It is expected that *bumiputera* citizens will generally support Malay parties, especially and traditionally the United Malays National Organisation (UMNO) in elections, on the basis of their delivery of redistributive policies.

Description of the Practice

The legal basis for this policy of affirmative action is as follows. Article 153 of the Constitution, as amended in 1971, allows as an exception to the principle of equality before the law (Article 8) in the form of quota systems in favour of *bumiputera* citizens in various areas (scholarships, trade licences, university admission and public service positions). These do not, however, include housing opportunities as such. Nonetheless there is a strong policy favouring provision of modern, low-cost public housing for the poor, especially poor *bumiputera*. While such housing projects, normally initiated by state governments, which control land issues, are designed to benefit poor citizens, a system of discounts operates also at the middle-class socio-economic level. These discounts involve the cooperation of local authorities, who are empowered under planning and land laws to impose conditions on housing developers as part of the approval-granting process for development, or land alienation, as the case may be.⁴⁷⁹ Such conditions are within the broad discretion granted to local planning authorities in handing development control, and normally include a requirement to reserve a number of lots for

⁴⁷⁸ Terence Gomez and Johan Saravanamuttu (eds), *The New Economic Policy in Malaysia: Affirmative Action, Ethnic Inequalities, and Social Justice* (NUS Press 2013); Lee Hwok-Aun, 'Affirmative Action: Hefty Action, Mixed Outcomes, Muddled Thinking' in Meredith Weiss (ed), *The Routledge Handbook of Contemporary Malaysia* (Routledge 2016); Andrew Harding, 'Constitutional Trajectory in Malaysia: Constitutionalism without Consensus?' in Michael Dowdle and Michael Wilkinson (eds), *Constitutionalism Beyond Liberalism* (Cambridge University Press 2017); Lee Hwok-Aun, *Affirmative Action in Malaysia and South Africa: Preference for Parity* (Routledge 2021); Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/Bloomsbury, forthcoming 2022) Chapter 3.

⁴⁷⁹ Town and Country Planning Act 1976 (TCPA), Sec 22(3); National Land Code, Sec 120.



bumiputera purchasers at a discount. These conditions typically involve a 30 per cent *bumiputera* quota (the quota varies somewhat between 20 per cent and 40 per cent, depending on the state) in all housing developments, with developers also being required to give discounts of between 5 per cent and 15 per cent to *bumiputera* applicants. The quota system also applies to commercial units.⁴⁸⁰ Apart from this there are Malay Reservation Lands, which have a constitutional basis and involve all property built on designated Malay Reservations being allocated to Malays only.⁴⁸¹ This latter policy applies in rural areas, whereas new developments are in newly built-up suburban or 'red-earth' suburban or formerly rural areas.

Assessment of the Practice

There have been calls for the planning impositions to be reviewed, particularly in the case of high-end properties where there seems to be no rationale for granting such discounts.⁴⁸² The ethnic-preference policy seems somewhat irrelevant in an urban middle-class environment, given that for the last 50 years, *bumiputera* citizens have had privileged access to educational, public service, and business opportunities. The continuance or modification of this system is nonetheless a large and sensitive political issue, on which many votes depend, and despite increasing discussion of the ethnic-preference policy in public fora, it seems unlikely there will be major changes in the foreseeable future.⁴⁸³ For present purposes, the impact of these policies and the strong trajectory of Malaysian development is to convert many rural areas into suburban areas, bringing more residents under the control of urban local authorities. This has the unfortunate effect of reducing the resource base of district councils, as we have seen, thus depriving of facilities those very rural areas where most poor *bumiputera* citizens live.

References to Scientific and Non-Scientific Publications

Terence Gomez and Johan Saravanamuttu (eds), *The New Economic Policy in Malaysia: Affirmative Action, Ethnic Inequalities, and Social Justice* (NUS Press 2013)

Lee Hwok-Aun, 'Affirmative Action: Hefty Action, Mixed Outcomes, Muddled Thinking' in Meredith Weiss (ed), *The Routledge Handbook of Contemporary Malaysia* (Routledge 2016)

⁴⁸⁰ See 'REHDA Institute's State Guidelines on Bumiputra Quotas' (*loanstreet*, undated) <<http://static.loanstreet.com.my.s3.amazonaws.com/assets/bumi-status.jpg>> accessed 16 June 2021.

⁴⁸¹ Basharan Begum Mobarak Ali, 'Red Ink Grant: Tracing Legitimacy in History' (2007) 34 *Journal of Malaysian and Comparative Law* 159.

⁴⁸² Lim Teck Ghee, 'Time to Do away with Housing Quotas' (*Malaysiakini*, 30 October 2007) <<http://www.malaysiakini.com/letters/74176>>; Fauwaz Abdul Aziz, 'Housing Industry: Bumi Quota a Pressing Issue' (*Malaysiakini*, 30 October 2007) <<http://www.malaysiakini.com/news/74138>>.

⁴⁸³ See Hwok-Aun, 'Affirmative Action', above.



17. Local Responsibilities and Public Services in Canada

17.1 The System of Local Government in Canada: An Introduction

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Types of Local Governments

Canadian federalism divides governing responsibilities among three levels of government: federal, provincial, and local. However, the Canadian Constitution gives the provinces sole jurisdiction over municipalities, which results in significant inter-provincial variation among local government systems. While the federal government in recent years began to provide money through joint federal-provincial programs for services that are ultimately delivered by municipalities (primarily hard infrastructure), there is typically no direct federal policy or regulatory involvement with the municipal level of government.⁴⁸⁵ One side effect of this lack of federal involvement is that it is difficult to determine how many local governments there actually are in Canada. A comprehensive survey of available data from numerous sources, conducted in June 2021 by researchers at Western University,⁴⁸⁶ indicates that there were 3,533 local governments in Canada as of 2020. This is a significant decrease from the total of 4,432 in 1995, which reflects the results of a large-scale wave of provincial imposed consolidations in several provinces around the turn of the millennium. Despite this consolidation, most municipalities in Canada are small and rural. A report based on the 2016 census finds that only 723 had a population of 5,000 or greater. By contrast, 24 municipalities had over 200,000 residents, while three municipalities (Toronto, Montreal and Calgary) had over 1 million inhabitants. Toronto is Canada's largest municipality, with a population of 2.9

⁴⁸⁴ Acknowledgements: Data regarding number of municipalities in Canada, as well as the analysis of rural-urban demographic and economic differences in Ontario, were compiled and produced by Amanda Gutzke at Western University. Our sincere thanks for her excellent work.

⁴⁸⁵ Erin Tolley and William R Young, 'Municipalities, the Constitution, and the Canadian Federal System' (Government of Canada 2001) <<http://publications.gc.ca/Collection-R/LoPBdP/BP/bp276-e.htm#Municipalities>> accessed 25 July 2019.

⁴⁸⁶ These data were collected and analyzed as part of another research project, led by Zack Taylor and Martin Horak.



million as of July 2018.⁴⁸⁷ Just as the country’s 10 provinces and three territories⁴⁸⁸ vary in population size, so too do their municipal populations. Ontario tends to have larger municipalities as a result of its history of amalgamations imposed by the province, many of which took place in the 1990s.⁴⁸⁹ Ontario currently has 444 municipalities.

In some cases, urban municipalities have distinct status under provincial law. For example, Vancouver, Winnipeg, Montreal, and Saint John are Charter Cities, which means that they are governed by their own piece of legislation – or ‘Charter’ – rather than being subject to the broad, province-wide legislation that governs the activity of other municipalities.⁴⁹⁰ The City of Toronto is likewise governed by stand-alone provincial legislation. However, in general the degree to which these charters grant powers and resources over and above those of other municipalities is limited.

Table 4: Types of municipalities in Canada’s four most populous provinces.⁴⁹¹

Province	Types of Municipality
Ontario	Village
	Township
	Town
	Municipality
	City
	County
	Regional Municipality
Quebec	Village
	Township
	United Township
	Town

⁴⁸⁷ ‘Municipalities in Canada with the Largest and Fastest Growing Populations between 2011 and 2016’ (*Statistics Canada*, 8 February 2017) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016001/98-200-x2016001-eng.cfm>> accessed 1 August 2019; ‘Municipalities in Canada with Population Decreases between 2011 and 2016’ (*Statistics Canada*, 8 February 2017) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016002/98-200-x2016002-eng.cfm>> accessed 1 August 2019; ‘Toronto at a Glance’ (*City of Toronto*, undated) <<https://www.toronto.ca/city-government/data-research-maps/toronto-at-a-glance/>> accessed 1 August 2019.

⁴⁸⁸ Canada’s three territories (Nunavut, the Northwest Territories, and Yukon) are located in the far north. Despite their large geographical size, they have very small populations, totaling only about 110,000 in all three territories, which is less than the population of the smallest province (Prince Edward Island, 150,000 inhabitants).

⁴⁸⁹ Andrew Sancton, *Canadian Local Government: An Urban Perspective* (2nd edn, OUP 2015) 150, 152.

⁴⁹⁰ ‘Power of Canadian Cities- The Legal Framework’ (*City of Toronto*) <https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/cd/gg/add_pdf/77/Governance/Electronic_Documents/Other_CDN_Jurisdictions/Powers_of_Canadian_Cities.pdf> accessed 25 July 2019; John Stefaniuk, ‘Municipal Powers and their Limits’ (TDS Law) <<https://www.tdslaw.com/site-content/uploads/municipal-powers-and-their-limits-2.pdf>> accessed 25 July 2019.

⁴⁹¹ Sancton, *Canadian Local Government*, above, 7-8; ‘Types of Municipalities in Alberta’ (*Government of Alberta*, undated) <<https://www.alberta.ca/types-of-municipalities-in-alberta.aspx>> accessed 25 July 2019.



	Municipality City Parish Regional Government Metropolitan Community Regional County Municipality
British Columbia	Village Town District Municipality City
Alberta	Summer Village Village Town City Specialized Municipality Municipal District Improvement District Metis Settlement Special Areas

Generally, Canadian municipalities are responsible for providing physical services including water supply, waste management, local infrastructure management, sewage treatment, planning and development services, libraries, parks and recreation, local police, and parking.⁴⁹² These local government tasks are administered through general purpose municipalities (variously called cities, towns, villages, etc., depending on size), sometimes in conjunction with special purpose bodies. The table above compares the largest four provinces by population to illustrate variation in the legal types of municipalities. In addition to these, there are numerous local government bodies that do not have municipal status – such as British Columbia’s regional districts, which are multi-purpose service federations of municipal governments.

In some provinces, including Ontario, Quebec and Alberta, there is a single tier of local government in some areas, and two tiers of local government in other areas. Upper-tier governments in Ontario, for example, are either called counties or regional municipalities, with the latter typically found in large urban areas. Upper-tier municipalities are comprised of the lower-tier governments within their boundaries. They provide region-wide services like arterial

⁴⁹² ‘The Three Levels of Government’ (*Parliament of Canada*, undated)
 <https://lop.parl.ca/about/parliament/education/ourcountryourparliament/html_booklet/three-levels-government-e.html> accessed 25 July 2019.



roads; transit; policing; sewer and water systems; waste disposal; region-wide land use planning and development; and health and social services.⁴⁹³

Legal Status of Local Governments

Canada's Constitution specifies the terms of Canadian federalism. It assigns responsibility for local governments to the provinces. This means that the provincial governments have full jurisdiction over the local governments in their territory. Section 92 of the Constitution Act of 1867 specifies the powers of the provinces and Section 92(8) gives each provincial legislature the power to make laws for the municipal institutions under its jurisdiction. Municipalities are often referred to as 'creatures of the province' because they rely on the provinces for their legal existence.⁴⁹⁴

There is significant variation among the provinces in terms of the structure of municipal legislation. Historically, provincial legislation has tended to lay out every power granted to its municipalities; if a specific power is not listed, municipalities do not possess that power. However, in recent years this has shifted, and most provinces now have legislation, such as that implemented in Alberta in 1995 and Ontario in 2001, which grants municipalities the same powers as a 'natural person' unless specifically excluded by the legislation. This gives municipalities the same rights as businesses to enter into contracts, own property, and make investments. Moreover, British Columbia's provincial government sets only broad legislation within which municipalities have the authority and flexibility to respond to each community's unique and changing needs. The Government of British Columbia views municipalities as autonomous and accountable to their democratically elected municipal councils.⁴⁹⁵

Both urban and rural municipalities in all Canadian provinces have some legal authority to act in the following functions: fire protection; animal control; roads; traffic control; solid waste collection and disposal (except in Prince Edward Island); land use planning and regulation; building regulation; economic development; tourism promotion; public libraries parks and recreation; cultural facilities; licensing of businesses; emergency planning and preparedness; rural fences and drainage; regulation and/or provision of cemeteries; airports (excluding major airports formerly operated by the federal government); and weed control and regulation of cosmetic pesticides.

Additionally, the following functions are typically delivered by urban municipalities: public transit; regulation of taxis; water purification and distribution; sewage collection and treatment; downtown revitalization; and regulation of noise. Generally, urban municipalities

⁴⁹³ 'Ontario Municipalities' (AMO, undated) <<https://www.amo.on.ca/AMO-Content/Municipal-101/Ontario-Municipalities.aspx>> accessed 25 July 2019.

⁴⁹⁴ Tolley and Young, 'Municipalities and the Constitution', above; Sancton, *Canadian Local Government*, above, 27.

⁴⁹⁵ For a comprehensive overview of Canadian municipal legislation, see Zack Taylor and Alec Dobson, 'Power and Purpose: Canadian Municipal Law in Transition' (2020) 47 IMFG Papers on Municipal Finance and Governance; 'Municipalities in British Columbia' (*British Columbia*, 2019) <<https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/systems/municipalities>> accessed 25 July 2019.



are also responsible for policing, although in some provinces special purpose bodies take care of this function. The exception is Newfoundland and Labrador, where policing is taken care of by the Royal Newfoundland Constabulary. Moreover, the Royal Canadian Mounted Police (RCMP) (or a provincial police force, as in the case in Quebec and Ontario) enters into contracts with some urban municipalities to provide policing, and it is typical for the RCMP or provincial police to provide policing in rural areas.

Ontario is unique in that the province mandates that its municipalities deliver certain social services. This includes income and employment assistance through the Ontario Works program and subsidized childcare with provincial oversight and financial assistance. Additionally, Ontario municipalities are required to provide subsidized social housing, with limited financial assistance from the province. Municipalities in other parts of the country do not have the same statutory responsibility to provide these social services.⁴⁹⁶

(A) Symmetry of the Local Government System

The fact that the provinces have under the Canadian Constitution sole jurisdiction over municipalities gives rise to considerable inter-provincial variation. Although municipal powers and responsibilities thus vary by province, common core functions include planning, regulating, protecting, and providing infrastructure services for the built environment.⁴⁹⁷

In some cases, there is also asymmetry within provinces in terms of how local government is structured, as different laws may exist for urban and rural municipalities. As noted above, several of Canada's largest urban municipalities are governed by charters that outline specific institutional arrangements for that municipality, and/or grant it additional powers and revenue sources. Toronto, for example, was granted charter status in 2007, giving it additional revenue raising tools beyond the property taxes and provincial transfers that most municipalities rely on. However, it should be noted that Charter Cities do not have additional constitutional protections. A municipal charter can be changed by the province at any time. Indeed, there is much disagreement surrounding the utility of granting cities such additional powers, as such powers have typically been limited and are often not fully used.⁴⁹⁸

General municipal statutes and special charters are not the only laws that apply to municipalities. Indeed, since provincial governments set parameters for municipal action in a multitude of policy fields, ranging from planning and environmental services to policing and housing, the cope of municipal action is shaped by dozens, if not hundreds of different statutes in each province.⁴⁹⁹ In addition, in some provinces, provincial governments may enact laws that apply only to particular municipalities or groups of municipalities – that is, single

⁴⁹⁶ Sancton, *Canadian Local Government*, above, 22-23.

⁴⁹⁷ Taylor and Dobson, 'Power and Purpose: Canadian Municipal Law in Transition', above.

⁴⁹⁸ Harry Kitchen, 'Is Charter City Status a Solution for Financing City Services in Canada – Or is that a Myth?' (University of Calgary School of Public Policy SPP Research Paper 9-2, 2016) <https://www.policyschool.ca/wp-content/uploads/2016/03/charter-city-status-kitchen_0.pdf> accessed 26 July 2019.

⁴⁹⁹ *ibid* 8.



municipalities can apply to their provincial government to request private statutes as a remedy for a particular local problem for there is no other legal recourse.⁵⁰⁰

Political and Social Context in Canada

All Canadian municipalities are governed by a democratically elected council.⁵⁰¹ Ward systems are commonly used, especially in large municipalities; Vancouver is Canada's only large city where councillors are elected at-large. With the exception of the City of Vancouver and larger municipalities in the Province of Quebec, local government is non-partisan. The provinces of British Columbia and Quebec are the only two provinces that have legislation that allows for the existence of political parties at the local level.⁵⁰² The fact that local government tends to be non-partisan, and that provincial party systems also tend to be quite distinct from the federal party system, means that the broader political context within which municipalities operate is marked by only weak political links among levels of government. This lack of vertical political integration, together with the weak legal status of local governments, made them the target of politically expedient decentralization in the fiscally lean 1990s. At that time, structural fiscal pressure on the welfare state produced a cascading decentralization of policy and fiscal responsibility through the Canadian federation, and municipalities had to cope with the imposition of unfunded or partly funded policy mandates from the provincial level. The result was intergovernmentally induced fiscal stress at the local level, which has only in recent years begun to be mitigated by increasing fiscal transfers.

Many scholars suggest that local governments, with their weak legal status, are primarily 'policy takers', rather than 'policy-makers', in the Canadian context.⁵⁰³ There are certainly cases where Canadian municipalities do make policy independently of the provinces. To a significant extent, their ability to do so depends on their population size and their local property tax base. Since rural municipalities have both a small population and a weak property tax base, their autonomous policy-making capacity tends to be very limited. For both reasons, there is thus a policy capacity divide among Canadian municipalities that closely mirrors the rural/urban divide.

Like many post-industrial countries, Canada is highly urbanized. Almost 72 per cent of the population lives in urban areas with over 100,000 people, and more than a third of all Canadians live in the three largest urban areas (Toronto, Montreal and Vancouver).⁵⁰⁴ The Canadian population is thus concentrated primarily in a handful of large urban areas, whose

⁵⁰⁰ Sancton, *Canadian Local Government*, above, 31.

⁵⁰¹ However, upper-tier governments in two-tier systems (e.g., Greater Vancouver and Ontario's regional municipalities) sometimes have indirectly elected councils composed of representatives of lower-tier municipalities.

⁵⁰² Sancton, *Canadian Local Government*, above, 173, 180, 186, 188.

⁵⁰³ *ibid* 251.

⁵⁰⁴ Calculated from Statistics Canada Census 2016 data reports.



population is growing quickly. By contrast, the population of rural Canada is (in most regions) growing much more slowly,⁵⁰⁵ and rural areas are on average older, whiter and poorer.

Table 5: Selected Demographic and Economic Indicators in Ontario, by Type of Census Division.⁵⁰⁶

	Metropolitan	Mixed	Non-Metropolitan
Population change (2011-2016)	+ 5.57%	+ 4.54%	+ 0.92%
Visible minority population (2016)	43.5%	13.5%	2.6%
Average household income (2016)	\$78,477	\$73,258	\$65,748

An analysis of 2016 census data conducted for this report paints a picture of the demographic and economic contrasts between rural and urban areas in Ontario, Canada's largest province by population (table above). The data are divided into three kinds of census divisions (CDs) – metropolitan CDs, which are located in urban areas with more than 100,000 people; non-metropolitan CDs, which are fully outside settlements with more than 100,000 people; and mixed CDs, which include a combination metro and non-metro areas. As is clear from the table, non-metropolitan – that is, rural and smaller-town – CDs grew much more slowly in population than others between 2011 and 2016; they were also much whiter, with only 2.6 per cent of the population identifying as visible minority, as opposed to 43.5 per cent in metropolitan CDs; and they were poorer, with an average household income that was only 83.7 per cent of the metropolitan average. These demographic differences, which reflect an economic base that has increasingly transitioned towards post-industrial urban productive sectors, set the context for the distinct governance challenges faced by rural and urban local governments in Canada in recent years.

For some time now, rural areas in the urban periphery of large cities in Canada have experienced some out-migration of urban residents facing high housing prices in the city. It appears that the Covid-19 pandemic has rapidly intensified this trend, to the extent that may fundamentally change the rural-urban dynamic in the longer run. Of course, it is too early to tell if the trend will be sustained. There is not even reliable data on the scale of the out-migration over the course of the pandemic yet. However, it was notable that *all* the experts and practitioners interviewed for this research noted this out-migration as a major development and a source of significant challenge, as well as potential opportunity, for rural areas. Interviewees all agreed that the structural driver of the out-migration is the very high cost of housing in large urban centers, most notably Toronto and Vancouver. With the Covid-19 pandemic entrenching work-at-home possibilities for white collar professionals, and

⁵⁰⁵ Between 2001 and 2016, the rural Canadian population grew by 5.5%, while the overall national population grew by 16.9%. Even this modest rural growth, however, is largely concentrated near urban areas. See Federation of Canadian Municipalities, 'Rural Challenges, National Opportunity: Shaping the Future of Rural Canada' (2019).

⁵⁰⁶ All data are calculated from Statistics Canada 2016 census of the population data tables.



simultaneously enhancing the appeal of low-density rural living, this structural trend has rapidly acquired more force.

Speaking about dynamics in the Toronto area, one policy analyst said: ‘Especially with the last year, housing has just moved out of the [Toronto area] and it's encroaching on a lot of these different communities. People who would have loved to have lived in downtown Toronto, but simply can't afford to are buying homes in Oxford County’ – about 150km from Toronto.⁵⁰⁷ While the experts interviewed for this project all focused on the Ontario context, media reports suggest similar dynamics surrounding other large urban centres.

This influx of new residents and money brings some benefits to rural areas, such as more budget money for municipalities that rely heavily on property taxes and development fees. As one interviewee noted, ‘from a property tax perspective, from a development perspective, it's pretty significant, (...) you go to some of these places, there's a lot of nice new playgrounds and parks and stuff like that. If you go to Innisfil [a rural community one hour north of Toronto], they built one of the nicest libraries I've ever seen. It's like a monument, incredible. And they're like, “yeah, that's development dollars”’.⁵⁰⁸

The other side of that same coin, of course, is that housing affordability is quickly becoming a major problem in rural communities that are relatively near to urban centres. ‘This notion that affordability is only an urban issue, it really needs to dissipate’, said one respondent. Those households that cash out of hot urban property markets have been driving up housing prices in rural areas at an unprecedented rate, especially since the beginning the Covid-19 pandemic. One interviewee noted that median house prices went up 40 per cent or more during 2020 in many rural communities that are within a two-hour drive of the Toronto area.⁵⁰⁹ Another challenge that comes with the influx of what one interviewee called ‘rural gentrifiers’⁵¹⁰ is that they tend to want more municipal services in communities that have long provided just the basics, putting upward pressure on property taxes.⁵¹¹

Most respondents also noted that the new urban out-migration is leading to cultural and lifestyle tensions in rural areas that are experiencing high rates of influx. ‘It's gonna be a little bit like it was after the Second World War, when a lot of European immigrants showed up in these communities,’ said one interviewee. ‘They haven't seen that kind of change in a generation in two generations really, and they may have a lot of people coming to town that don't look like them, don't engage in the same economic activities that they're used to, that have different expectations. And they may want to set up cricket pitches, not baseball diamonds’.⁵¹² Another respondent noted of the new arrivals from urban areas: ‘You know, they need to have a big box store, they want some things from you know from the supermarket and

⁵⁰⁷ Interview with local government expert, Rural Ontario Institute (20 July 2021)..

⁵⁰⁸ Interview with local government expert, York University (10 July 2021)..

⁵⁰⁹ Interview with local government expert, Guelph University (28 July 2021).

⁵¹⁰ *ibid.*

⁵¹¹ Interview with local government expert and consultant, Toronto (13 June 2021).

⁵¹² *ibid.*



stuff, and [long-time residents] are complaining that all these weird products are showing up in the supermarket right like avocados and (...) gluten-free food'.⁵¹³

It is far too early to tell how extensive this out-migration to rural areas will ultimately be, and whether it will continue after the Covid-19 pandemic. However, it appears that a significant shift in rural-urban dynamics is underway in the parts of rural Canada that are relatively close to major metropolitan centres, with possibly far-reaching knock-on effects on rural governance issues.

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⁵¹³ Interview with local government expert, York University (10 July 2021).



17.2 Local Responsibilities and Public Services in Canada: An Introduction

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Local Responsibilities and the Challenge of Local Government Capacity

Local governments in Canada have responsibility first and foremost for local physical services, such as planning and development permits, water and wastewater, roads and transit, and parks.⁵¹⁴ But many are also responsible for a variety of other services, including economic development initiatives, emergency services and police and (especially in Ontario) local administration of provincially funded social services and social housing. Beyond this, community demand often pushes local governments to fund services in fields well beyond their core mandate – such as arts and culture and immigrant settlement initiatives.

While both rural and urban municipalities in Canada deliver a range of services, service needs and demands vary across these two contexts. In urban municipalities – especially those which experience rapid growth – distinctly urban infrastructure such as transit, public space and (in some places) affordable housing loom large. Local police and emergency services are big-ticket items in many urban municipalities, and some also increasingly embrace broader ‘place-based policy’ roles that include elements such as support for the arts, partnerships with higher education institutions, and/or support for the needs of new immigrants. In rural areas, by contrast, the focus tends to be on maintaining basic services in a low-density context where per-capita infrastructure costs are high,⁵¹⁵ pressing needs include attracting economic development in the face of decline,⁵¹⁶ supporting an aging population, and improving internet connectivity.⁵¹⁷

As might be expected, capacity to deliver services is limited in multiple ways in small rural municipalities. Roughly 60 per cent of Canadian municipalities have five staff members or less,⁵¹⁸ so limited administrative resources are a major issue. Fiscally, not only do small municipalities have a smaller local tax base, but in many cases local property values (especially for commercial properties) are stagnant or declining in economically disadvantaged rural areas, which significantly limits fiscal capacity, since local governments across the country are heavily reliant on property taxes for revenue.

⁵¹⁴ See the report section 1 on the System of Local Government in Canada for details.

⁵¹⁵ The maintenance of local rural roads alone consumes 25% or more of many rural municipal budgets.

⁵¹⁶ As one respondent to interviews for the project noted, the oft-cited story of ‘decline’ is actually a complicated one in the Canadian context. On the one hand, many ‘traditional’ rural economic sectors do continue to decline in terms of output; on the other hand, rural areas as discussed in detail in report section 1 on the System of Local Government in Canada, an out-migration of affluent homeowners from urban areas, accelerated by the Covid-19 pandemic, is bringing new money into some rural areas, but it is not clear to what extent these trends will affect rural economic prospects.

⁵¹⁷ See, for example, Federation of Canadian Municipalities, ‘Rural Challenges, National Opportunity: Shaping the Future of Rural Canada’ (2019).

⁵¹⁸ *ibid* 9.



While urban municipalities in Canada do not face the same size-related capacity limitations as rural ones, the capacity of urban municipalities to deliver services is nonetheless challenged in a couple of important ways. First, given their heavy reliance on property taxes and their limited jurisdictional autonomy from provincial governments,⁵¹⁹ local governments in big cities often face fiscal and jurisdictional limits in responding to emerging concerns in complex policy fields such as infrastructure, immigrant integration, and housing affordability. Effective service provision in such fields often necessitates some form of multilevel collaboration among levels of government, which has historically been difficult to sustain. Second, while in some large urban areas a single municipality covers all or most of the urban region, Canada's three largest city-regions (Toronto, Montreal and Vancouver) are all fragmented among multiple local government units, raising challenges of horizontal coordination in service provision on regional issues.

Responding to Capacity Constraints

Historically, provincial governments have dealt with rural capacity limitations in three main ways. First, in several provinces, some rural areas have no local government, and are administered directly by provincial governments. This has become decreasingly common over time, and as of today, the only province where a large proportion of the population lives in such areas is New Brunswick.⁵²⁰ Second, in many provinces – including the four largest provinces of Ontario, Quebec, Alberta and British Columbia – there has long been an upper tier of local government that provides certain services on a larger geographical scale.⁵²¹ Finally, some provincial governments (most notably Ontario's) have repeatedly amalgamated small rural municipalities into larger ones. In addition, rural local governments themselves have long engaged in various forms of voluntary inter-municipal service sharing. An innovative recent example comes from Ontario, where regional associations of rural municipalities in two areas of the province have organized initiatives to develop broadband internet infrastructure for their communities.⁵²²

The limited capacity of urban local governments to deal with complex urban problems became more politically salient in Canada in the early 2000s. Large urban municipalities, facing a fiscal squeeze after a steep decline in intergovernmental transfers in the 1980s and 90s, began to lobby other levels of government for funding assistance. At the same time, large urban areas were becoming increasingly electorally important at both the provincial and federal levels. The

⁵¹⁹ See report section 1 on the System of Local Government in Canada.

⁵²⁰ About 30% of the total provincial population of 800,000 lives in areas with no local government. See Michael McKendy, 'Improving the Regional Service Commissions in New Brunswick: Final Report' (Government of New Brunswick 2017). The obvious resulting 'democratic deficit' has led to repeated efforts to develop local government for these parts of New Brunswick, with a new round of consultation on the matter currently underway in 2021.

⁵²¹ The British Columbia case is unique. The upper tier-units there, designed by the provincial government in the 1960s, are called 'regional districts'. They do not have municipal status, but rather, they are institutional shells that local municipalities can use to share delivery of whatever services they agree to share. See David Cashback, *Regional District Governance in British Columbia: A Case Study in Aggregation* (Institute on Governance 2001).

⁵²² The associations are the Eastern Ontario Wardens' Caucus and the Western Ontario Wardens' Caucus. Details of these two projects can be found at <<https://www.eorn.ca/en/index.aspx>> and <<https://swiftruralbroadband.ca/>>.



result has been the emergence, over the past 15 years, of a variety of multilevel coordination efforts in urban services – ranging from trilevel funding for infrastructure to funding and policy supports for affordable housing and immigrant integration. A significant Canadian literature on multilevel governance and place-based urban policy documents the rise of these initiatives.⁵²³ The problem of horizontal metropolitan coordination has been addressed in very different ways in Canada’s three largest urban areas. In Vancouver, a long-standing collaborative regional government (Metro Vancouver, until recently the Greater Vancouver Regional District) has promoted a shared approach to planning and development issues; in Montreal, a complex system of up to four levels of local government has emerged in response to the social and political heterogeneity of the city-region; and in Toronto, the provincial government has compensated for a lack of regional governing institutions by assuming direct control over large-scale regional development planning and infrastructure since 2005.

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17.3 Governing the Construction of Transit Infrastructure in Toronto and Vancouver

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Relevance of the Practice

Over the past 20 years, provincial and federal governments have provided significant intergovernmental transfers to fund the development of new rapid transit infrastructure in Canada's largest cities. This funding arose in part as a response to a lack of transit infrastructure development in the 1980s and 1990s, when Canadian cities grew significantly in population, but local fiscal constraints and the decline of intergovernmental transfers meant that development of transit infrastructure did not keep up. As noted in the Introduction to Local Responsibilities and Public Services, report section 2.1, Canada's three largest city-regions – Toronto, Montreal and Vancouver – are composed of many municipalities. In these cities, then, the availability of new funds for rapid transit development brought with it the question of how to govern the construction of transit – that is, who decides what will get built where, and how? In each of these cities, many billions of dollars have been spent over the past 20 years building rapid transit and having an effective governance mechanism in place is essential to ensuring that the many environmental, economic and social benefits of stronger transit infrastructure are maximized in the long run, and that the money is not wasted on poorly planned, poorly managed, or short-sighted projects.

Description of the Practice

International experience suggests that the successful development of large-scale urban transit infrastructure requires a coordinating institution that can lead systematic planning and implementation at the metropolitan scale. However, neither Toronto nor Vancouver had such a body in place in the late 1990s. Toronto had no metropolitan-scale governing institutions at all. Instead, the local government landscape consisted of a large central municipality – the City of Toronto (population 2.9 million), which was the product of a provincially-imposed amalgamation in 1997 – surrounded by four two-tier 'regional governments', each with several constituent municipalities, housing another 3.5 million people in a sprawling suburban landscape. There was, and still is, no institutional connection between the central city and the surrounding two-tier suburban governments. Rapid transit infrastructure mainly consisted of two subway lines and municipalities ran their own individual public transit systems, and rapid transit infrastructure was limited – its main elements were two subway lines built in the 1960s in the City of Toronto, and a provincially owned regional commuter rail system.

Vancouver, by contrast, has had a multi-functional metropolitan authority since the late 1960s. Metro Vancouver (until recently the Greater Vancouver Regional District) is a cooperative metropolitan authority through which the 20 municipalities in the urban area voluntarily share



several services, including water, sewer, waste management and regional planning. Until 1998, public transit was not locally managed at all. Rather, it was run directly by an agency of the provincial government, which had also built the only rapid transit line that existed at the time. Since the late 1990s, the Ontario and British Columbia provincial governments have both established single-purpose, regional transit agencies to coordinate the construction and operation of regional transit services. Toronto's Metrolinx was established in 2005. It took over operations of the suburban commuter rail system, and the provincial government committed to flow billions of dollars of funding through Metrolinx to build new transit infrastructure.⁵²⁴ However, it did not take over operations of municipal transit systems, which carry the bulk of riders in the region,⁵²⁵ and local governments retained control over planning and development approvals. At first, Metrolinx was governed by a board of representatives of area municipalities, but after several years chronic conflict on the board, the provincial government replaced this with a provincially appointed board.⁵²⁶ The agency gets some operating revenues from commuter rail fares but depends on provincial funding for capital construction projects. Since 2005, Metrolinx has spent some CAD 27 billion (mostly of provincial funding, with about 10 per cent federal funding) building transit infrastructure.⁵²⁷ The results to date include upgrades to the commuter rail system, an airport rail link and two suburban busways – but no completed projects in the core City of Toronto, where congestion is acute and more rapid transit would be particularly beneficial.

In Vancouver, the provincial government established TransLink in 1998. TransLink is institutionally stronger than Metrolinx, since it operates all transit in the Vancouver region, and it was also given access to some local sources of revenue beyond fares (specifically, a share of the gas tax and the property tax).⁵²⁸ Like Metrolinx, it is tasked with planning and leading the construction of new rapid transit infrastructure. It is governed by a council of mayors from area municipalities, who are also involved in the governance of regional land use planning through Metro Vancouver. Even though TransLink has access to more sources of local revenue, its efforts to expand these revenue sources have come up against local political opposition, so the realization of new rapid transit projects has continued to rely heavily on intergovernmental funds, which have provided over 70 per cent of the approximately CAD 10 billion in capital investment in transit since 1998. The results of this investment include three completed urban rail lines that span both core and suburban areas of the region, with two more urban rail lines currently under development.

⁵²⁴ For detailed discussion, see Martin Horak, 'State Rescaling in Practice: Urban Governance Reform in Toronto' (2013) 6 *Urban Research and Practice* 311.

⁵²⁵ The Toronto Transit Commission (TTC), which operates in the central City of Toronto, is North America's third busiest transit system, after New York City and Mexico City.

⁵²⁶ The Metrolinx Act, Government of Ontario, Ontario Legislature 2006.

⁵²⁷ Metrolinx, '2020-2021 Business Plan' (2020).

⁵²⁸ The South Coast British Columbia Transportation Authority Act, Government of British Columbia 1999 (2021).



Assessment of the Practice

The effectiveness of Metrolinx and TransLink as institutional vehicles for transit development is very different. While new transit infrastructure has been built in both city-regions, in Vancouver the new infrastructure has been built largely in accordance with a long-range plan, whereas in Toronto – especially in the core City of Toronto – the development of rapid transit has been highly contentious, marked by frequent changes in plan and the repeated cancellation and deferral of major projects. The reasons why TransLink has been more effective than Metrolinx shed light on the importance of institutional design and local context in governing large-scale transit development. Of the two agencies, Metrolinx is institutionally weaker, since it relies entirely on yearly appropriations of capital funding from the provincial budget, rather than having access to general revenue sources. Just as importantly, it does not have authority over the operation of most public transit in the Toronto region, meaning that it must coordinate its plans and priorities with those of institutionally independent local authorities, most notably, the Toronto Transit Commission in the core City of Toronto. As a result of these institutional weaknesses, Metrolinx has remained an agent of the provincial government, and its investment choices reflect changing provincial political priorities, rather than being the product of a long-range, integrated transit plan that is supported by municipal political actors.

The most important reason for the different performance of the two agencies, however, is the different local and metropolitan political and institutional context in the two cases. In Toronto, a lack of regional political collaboration has led the provincial government to assume tight control over Metrolinx, and there is no comprehensive, integrated regional transit plan. In the core City of Toronto, local rapid transit plans have repeatedly become a political football, with successive mayors promoting radically different proposals, ranging from five new light rail lines (proposed under Mayor David Miller in 2007) to no new light rail and two new subway lines (proposed by Mayor Rob Ford in 2010).⁵²⁹ In this context, Metrolinx has been able to realize some suburban transit projects, but important projects in the central city have repeatedly been delayed or even cancelled due to local political controversy. In Vancouver, by contrast, the existence of Metro Vancouver has, over the years, promoted a culture of regional policy collaboration, and a long-standing regional land use plan – complete with designated transit corridors – exists. This broader context gives TransLink a foundation of regional planning and political compromise that has helped it to systematically pursue construction of a regional transit system.⁵³⁰

This case comparison of nominally similar institutional innovations in Vancouver and Toronto shows that simply establishing a regional transit authority and providing it with funding by no

⁵²⁹ For a detailed discussion, see Martin Horak, 'Building Rapid Transit in Canada: The Problem of Governance' in Francisco Velasco Caballero (ed), *Anuario de Derecho Municipal 2020* (UAM Instituto de Derecho Local, forthcoming).

⁵³⁰ This is not to say that there has been no controversy or problems. Funding sources remain politically contentious, and the provincial government has consistently pushed for a more expensive rail technology than is necessary under the circumstances. Relatively speaking, however, the development of transit infrastructure in Vancouver has been much more orderly and systematic than in Toronto.



means guarantees the effective development of rapid transit infrastructure. Rather, effectiveness depends significantly on two additional elements. First, it is affected by the institutional design of the agency – specifically, the extent to which it has control over relevant infrastructure, its own dedicated sources of revenue, and a governing body that features representation from important local actors. Second, agency performance (and indeed, the possibilities for institutional design) is shaped by the character of the pre-existing metropolitan context, specifically whether there is a history of regional collaboration, and whether a stable, locally supported vision for the future development of the transit system already exists.

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