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LOCAL GOVERNMENT POWERS

Introduction

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



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

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

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

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



Are the powers of local government clearly defined?

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



Are the powers of local government relevant and substantial?

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



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

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

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



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

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

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



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

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



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

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

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