



# DECENTRALIZATION IN UNITARY STATES

Constitutional Frameworks for the  
Middle East and North Africa



the center for  
**constitutional**  
transitions



*Empowered lives.  
Resilient nations.*

## **Decentralization in Unitary States:**

### **Constitutional Frameworks for the Arab States Region**

**Center for Constitutional Transitions, International Institute for Democracy  
and Electoral Assistance and the United Nations Development Project**

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## About this Report

The Constitutional Transitions Clinic 'back office' has, from 2011 to 2014, prepared a series of thematic, comparative research reports on issues in constitutional design that have arisen in the Middle East and North Africa. Zaid Al-Ali, Senior Adviser on Constitution Building at International IDEA, acted as an adviser on these reports and oversaw International IDEA's participation in the report-drafting process. The United Nations Development Programme's Regional Center provided both material and substantive support in relation to the last three of the six reports.

The first three of these reports are jointly published by Constitutional Transitions and International IDEA. The second three are jointly published by Constitutional Transitions, International IDEA and the United Nations Development Programme. The reports are intended to be used as an engagement tools in support of constitution-building activities in the region. The full list of reports is:

- Constitutional Courts after the Arab Spring: Appointment Mechanisms and Relative Judicial Independence (Spring 2014)
- Semi-Presidentialism as Power Sharing: Constitutional reform after the Arab Spring (Spring 2014)
- Political Party Finance Regulation: Constitutional reform after the Arab Spring (Spring 2014)
- Anti-Corruption: Constitutional Frameworks for the Middle East and North Africa (Fall 2014)
- Decentralization in Unitary States: Constitutional Frameworks for the Middle East and North Africa (Fall 2014)
- Oil and Natural Gas: Constitutional Frameworks for the Middle East and North Africa (Fall 2014)

The reports are available in English and Arabic at [www.constitutionaltransitions.org](http://www.constitutionaltransitions.org) and [www.idea.int](http://www.idea.int). For more information, please visit [www.constitutionaltransitions.org](http://www.constitutionaltransitions.org).



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# Contents

About this Report.....	5
Acknowledgements .....	6
Preface .....	9
Executive Summary.....	11
<b>1 Introduction .....</b>	<b>22</b>
<b>1.1 Decentralization in new democracies .....</b>	<b>22</b>
<b>1.2 Definition of decentralization .....</b>	<b>23</b>
1.2.1 Dimensions of decentralization .....	23
1.2.2 Decentralization versus federalism .....	25
<b>1.3 Three benefits of decentralization .....</b>	<b>27</b>
1.3.1 Enhancing efficiency in service delivery .....	27
1.3.2 Addressing neglect .....	28
1.3.3 Promoting democratic citizenship.....	28
<b>1.4 The global trend towards decentralization.....</b>	<b>30</b>
1.4.1 Decentralization frameworks in constitutions.....	31
1.4.2 Importance of context.....	32
<b>1.5 Decentralization in the MENA region.....</b>	<b>34</b>
1.5.1 Historical basis for centralized state structures in the MENA region .....	34
1.5.2 Evolution of local government structures in the MENA region.....	35
1.5.3 The Arab Spring and decentralization.....	36
<b>2 Architecture of Decentralization: Internal Boundaries and Levels of Government .....</b>	<b>44</b>
<b>2.1 Internal boundaries.....</b>	<b>44</b>
2.1.1 Initial drawing of local government geographic boundaries.....	44
2.1.2 Subsequent alteration of local government geographic boundaries.....	48
<b>2.2 Levels of government: asymmetrical decentralization.....</b>	<b>53</b>
2.2.1 Distinct regimes of local governance for urban and rural areas.....	54
<b>2.3 Options for constitutional design and application to the MENA region.....</b>	<b>58</b>
2.3.1 Options for constitutional design.....	58
2.3.2 Application to the MENA region: Egypt and Tunisia.....	59
<b>3 Political Decentralization .....</b>	<b>61</b>
<b>3.1 Methods of selecting executive and legislative branches of local government....</b>	<b>61</b>
3.1.1 Direct versus indirect elections: balancing democracy, populism and capture .....	62
3.1.2 Evaluating direct versus indirect elections.....	62




<b>3.2 Local government political structures.....</b>	<b>65</b>
3.2.1 Models .....	65
<b>3.3 Cooperation between local governments .....</b>	<b>74</b>
<b>3.4 Relationship between the central government and local governments.....</b>	<b>75</b>
3.4.1 Central government 'step-in' powers.....	76
<b>3.5 Options for constitutional design and application to the MENA region.....</b>	<b>82</b>
3.5.1 Analysis of the relevant constitutional provisions.....	82
<b>4 Implementation and Sequencing.....</b>	<b>86</b>
<b>4.1 Preliminary considerations.....</b>	<b>86</b>
4.1.1 Planning.....	86
4.1.2 Legal framework.....	87
<b>4.2 Sequencing decentralization .....</b>	<b>89</b>
4.2.1 Uniform decentralization.....	90
4.2.2 Incremental decentralization.....	93
4.2.3 Multi-pace decentralization .....	97
<b>4.3 Decentralization strategies: monitoring and evaluation mechanisms.....</b>	<b>100</b>
4.3.1 The Philippines Rapid Field Appraisal system.....	101
4.3.2 Uganda's ad hoc approach to accountability .....	102
<b>4.4 Options for constitutional design and application to the MENA region.....</b>	<b>103</b>
4.4.1 Emerging best practice .....	104
4.4.2 Analysis of relevant constitutional provisions.....	104
<b>Conclusion: Is the MENA region ripe for decentralization?.....</b>	<b>106</b>
<b>Bibliography .....</b>	<b>108</b>
<b>References.....</b>	<b>110</b>
<b>Endnotes .....</b>	<b>123</b>

## Preface

Comparative constitutional law is at the heart of democratic development. Legal scholars, policy makers, constitutional drafters, judges and advocates all over the world have looked to other jurisdictions for ideas on how their own challenges can be addressed and to better understand which reforms are likely to be successful in their own countries. The Arab region is no exception in that regard. Since 2011, at least 10 countries in the region have either replaced, reformed or reconsidered their constitutional frameworks. In that context, national, regional and international institutions have contributed to the legal scholarship that already existed by bringing the knowledge that has been developed in other jurisdictions closer to the region. Dozens of foreign constitutions have been translated into Arabic, existing constitutional frameworks from within the region were analyzed and comparative studies have explored how international and foreign experience could be used to help resolve national problems.

In 2012, International IDEA and the Center for Constitutional Transitions established a partnership to draft a series of regional studies on constitutional law issues that were of particular importance to the Arab region. Three studies were published during the first year of that relationship, covering the composition of constitutional courts, semi-presidentialism as a mechanism for power sharing, and the regulation of political party finance through constitutional reform. The United Nations Development Programme joined the partnership in 2013 and has played a key role in the elaboration of a further three studies, including the current volume. The effort to develop these comparative studies on constitutional law was of a truly international and regional nature, involving input, discussions and debates from a large number of institutions and individuals from across the Arab region, North America, Europe, sub-Saharan Africa and elsewhere. The authors and the institutions who participated in this effort did so in the hope that the published reports will be of use to scholars, researchers, policy makers, constitutional drafters, judges and advocates throughout the region. Each report uses a comparative approach but also has as its ultimate objective to provide assistance to the effort to modernize and reform constitutional frameworks in the Arab region.

The reports that were developed by International IDEA, the Center for Constitutional Transitions and the United Nations Development Programme move beyond the general areas that are traditionally debated during constitutional reform efforts. Instead, they focus on detailed and specific areas that were identified as being of specific interest to the region. Constitu-



tional drafters and reformers in the region have moved past discussions on general principles such as the separation of powers, judicial independence and fundamental rights and have, particularly since 2011, focused more on the mechanisms that can and should be designed to ensure that general principles such as the ones just mentioned can finally be employed to improve governance and standards of living throughout the region. Thus, for example, judicial independence as a general principle has long been accepted and incorporated in the large number of constitutions that exist throughout the region; the debate today is therefore not whether the courts should be independent from the other branches of government but rather what mechanisms can and should be incorporated into the region's constitutions to increase the likelihood that the courts, including constitutional courts, will be in a position to render justice to the people free from influence from the vagaries of politics.

The current volume focuses on the relationship between decentralization and constitutional law. Although a significant number of Arab constitutions have for decades provided that a decentralized form of government should be adopted, they remained essentially silent on the details, leaving everything to legislation, which in the end meant that very little progress was made in most of those countries towards achieving any meaningful form of local governance. Partly as a result, the gap between major urban centers (which enjoy relatively competent public services) and rural provinces has merely widened in the past half century, adding to an exodus that has been taking place throughout the region from the countryside to major cities, sometimes resulting in the emergence of slums that have grown exponentially in size. This report explores this important issue, specifically with a view to determining what level of detail and what principles should be incorporated in a constitution to increase the likelihood that decentralization will move from theory to reality and that it will help to improve standards of living throughout the region. The report studies existing frameworks within the region, including some of the new constitutions that were drafted since the uprisings began in late 2010, as well as a large number of comparative examples from other jurisdictions, to determine what lessons exist for the broader region.

International IDEA, the Center for Constitutional Transitions and the United Nations Development Programme are grateful to this report's authors and to all the individuals who reviewed, commented upon and provided input to their content throughout the drafting process. This report would not have become a reality without them. We are confident that their efforts will contribute to improving constitutional frameworks throughout the region.

## Executive Summary

Decentralization involves the transfer of responsibility and authority from the central government to the provincial level of government, the local level of government, or both. Decentralization has the potential to deepen democratic values and improve the quality of life in neglected communities, and thus is an important topic to consider during democratic transitions. This report considers the relevance of decentralization to the democratic transitions and constitutional (re)construction in the Middle East and North Africa (MENA) region.


The report explores the benefits that decentralization holds for the MENA region, as democratic reconstruction proceeds, and points out that democratic reconstruction presents a good opportunity to establish a system of decentralized local government. The constitutional design options presented and analysed in this report are intended as a resource for countries in the process of political decentralization.

The focus of this report is decentralization within unitary countries. Whereas federal countries usually transfer political authority to regional governments (i.e. to provinces or states), unitary countries do not necessarily have regional political units. For this reason, the local level of government (i.e. municipalities or counties) is more relevant to the consideration of unitary, decentralized countries or unitary countries that are in the process of decentralizing. The report therefore focuses on the decentralization of political authority to the local level of government.

Numerous case studies and examples are given in the text, and are analysed in the light of their usefulness to the MENA region. In addition, the report provides analysis of recent constitutional reforms in the MENA region in the light of the case studies and emerging global best practice on decentralization.

### *Federal versus decentralized unitary systems*

Transferring responsibility and authority from the central government to local governments is relevant to both federal and unitary states; however, it is important to distinguish decentralization from federalism. While federalism is a form of decentralization, a federal system differs from a unitary, decentralized system in two fundamental ways. The first



difference is structural: a federal system involves the decentralization of responsibility and authority to fully constituted governments at the regional or provincial level. The provinces are themselves represented in institutions of government at the central level, for example in an upper chamber of the legislature. Federal nations must typically have: (1) at least two levels of government whose powers are enshrined in the constitution, and (2) representation of the regional level of government in the national legislature. In unitary systems, by contrast, lower levels of government are not necessarily enshrined in the constitution, and these levels are not represented in the national legislature. In addition, provinces in federal systems are generally fewer in number, larger in size, more autonomous, and have more extensive and secure powers than local governments in unitary systems.

Second, the objectives of federalism, on the one hand, and of decentralization within a unitary country, on the other, often differ. An objective of a federal system can be to ease tensions between distinct groups in a diverse society. These groups are often located in distinct geographic regions of the country, and may make demands for some degree of regional autonomy. The distribution to provinces or regions of substantial political autonomy and authority over matters of policy, alongside the representation of provincial interests in structures of central government, may allow a nation to come together under a single flag even though there are significant differences in identity, culture, language and political preference across different regions within the country. Decentralization in a unitary country, by contrast, tends to be less concerned with satisfying calls for regional autonomy, and more concerned with increasing the effectiveness with which services are delivered at the local or municipal level.

Decentralization exists along a spectrum: a greater number of unitary countries are beginning to move towards decentralized systems of government, with the result that the transfer of responsibility and authority to local governments is increasingly relevant to questions of constitutional design in unitary systems of government. Even where a decentralized system of government is established by legislation, a country's constitutional framework must at least contemplate the decentralization of government.

### *Dimensions of decentralization*


There are three dimensions of decentralization: political decentralization, administrative decentralization and fiscal decentralization. Political decentralization involves the transfer

of authority to local governments from central or provincial governments. Political decentralization has the capacity to foster 'democratic citizenship' by expanding political participation and increasing the ability of citizens to hold political actors accountable. In countries with a history of authoritarian and highly centralized government, with political leaders who are unaccountable to the people, political decentralization is important to new democracies. Although there are close links between the three dimensions of decentralization, this report focuses primarily on political decentralization.

A decentralized system of government can be decentralized to varying degrees along each of the three dimensions. Political decentralization increases the political accountability of local government officials to citizens of local constituencies by allowing local election of local officials. Administrative decentralization is the transfer of responsibility for public service delivery from central government to regional or local governments or regional or local administrative entities. Administrative decentralization and political decentralization are not necessarily linked: a politically decentralized, locally elected local government may have few administrative responsibilities, while a local administrative entity may bear service-delivery responsibilities while remaining politically accountable to the central or regional government with no locally elected officials. Finally, fiscal decentralization is the assignment to local governments of revenues and responsibilities for certain services.

Decentralization offers four primary benefits, in principle:

1. Improving service delivery: decentralization allows local governments to tailor services to local needs and make policy choices without central government approval.
2. Addressing neglect of marginalized areas by establishing local government structures capable of representing local needs, and ultimately promoting the distribution of public resources to regions that need them, in turn promoting development at the local level.
3. Promoting democratic citizenship through greater accountability, broadening citizen participation, fragmenting central power, and fostering political competition.
4. Preserving national unity and stability.



There is a strong global trend towards increased decentralization, particularly among developing countries. Historically, however, almost all states in the MENA region developed highly centralized and authoritarian state structures, with weak democratic practices. Political elites in the region have continually exploited nationalism and periods of regional and internal conflict to justify the need for a strong centralized state. As a result, there has been little or no decentralization in the MENA region. The fall of authoritarian governments as a result of the uprisings of the Arab Spring, spurred in part by discontent in areas outside the capital cities, presents an opportunity for states in the MENA region to revisit the question of decentralization. However, both the Egyptian Constitution of 2014 and the Tunisian Constitution of 2014 take a cautious approach towards decentralization, leaving many crucial details to subsequent legislation.

In this light, there is an opportunity both for constitutional reform in the region to address questions of decentralization and for legislation in Egypt and Tunisia to consolidate the minor constitutional moves taken so far towards decentralization. This report aims to bring together global best practices on a number of discrete elements of decentralization, by reviewing arrangements for decentralization around the world. The objective is to present these global best practices as options for further decentralization in the MENA region. This report therefore considers decentralization in the context of the MENA region, and highlights the value or relevance of decentralization to constitutional transitions in the MENA region.

This report explores three main elements of a system of decentralization in unitary countries:

1. the architecture of decentralization, including the demarcation of local government unit boundaries and the design of different levels of government;
2. the political aspects of decentralization, including processes for selecting local executives and legislatures, the relationship between local government units, and the relationship between the central and local governments; and
3. the implementation, sequencing and monitoring of a decentralization programme.

## *Analysis of specific issues*

### *Architecture and procedures of decentralization: internal boundaries and levels of government*


The architecture of decentralization concerns both geographic considerations, such as the number, size and boundaries of local governments, and institutional/structural considerations about the different ways in which responsibility and authority may be allocated among the levels of government.

Drawing internal boundaries involves substantive and procedural considerations. Substantively, the main criteria on the basis of which geographic boundaries can be determined are: (1) representation and democracy; (2) efficiency and economic concerns; (3) identity; (4) pre-existing boundaries; and (5) broader reforms. How a system weighs or prioritizes these criteria in demarcating the geographic units of a decentralized system can advance or hinder the goals of decentralization. When a country's primary goal is to improve service delivery, local government boundaries should prioritize efficiency and economic concerns, such as capacity, geography and resources.

The procedures for initially drawing internal boundaries vary. Boundaries may be initially determined as part of the general constitutional drafting process, and emerge along with a new constitution. Alternatively, the procedure for determining boundaries may involve a specially designed independent commission or demarcation board, whose work proceeds separately from negotiations for a new constitution. In many countries that have drawn internal boundaries during a constitutional transition, members of the public and civil society have been invited to offer their views on proposals for new boundaries.

Demographic changes do occur, with people moving between cities and from rural to urban areas. To recognize and accommodate these changes, alterations may need to be made to the boundaries of local government areas. These changes involve two elements: first, a proposal for changes; and, second, the procedure for effecting the proposed changes. Proposals for changes to internal boundaries can be made, for example, by the national legislature, by the national executive alone or together with an independent commission, or by an independent commission alone. Civil society and members of the public may put pressure on these institutions to initiate changes, but civil society is usually not able





to formally initiate boundary changes. In cases where two or more local governments merge, the change may be initiated by the local governments concerned. The power to approve or effect boundary changes may rest with the national legislature, or with the local people through the use of a referendum or plebiscite.

Criteria and procedures for altering internal boundaries are critical to ensuring that these changes are made transparently, fairly and justifiably. Criteria may include, for example, the means of communication, geographical features, population density and demographic trends, economic viability and the cost of administration, the wishes of the people concerned, physical and human infrastructure, historical and cultural ties, and the objectives that are to be achieved through decentralization. Prohibitions on the division or merger of governmental entities can be put in place, to prevent changes that would reduce the income, population or land area of a new unit to less than the requirements for the creation of a new unit.

If the central government is the only actor involved in changing internal boundaries, opportunities for partisan abuse may arise. A ruling party at the central government level could seek to undermine opposition political parties by reducing or eliminating local government units controlled by opposition parties, or by fostering political patronage by expanding the geographic regions controlled by the ruling party. However, the central government is often in the best position to evaluate whether or not local government units have the capacity to implement national policy, and whether changes to local government boundaries are justifiable. Therefore, the ideal approach is one that ensures the participation of central government, but does not allow central government to make unilateral changes to local government boundaries without the involvement of at least one of the other relevant actors (i.e. the national legislature, an independent commission or the people themselves speaking through a referendum).

Once geographic boundaries have been determined and the criteria and procedures established for altering internal boundaries, the next question is how political power will be transferred to the respective local government units. Some countries may opt for an asymmetrical structure, under which the degree of autonomy or power that is transferred to each unit is not necessarily identical. Special autonomy arrangements, for example, grant special powers to certain units not granted to others, or establish distinct systems of

local government for urban and for rural areas. Asymmetrical arrangements are, further, suited to accommodating the differences among cities: a state may create a special organizational arrangement for its capital city, allowing it to govern itself according to its unique needs as the capital.


Mechanisms may be established to ensure that local governments cooperate with one another and coordinate their activities in order to eliminate inefficient duplication of services. These include intergovernmental agreements, merger, a metropolitan level of government that brings together numerous local governments in a single urban area, and other coordinating institutions or mechanisms.

### *Political decentralization*

Political decentralization involves the transfer of political authority to local governments from central or provincial levels of government, or from central government to provincial governments. Political decentralization affects fiscal and administrative decentralization, as the three dimensions of decentralization are intertwined. Although this report focuses primarily on political decentralization to the local level of government, the other two dimensions of decentralization are discussed to the extent that they are bound up with political decentralization.

Political decentralization comprises: (1) local citizens' power to select local legislative and executive officials; (2) the rules that structure relations between different local government units; and (3) the rules that structure the relationship between the central government and local governments. Political decentralization can foster 'democratic citizenship' – that is, citizens' affective attachment to the nation and to his or her sense of ownership of the political process – by expanding political participation and increasing the ability of citizens to hold political actors to account.

First, the selection of local public officials is an important decision with broad ramifications. There is no one optimal method for selecting public officials. The choice of electoral system is a context-specific political decision, rather than a purely technical one. Broadly, three methods for selecting local officials are available: direct elections, indirect elections or appointment by another level of government. In addition, local officials must be selected to fill both legislative and executive institutions. The third centre of political authority in democratic government – the bureaucracy – is never elected because of its



technical nature. This leaves four broad ways in which the executive and the legislature may be organized within local government:

1. a directly elected legislature and a directly elected executive, each elected in separate elections;
2. a directly elected legislature and an executive appointed by the central (or regional) government;
3. a directly elected legislature and an indirectly elected executive; and
4. a directly elected but combined legislative and executive council.

Second, rules that structure relations between different local governments generally aim to foster cooperation between local governments, and to ensure that uniform standards of government are met throughout the country. Increased competition between local governments seeking to attract businesses and residents creates an incentive for local governments to undercut one another on taxes and compliance costs, labour standards, and environmental and other standards. Competing local governments may, if there is lack of coordination between them, deplete common resources in a manner that runs contrary to the long-term interests of the country as a whole. Model legislation drafted by the central government or a national non-governmental institution and adopted by local governments can eliminate these problems and ensure uniform standards across local governments. Intergovernmental forums or other institutions may coordinate the functions of numerous local governments.

Third, decentralization structures the relationship between the central government and local governments. Decentralization does not imply an absence of central regulatory authority, but rather shifts the role of the central level of government to one of setting baseline accountability standards and monitoring local governments for compliance with those standards. In many cases, local governments are charged with implementing a legal or policy framework formulated at the central or regional level. The central or regional government's regulatory authority may include the central government's power to assume authority for local government functions in situations where a local government is unable to perform those functions effectively or to meet baseline standards. This is referred to as a 'step-in' power.


Without sufficient safeguards, however, the step-in power may be abused by central government to punish local government officials or voters in local government units for making legitimate political or policy choices with which the central government does not agree. To prevent abuse, the circumstances or conditions that trigger step-in powers must be clearly defined, preferably in the constitution, but at least in ordinary legislation. The constitution or legislation must, in addition, define clearly when the circumstances or conditions that trigger the step-in power end. The scope of step-in powers must be clearly defined, and the courts must be able to exercise meaningful oversight.

### *Implementation and sequencing*

Countries that implement decentralization typically adopt one of three different approaches: uniform, incremental or multi-speed.

On the uniform approach to decentralization, a country implements fiscal, administrative and political decentralization uniformly. Each local government unit assumes fiscal, administrative and political responsibility at the same time. This can happen rapidly ('big bang') or over a longer period of time. A rapid big bang approach may be warranted, for example, during an economic crisis or a transition from authoritarian to democratic rule, where the window for systemic change is narrow. Rapid decentralization poses challenges in coordinating the actions of officials at the central and local levels, and in conferring responsibilities on local governments before they have developed the capacity to discharge those responsibilities. Some countries opt to decentralize uniformly but over a longer period of time. This gives the central government and local governments time to develop capacity and to establish robust governance structures. The shortcomings of a gradual process include the possibility that enthusiasm or support for decentralization may wane over time, leading to recentralization and the slowing of local capacity-building and development.

Incremental decentralization involves multiple stages which focus on either administrative or political decentralization sequentially. Where administrative decentralization occurs first, the responsibility for service delivery at the local level is transferred to local government offices. The focus on administrative decentralization means that local government officials are accountable for their administrative actions not to local people, but to the central government. This may result in the subordination of local governments to



the central government and in the entrenchment of central government policies. Where political decentralization precedes administrative decentralization, local government officials are elected by local people and are thus accountable to local citizens, but are not responsible for the delivery of services. These reforms may foster coordination among local politicians who can then lobby for administrative decentralization.

On the multi-speed approach, administrative decentralization follows political decentralization at the pace that best suits the capacities of each local government. Under one variation of this approach, local governments can apply for greater administrative responsibilities. The transfer of greater administrative responsibility is ideally matched with a grant of resources adequate to discharge those responsibilities.

Monitoring mechanisms may be established to evaluate and make adjustments during and after the implementation of a decentralization scheme. One approach is to establish a formal institution or agency (or to contract outside experts) to oversee the decentralization programme. An alternative is a more ad hoc approach, with multiple agencies and actors involved in overseeing the process. The former approach, which involves a single and comprehensive oversight system, tends to ensure better outcomes, even though it requires greater technical and fiscal resources.

### *Options for constitutional design*

#### *Architecture and procedures of decentralization: internal boundaries and levels of government*

- Develop criteria and procedures for altering internal boundaries that involve the central and regional governments, and either an independent commission or a plebiscite/referendum.
- Provide a special governance scheme for large urban areas, such as a coordinating mechanism with a legal mandate and sufficient resources to permit the integrated governance of urban areas.

#### *Political decentralization*

- Design local electoral systems that respond to the need for democratic representation, while guarding against risks of populism and political capture.

- Establish mechanisms for cooperation and coordination between local governments.
- Delineate when, why, how and for how long the central government may intervene in local government.

### *Implementation and sequencing*

- Set out core features of the system of decentralization in the constitution, including:
  - mechanisms and procedures for drawing and amending internal boundaries;
  - the principles of the electoral system at the local level;
  - the respective powers and responsibilities of each level of government;
  - the objectives of the system of decentralization; and
  - the basic framework or blueprint according to which a system of decentralization will be implemented.

Within these basic constitutional principles and guidelines, ordinary legislation can determine the details of the system of decentralization.

- Develop a comprehensive blueprint that takes into account the specific aims that decentralization is supposed to accomplish, as well as the political climate and local capacity constraints. These considerations will determine the sequencing and pace of the decentralization programme.
- Develop a centralized monitoring mechanism to evaluate and make adjustments during and after implementation of the decentralization programme.

Parts 2–4 of this report end with a summary of the options for constitutional design relevant to each of the specific issues covered. These lists of options are followed by a brief examination of the situation in a selection of countries in the MENA region. The comparison of options for constitutional design and the existing legal situation is intended to allow readers to identify areas of possible change in specific MENA countries.



# 1 Introduction

## *1.1 Decentralization in new democracies*

Decentralization is the transfer of responsibility and authority from the central government to other levels of government or administration.<sup>1</sup> It has emerged as a central issue on the constitutional agenda in the Middle East and North Africa (MENA), where discontent with strongly centralized systems of government has been expressed. One of the biggest challenges that political reformers in the MENA region face is how to address the neglect by the former regimes of areas outside the capital cities. By making local government officials accountable to local constituents, decentralization can meet some of the demands for greater attention to be paid to rural and less developed areas, and can help to remedy regional inequality by ensuring a more equal distribution of public resources, improving public service delivery and giving citizens a greater voice in how they are governed. Partly as a result of these benefits, transitional democracies usually adopt some form of decentralization as part of the process of democratization and constitution building.

Many nations have three levels of government: central, regional or provincial, and local or municipal. However, some unitary countries have no regional level of government, and instead have only a central government and a local level of government.<sup>2</sup> This report focuses on decentralized local government. Around the world, various terms are used for the local level. For example, the unit of local government in Uganda is the ‘district’,<sup>3</sup> whereas in Kenya, the relevant local government unit is the ‘county’.<sup>4</sup> Many countries use terms such as village, town, city and rural district to describe the units of local government. In this report, we use the term ‘local government’ generically, except in discussions of specific countries’ systems of local government, where we use that country’s specific term for the unit of local government.

This report explores options for the constitutional design of local government in unitary nations and the ways in which decentralization can be used to help improve public service delivery and support democratization in the MENA region. Part 1 introduces the concept of decentralization and discusses the benefits of pursuing a decentralization policy, looks at the overall global trend towards more decentralized government, and gives a brief history of local government in the MENA region. Part 2 discusses the

architecture of decentralization, focusing on: (1) internal boundaries and (2) the levels of government, including asymmetrical design options in the form of distinct systems of local government for urban and rural areas. Part 3 addresses the political aspects of decentralization, including the selection processes for local executives and legislatures, and the relationship between local governments, as well as between the central government and local government. Part 4 discusses issues of implementing, sequencing and monitoring the decentralization process.

## ***1.2 Definition of decentralization***

In a decentralized system, the central government transfers responsibility and authority to regional or local levels of government.<sup>5</sup>

### ***1.2.1 Dimensions of decentralization***

There are three dimensions of decentralization: political decentralization, administrative decentralization and fiscal decentralization. These are often interconnected, and the system of decentralized government in each nation may display a different mix of the three dimensions. A system of government can be decentralized to varying degrees along each of the three dimensions.<sup>6</sup>

#### **1.2.1.1 Political decentralization**

Through political decentralization, the central government transfers political authority to local government.<sup>7</sup> Political decentralization comprises three elements: (1) local citizens' power to elect local legislative and executive officials;<sup>8</sup> (2) relations between different local government units; and (3) relations between the central and local levels of government. Political decentralization may also include the authority of local governments to appoint local bureaucrats who are accountable to them – and thus accountable to the local electorate.<sup>9</sup>

#### **1.2.1.2 Administrative decentralization**

Administrative decentralization is the transfer of responsibility for public service delivery from the central government to locally situated administrative units, regional governments or local governments.<sup>10</sup> The extent of administrative decentralization varies and typically comprises one of three degrees, from least to most extensive:



- **Deconcentration:** Deconcentration is purely geographic. The central government shifts administrative responsibilities for certain services to local branch offices of the central government.<sup>11</sup> Deconcentration consists solely of the reassigning of authority within central government,<sup>12</sup> and as such control remains in the capital and no additional level of government is created.<sup>13</sup> Given these limitations, deconcentration should not be mistaken for true decentralization; but it can be a step towards full administrative decentralization.<sup>14</sup>
- **Delegation:** The central government transfers administrative responsibility for particular functions or services to local government or administrative units.<sup>15</sup> Unlike deconcentration, delegation does involve a second level of government.<sup>16</sup> Local governments act as the central government's agents, remaining accountable to the central government.<sup>17</sup> The central government may exercise substantial control over local governments, or may alternatively allow a fair degree of discretion, while nevertheless ensuring compliance with national policy.<sup>18</sup>
- **Full administrative decentralization:** The central government transfers decision-making authority to autonomous or semi-autonomous regional or local governments.<sup>19</sup> Local government thus assumes responsibility for the planning and management of public functions at the local level, including decision-making and policymaking authority. Full decentralization requires some degree of political decentralization,<sup>20</sup> allowing the local electorate to hold local officials accountable for their decisions and conduct, through the mechanism of local government elections.<sup>21</sup>

### 1.2.1.3 Fiscal decentralization

Fiscal decentralization is the assignment of revenues and responsibility for certain services to local governments.<sup>22</sup> Without some form of fiscal autonomy, local governments will not be able to perform their assigned roles effectively, and will be dependent on central government for resources.<sup>23</sup> There are three main areas of fiscal decentralization:

- **Expenditure:** each level of government has responsibility for providing certain services, and needs to cover the costs of those services.<sup>24</sup> Generally, expenditure responsibility should correspond to the level of government that can most effectively deliver the service.<sup>25</sup> For example, services with national application, such as defence, should be assigned to central government, with central government bearing expenditure

responsibility for defence services. By contrast, building local roads is usually left up to regional or local levels of government, with expenditure responsibility for building those roads transferred to the regional or local level of government.<sup>26</sup>


- **Revenues** are the taxes and fees collected by the different levels of government.<sup>27</sup> An independent source of revenue is necessary for the autonomy of local governments.<sup>28</sup> When determining revenue allocations, a regional or local government's revenues should be determined according to its assigned functions and expenditure responsibilities.<sup>29</sup>
- **Intergovernmental transfers** from central to local government are used to supplement the revenues that local governments raise on their own. Transfers can correct horizontal imbalances between local governments that result from unequal revenues. Transfers can also address vertical imbalances that result when central government collects most of the revenues but assigns a larger share of expenditure responsibilities to local governments.<sup>30</sup> Transfers may be either unconditional or tied to the delivery of specific public services. The latter may diminish local government autonomy.<sup>31</sup>

Fiscal decentralization is a vital component in the overall decentralization process: a poorly designed fiscal decentralization scheme has the potential to exacerbate existing inequalities among regions as a result of differences in local revenue-generating capacity. This can result in the under-provision of public services in poorer regions of the country.<sup>32</sup>

The focus of this report is on political decentralization. Administrative and fiscal decentralization are dealt with to the extent that they affect, or are relevant to, the primary discussion of political decentralization, are not be given further specific attention.

### *1.2.2 Decentralization versus federalism*

While discussions of decentralization and federalism are often intertwined, the concept of decentralization in unitary systems should be kept distinct from the concept of federalism. While federalism is a form of decentralization – especially at the level of regions, states or provinces – a federal system differs from a unitary, decentralized system in two fundamental ways. The first difference is structural: a federal system involves the decentralization of responsibility and authority to fully constituted governments at the regional or provincial level. The provinces are themselves often represented in institutions of gov-



ernment at the central level, for example in an upper chamber of the legislature. Federal nations typically have: (1) at least two levels of government whose powers are enshrined in the constitution and (2) representation of the regional level of government in the national legislature.<sup>33</sup> In unitary systems, by contrast, lower levels of government are not necessarily enshrined in the constitution, and these levels are not usually represented in the national legislature.<sup>34</sup> In addition, provinces in federal systems are generally fewer in number, larger in size, more autonomous, and with more extensive and secure powers than local governments in unitary systems.

The second variation involves the different objectives of federalism on the one hand and of decentralization within a unitary system on the other. Federalism is often – although not always – motivated by the need to provide a solution to problems of division in diverse societies where distinct groups within society (usually located in a particular geographic region of the country) may make demands for greater autonomy.<sup>35</sup> The distribution to provinces of substantial political autonomy and authority over matters of policy, alongside the representation of provincial interests in structures of central government, may allow a nation to come together under a single flag, even though there may be significant differences in identity, culture, language and political preference across different regions of the country. Federalism can manufacture national cohesion and prevent the break-up of a state, by recognizing and accommodating political differences. One consequence is that one of the primary concerns in federal systems is the legal relationship between the levels of government (i.e. the central government and provincial governments), and the distribution of competences or powers between the central and provincial governments.<sup>36</sup>

Decentralization, on the other hand, is less concerned with satisfying calls for regional autonomy. Rather, decentralization is primarily concerned with increasing the effectiveness with which services are delivered, usually at the local or municipal level. This is not to suggest that a decentralized unitary state will provide services more efficiently or effectively than a federal state, but simply to point out that the objective of decentralization is often no more than improved service delivery and political accountability at the local level, rather than the broader socio-political objectives that justify federal systems.

Finally it should be noted that decentralization exists along a spectrum. Unitary countries can adopt more or less decentralized structures, and there are variations across unitary countries in the extent to which they are decentralized. There are examples of unitary

countries that have adopted systems of decentralized government that strengthen local as well as regional or provincial governments in ways that move those countries towards federalism, even though the constitution does not recognize or establish a formally federal state structure (see, for example, the decentralized government systems in Bolivia, Chile, Colombia, Peru, the Philippines and Uruguay).<sup>37</sup> In fact, some unitary countries are, in practice, more decentralized than some formally federal countries.<sup>38</sup> Questions about the transfer of responsibility and authority to local governments are equally relevant in unitary and federal systems of government.<sup>39</sup> However, this report focuses on decentralization specifically in the context of unitary systems.

### *1.3 Three benefits of decentralization*

#### *1.3.1 Enhancing efficiency in service delivery*

A key goal of decentralization is the improvement of service delivery. Decentralization can improve service delivery by allowing local governments to tailor their services better to local needs. Local governments are likely to have better information than central government with regard to the specific service demands of their constituents.<sup>40</sup> In addition, depending on the degree of administrative and political decentralization, local governments may be able to take policy decisions without waiting for approval from central government, thus reducing the bureaucratic load on central government and increasing efficiency at the local level.<sup>41</sup> Lastly, competition between local governments will incentivize them both to keep taxes from rising too high and to provide services efficiently, in order to attract and retain investment, trade and tax-paying residents.<sup>42</sup>

The improvement of service delivery is an important goal for many countries in the MENA region. For example, in Yemen, as of 2010, only 35 per cent of the rural population had health service coverage.<sup>43</sup> These poor health services have been cited as a factor that is contributing to unrest and secessionist movements.<sup>44</sup> While decentralization has the potential to improve service delivery, data gathered from decentralized systems suggest that efficient service delivery is tied to transparent and accountable local government.<sup>45</sup>



### *1.3.2 Addressing neglect*

Decentralization can help overcome the political and economic neglect of rural and less developed areas by reducing urban bias and more equally distributing resources to rural, less developed or other marginalized areas.<sup>46</sup> This is especially relevant for the MENA region, where only a small fraction of public expenditure goes on services in rural and other areas outside the capital cities.<sup>47</sup> Similarly, in Bolivia, prior to decentralization reforms, the capitals of the country's nine administrative regions ('departments') received 93 per cent of the funds transferred from central government.<sup>48</sup> After decentralization, public investment was spread more equitably across all its local governments, with the departmental capitals' share dropping to 38 per cent.<sup>49</sup>

### *1.3.3 Promoting democratic citizenship*

Decentralization often coincides with democratization and increasing political involvement and awareness.<sup>50</sup> An element of the democratization process is developing democratic citizenship - the sense within a society that its members are both represented and included in the political process and feel a sense of ownership over, and affective attachment to, the political system, and that government is accountable to its citizens. Decentralization can help foster democratic citizenship by increasing accountability, broadening citizen participation, fragmenting central power and fostering political competition.

#### **1.3.3.1 Increasing accountability**

Citizens can hold local elected officials and bureaucrats accountable more easily than they can officials appointed by central government. In theory, citizens' proximity to local officials increases both the information that voters have and their ability to monitor local officials' performance.<sup>51</sup> However, citizens cannot hold local government accountable unless there is political competition at the local level, the citizens are politically aware and there is access to reliable information.<sup>52</sup> Local governments may also be at greater risk of being captured by local elites, who may then abuse their influence over local government to ensure that they benefit disproportionately from local resources.<sup>53</sup> A related danger is that decentralization can expand or entrench existing patronage networks.<sup>54</sup> A well designed system of decentralization, with proper accountability and oversight mechanisms, can help mitigate these risks. These options are explored further in Parts 3 and 4 of this report.

### **1.3.3.2 Broadening citizen participation**

Decentralization can also improve governance by broadening civic participation through local elections, which provide an opportunity for citizens to run for office and allow them to observe their local government in action.<sup>55</sup> Increased participation in government by formerly marginalized groups has been found to discourage the rise of secessionist movements.<sup>56</sup> Political decentralization also increases the pool of available leaders with experience of democratic government.<sup>57</sup> Finally, citizens who are accustomed to participating in local government are less likely to support a return to authoritarian rule, since authoritarian regimes tend not to establish or maintain decentralized local government. The broader participation in government that decentralized local government facilitates gives citizens a direct stake in the success of local government.<sup>58</sup>

### **1.3.3.3 Fragmenting central power**


Of particular importance for countries transitioning from authoritarianism,<sup>59</sup> including many in the MENA region, decentralization fragments political power.<sup>60</sup> In this respect, decentralization is one of a menu of constitutional options such as the separation of powers, and an independent judiciary, that operate and checks and balances against the concentration of power in a single political leader or party, and hence reduces the risk of the abuse of public power.<sup>61</sup>

### **1.3.3.4 Fostering political competition**

Political decentralization can also foster political competition by allowing for the emergence at the local level of new political parties that may eventually be able to compete nationally.<sup>62</sup> For example, in Bolivia decentralization led to the creation of two indigenous political parties, the leader of one of which subsequently became president.<sup>63</sup> Strengthening local governments increases the appeal and importance of local elections, thus lowering the stakes of national elections and discouraging the use of violence to gain political power.

### **1.3.3.5 Preserving national unity and stability**

Decentralization has been used as a means of preserving unity in post-conflict countries, such as Kosovo and Cambodia.<sup>64</sup> The creation of local governments across ethnic lines



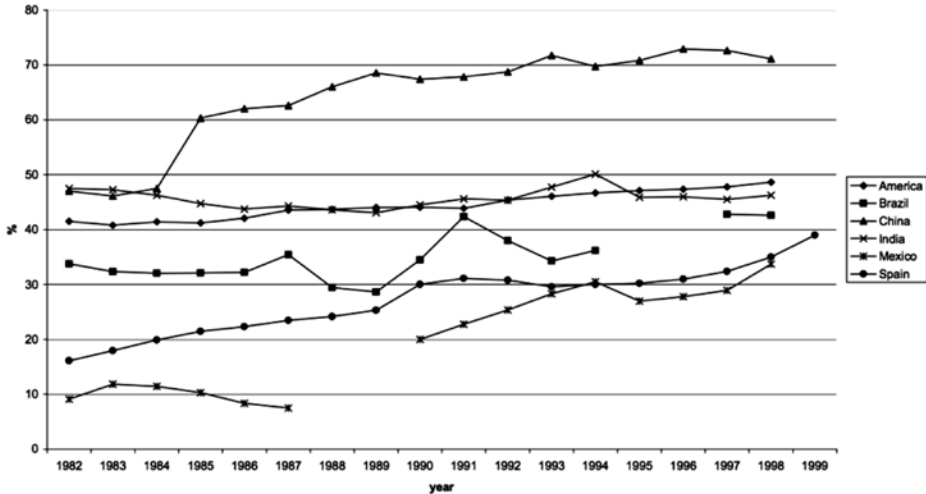
in Kosovo has helped to discourage partition by bringing power closer to citizens and providing an institutional framework in which Kosovar Serbs and Albanians can work together.<sup>65</sup> Decentralization is able to help preserve national stability through the same mechanisms that promote democratic citizenship: namely, broadening citizenship participation and fragmenting central power. As is discussed in section 1.5.3, this aspect of decentralization is especially relevant in Libya and Yemen.

#### *1.4 The global trend towards decentralization*

There is a global trend towards increased decentralization of functional responsibilities from central government to local and regional government. One of the strongest indicators of this trend is the increase in the ratio of local and/or regional expenditures relative to total government expenditures. While it may seem that this is a measure of fiscal decentralization alone, local or regional governments expend fiscal resources only on functions for which they are responsible, so that a higher ratio of local and/or regional expenditure to a country's total expenditure indicates greater administrative decentralization and generally greater local and regional autonomy.<sup>66</sup>

In addition, the measure of local or regional expenditure as a ratio of total expenditure is not a measure of local or regional governments' authority to levy taxes; it is not a measure of fiscal decentralization as such, but a focused measure of how much is spent by local and regional government on discharging the obligations of government, and therefore the extent of local and regional responsibility for the functions of government. Between 1982 and 1999, there was an average increase in decentralized or federal countries of around 15 per cent in the ratio of local and/or regional government spending to total expenditure, thus indicating a movement towards increased decentralization.<sup>67</sup> This trend was particularly pronounced among developing countries, including such large developing countries as Mexico, Brazil, Russia and China.<sup>68</sup> Figure 1.1 captures the increase in local and/or regional government spending as a percentage of total government spending between 1982 and 1999.

**Figure 1.1: Ratio of local and regional/provincial expenditure to total government expenditure (percentage)<sup>69</sup>**



Note: includes local government expenditure (as well as state or provincial expenditure) in the cases of Brazil, Mexico, Spain and the USA.


Source: IMF government finance statistics, various years.

The ratio of local spending to total spending is not a perfect metric, however, as it does not capture the distinction between fiscal decentralization and political or administrative decentralization. Brazil and China, for example, display an increase in the ratio of local and/or regional expenditure to total government expenditure, although there was no corresponding increase in decentralized administrative authority. Conversely, India displays no increase in the ratio of local and/or regional expenditure to total expenditure, even though India transferred administrative and political authority from central government to local and regional (state) governments.

#### *1.4.1 Decentralization frameworks in constitutions*

The legal basis for decentralization in a unitary country can be found in its constitution, in its statutes or in both.<sup>70</sup> Although it is more common to specify the powers of regional and local governments in the constitution of a federal country, the constitution of a unitary country often provides a basis for decentralization that goes beyond a statement of principle. Since constitutions are harder to change than ordinary statutes, describing the





scope and authority of local government in the constitution insulates local governments against sudden changes that could limit or remove their authority.<sup>71</sup> However, constitutions lack flexibility precisely because they are difficult to change. As a result, some states have opted to enshrine only the general principles of decentralization in the constitution, while they leave the specifics to subsequent legislation.<sup>72</sup> While the current trend today is to include more detail in the constitution, countries delineate the various aspects of decentralization in their constitutions with varying levels of specificity.<sup>73</sup> These issues are explored in more depth in sections 2.1.2 and 4.1.2.

### *1.4.2 Importance of context*

While the decentralization of service delivery often has many benefits, there is no uniform standard of decentralization that is applicable to all countries.<sup>74</sup> The impact of a decentralization programme will depend on a number of factors – particularly the specific country’s history, its political will, and its administrative and financial systems.<sup>75</sup> Different conditions prevail and, accordingly, different modes of implementation are required for decentralization efforts to succeed.

These contextual factors fall into three broad categories: capacity to finance, capacity to deliver and the inherent risks that accompany governmental sub-division. Two means to account for these variances are asymmetrical decentralization (in which a different extent of responsibility or a different dimension of decentralized power is transferred to equivalent levels of government) and multi-pace decentralization, (in which decentralization occurs at different speeds or at different times across different local government units). Asymmetrical decentralization is discussed in section 2.2, while multi-pace decentralization is dealt with in section 4.2.3.


**Capacity to finance** refers to the ability of a local government to pay for its new service delivery responsibilities. Disparities in the tax base among different jurisdictions must be taken into account when determining what services local government can provide. Typically, the tax base and financial capacity will increase as the country develops. However, without financial assistance, historically neglected and impoverished areas will tend to remain underdeveloped.<sup>76</sup> While it is tempting to address this inequality through revenue-sharing programmes that involve direct transfers from central government to the areas in need, transfers may conceal local inefficiencies and budgetary shortfalls,

causing sub-national governments to become dependent on the centre and masking the positive or negative effects of decentralization on local policies. This in turn reduces the accountability of the tax authorities, and increases the likelihood that local government authorities will be captured by central government actors.<sup>77</sup>

**Capacity to deliver** accounts for the non-financial resources that are required to deliver services.<sup>78</sup> It includes two elements: well-designed and well-operated institutions to deliver services,<sup>79</sup> and the availability of expert personnel and other human resources. If no qualified personnel for a particular service reside in a local government unit, that local government will have difficulty in providing the service. Furthermore, even if expert personnel develop good policies, institutional frameworks for executing those policies are still necessary. There is often a link between financial resources and non-financial resources. A local government with greater financial resources will be able to hire more and better-qualified personnel, even attracting personnel from outside the jurisdiction.

A further consideration is a local government's capacity to outsource or privatize the delivery of services. This depends, first of all, on the necessary financial resources being available to a local government to hire or contract with private entities capable of delivering the services. This is a particularly attractive option for local governments that have financial resources but lack capacity or expert personnel.

A second requirement for effective privatization of service delivery is the local government's capacity to procure reliable private service delivery. This involves three steps. The first is to invite tenders or bids from private firms that hope to win a contract to deliver services. The local government must be able to identify clearly which services the private firm must be able to supply. Second, the local government must have in place clear rules for the selection of the winning contractor: the criteria for selection and how those criteria are to be weighted by the local government in comparing competing tenders or bids must be clear. Third, the local government must have the legal expertise to draft and negotiate contracts with the winning private firm to ensure both that the requisite services will be delivered and that the local government's financial interests are protected. The local government must be able to protect itself from overpriced service delivery by private firms, while making sure that services are delivered to its constituents.



**Government sub-division** that results from decentralization carries with it a number of inherent risks:

- Small populations and boundary manipulation may inflame existing social and economic divisions and result in **political capture** or **conflict**.<sup>80</sup> Political capture occurs when individuals or groups develop excessive influence over government institutions through wealth or power. Existing social structures, like tribal affiliations or criminal networks, or a high degree of income inequality can leave local governments vulnerable to capture.<sup>81</sup> Not only does this undermine democracy, but it can also result in a funnelling of services and resources to certain communities to the detriment of others.<sup>82</sup> Similarly, conflict may arise between distinct, historically antagonistic populations of relatively equal size and strength if decentralization forces these groups into power-sharing or compromise situations in a single local government structure. Another possibility is that a group may become a minority group in a particular local government jurisdiction, even though it is not necessarily a minority group in the broader national society. This may breed resentment in the new minority group and lead to opposition to decentralized structures of government.
- **The over-proliferation of local government units** can produce inefficiencies through the loss of economies of scale.<sup>83</sup> Smaller units can lead to bureaucratic duplication, in which multiple entities or people fulfil the same function, as well as to the dilution of bargaining power, so that local governments are no longer large enough to effectively negotiate optimal rates in procurement. Excessive competition between local governments may also produce a race to the bottom, whereby local governments compete to eliminate regulations or lower taxes, or else pursue other potentially deleterious policies in order to attract residents and business.

## *1.5 Decentralization in the MENA region*

### *1.5.1 Historical basis for centralized state structures in the MENA region*

Historically, almost all nations in the MENA region developed highly centralized state structures. These structures usually drew on the colonial systems of government that preceded independence. Both the Ottoman Empire and the European powers, particularly the French, employed centralized administrative and taxation systems both at home and in their colonies and territories.<sup>84</sup> In the post-colonial period, a growing pan-Arab


cultural nationalism and support for popular anti-imperialist, authoritarian rulers (such as Abdel Nasser in Egypt or the Baath party in Syria and Iraq) allowed governments in the newly independent countries to centralize power largely without opposition or objection.<sup>85</sup> Political elites in the region have continually exploited nationalism to keep a hold on power and to resist calls for decentralization.<sup>86</sup>

Throughout the MENA region, and particularly in the capitals, decentralization is seen as a threat to national unity.<sup>87</sup> In nations with sizeable minority populations, such as Iraq, Bahrain, Syria or Lebanon, and in others with strong Islamist movements, like Egypt and Saudi Arabia, central governments fear that increased local autonomy may trigger further sectarian and religious division.<sup>88</sup> Autocrats throughout the region have successfully relied on the military or the security services to maintain territorial integrity and preserve centralized control. Moreover, governing in the region has traditionally been based on personal – rather than institutional – authority.<sup>89</sup> Voters support candidates who, they believe, will remain in the central government's good graces.<sup>90</sup> For example, the retention of political and economic power in the upper levels of government in Egypt allowed national-level bureaucrats to reward friends and punish enemies, including lower-level officials.<sup>91</sup>

### *1.5.2 Evolution of local government structures in the MENA region*

Decentralization in the MENA region has been primarily cosmetic.<sup>92</sup> Public administration is highly centralized, with planning and decision-making falling within the exclusive purview of central government. Local services are provided either through structures of deconcentrated government, with agents of central government operating at the local level, or through centrally appointed local executives that have been delegated to fulfil government functions under the supervision of central government.<sup>93</sup> In Jordan, the central government initially delegated authority for service delivery to local bureaucrats hired at the district level, while regional-level governors, supervised by the Ministry of the Interior, retained policymaking authority.<sup>94</sup> However, as a result of ongoing unrest and instability, the central government in Jordan has actually recentralized, and has 'confiscated' even local authority with regard to the delivery of basic services.<sup>95</sup>

The recent trend of holding local council elections should not be mistaken for meaningful political decentralization. In the past decade, Bahrain, Jordan, Oman and Saudi



Arabia have all held local government council elections.<sup>96</sup> Despite these elections, central governments in the region have continued to call the shots. In Bahrain, Oman and Saudi Arabia, local government councils have not had any authority delegated to them and have no control over local executive officials or bureaucrats: the councils make recommendations to the central government, which then decides whether or not to take action.<sup>97</sup> Local people's councils were elected in Egypt under former Egyptian President Hosni Mubarak below, but they had no authority over the local executive councils, which were composed of representatives of central government ministries and departments.<sup>98</sup>

Fiscally, the local share of public expenditure in 2008 was around 5 per cent of total government expenditure in the MENA region, compared to roughly 17–20 per cent in the Organisation for Economic Co-operation and Development (OECD) at the time.<sup>99</sup> Fiscal management is highly centralized: in Jordan and Lebanon, for example, the central government has sole authority to set the tax rate and to collect the taxes.<sup>100</sup> In Jordan, Saudi Arabia and Bahrain, local government councils can propose budgets, but do not have the authority to approve them.<sup>101</sup> This lack of fiscal autonomy, combined with a lack of political and administrative autonomy, reinforces local authorities' dependence on central government.

Iraq further illustrates the challenge in strengthening local government. In the aftermath of the US-led invasion and subsequent occupation of Iraq, in 2005 the Iraqi people approved a new constitution. The 2005 Constitution expressly carves out space for local governments in the parts of the country outside the region of Kurdistan: the federal system in Iraq is made up of a 'decentralized capital, regions, and governorates, as well as local administrations'.<sup>102</sup> On the other hand, the Constitution does not specify the powers of local government below the governorate level: it leaves those details for future legislation.<sup>103</sup> In 2008, the Iraqi parliament passed Law 21 – later amended in 2010 and again in 2013 – which sets out procedures for establishing elected councils at the local government level.<sup>104</sup> Despite the existence of elected local government councils, the satellite offices of the central government retain authority over public service delivery.<sup>105</sup>

### *1.5.3 The Arab Spring and decentralization*


The Arab Spring presents an opportunity for nations in the MENA region to revisit the question of decentralization. The new constitutions and interim legislation in Tunisia,

Egypt and Libya all address the issue of decentralization and local government to some degree. However, while provisions in the 2014 Tunisian Constitution and the 2014 Egyptian Constitution express a policy preference for decentralization and provide a structural outline of local government, the more specific – and contentious – details of the system of decentralization have been left to the legislature. The lack of detailed provisions in either Constitution will mean a greater degree of judicial interpretation is required.<sup>106</sup> The transitional government in Yemen and the governments in Jordan and Morocco also face calls to decentralize and expand local government, and are currently wrestling with these issues.

### 1.5.3.1 Egypt

Egypt has had a long history of highly centralized government. Like his predecessors, Mubarak consolidated power at the central government level. The central government controlled all aspects of local administration through its branch offices; executive heads of local governments were appointed by central government and had limited responsibilities delegated to them to carry out national government policies.<sup>107</sup> These centralized policies, which tended to favour the well-connected populations in Cairo and Alexandria, resulted in increasingly uneven economic growth and development between the urban and the rural areas.<sup>108</sup> Indeed, Egyptian members of parliament served as patrons, providing their constituents with material resources from Cairo in exchange for political support.<sup>109</sup> Despite repeated gestures towards granting local councils a broader role in the planning and monitoring of service delivery,<sup>110</sup> the Mubarak regime never followed through with the necessary reforms. The regime may have avoided robust decentralization in part out of fear that it would provide a platform for its political opponents, notably the Muslim Brotherhood.

Egypt's 2014 Constitution – its third constitution in four years – provides few details with regard to local government. Article 175 embraces a policy of decentralization, dividing Egypt into regional units – governorates – that are then divided into local government units: cities and villages.<sup>111</sup> All of these units possess 'legal personality' – presumably giving them access to the court for redress and the ability to contract with private parties, for example for service delivery.<sup>112</sup> The Constitution allows for the election of local government councils,<sup>113</sup> but states that 'the law regulates the manner in which governors and heads of other local administrative units are selected, and defines their mandate.'<sup>114</sup>



Furthermore, the 2014 Constitution does not provide any indication of the functional areas or subject matter for which governors or local councils will be responsible, and provides that subsequent legislation will determine their mandate.<sup>115</sup> The 2014 Constitution contains even less detail in this regard than the 2012 Constitution, which provided that local councils had the authority to establish and direct local facilities and ‘to conduct economic, social, health-related, and other activities in accordance with the law.’<sup>116</sup> Additionally, while earlier drafts of the 2012 Constitution called for a financial transfer mechanism between provinces to remedy economic disparities, this provision was taken out of the 2012 Constitution and remains absent from the 2014 Constitution.<sup>117</sup>

Under the 2014 Constitution, local councils have the authority to withdraw confidence from the executive heads of local units, ‘in the manner organized by law.’<sup>118</sup> This creates some degree of local accountability, but the central government retains the authority to interfere in local council decisions, in order to prevent a local council from ‘causing damage to the public interest or the interests of other local councils.’<sup>119</sup> In other words, although authority has ostensibly been given to local councils to carry out a variety of administrative and executive functions, central government retains a veto. The 2014 Constitution provides that ‘The state shall ensure administrative, financial, and economic decentralization, and that this will be regulated by law.’<sup>120</sup> This provision enables the central legislature to determine the degree of administrative and fiscal autonomy that local governments will enjoy. The 2014 Constitution goes on to reinforce this position with the following provision:

The resources of local units shall include, in addition to the resources allocated to them by the State, taxes and duties of a local nature, whether primary or auxiliary. The same rules and procedures for the collection of public funds by the State shall apply to collection of such taxes and duties. The foregoing shall be regulated by law.<sup>121</sup>

### **1.5.3.2 Tunisia**

Under former President Ben Ali, the Tunisian central government grew more authoritarian and increasingly disconnected from the political and socioeconomic realities outside Tunis. The levels of government under Ben Ali were the same as they are today. Tunisia is divided into regions, which are further sub-divided into districts, and these districts are divided into ‘municipalities’ at the local level.<sup>122</sup> Municipal councils were directly elected


and the council elected a mayor from within its ranks.<sup>123</sup> In many rural municipalities under Ben Ali, the municipal councils had few resources and were so constrained by central regulations that they were incapable of effective or meaningful local governance.<sup>124</sup> The municipal councils' function was consultative: they lacked sufficient resources and the authority to make decisions without approval from the appointed governor or the central government.<sup>125</sup> As a result, the municipal councils and municipal bureaucrats were not accountable to the local population: their authority was never carefully delineated and depended in large part on the good will of the central authorities.<sup>126</sup> This sense of powerlessness and alienation from the central government among the Tunisian population contributed to dissatisfaction with Ben Ali's government, especially in the rural areas far away from the seat of centralized power in the capital.<sup>127</sup>

On 26 January 2014, Tunisia's Constituent Assembly voted 200 to 16 to approve the new Constitution.<sup>128</sup> The 2014 Constitution acknowledges the importance of decentralization, but offers few specifics regarding the shape of local government. Article 14 states that national government is obliged to 'strengthen decentralization and to apply it throughout the country', while also maintaining national unity.<sup>129</sup> Article 131 provides the basic structure of the local governments – 'local authorities comprised of municipalities, districts, and regions' – but leaves the determination of the boundaries of local authorities and the geographic relationships between them to ordinary law. Article 133 provides that municipal and regional councils will be directly elected, and that district councils will be elected by members of the municipal and regional councils.<sup>130</sup> While this preserves a baseline of local democracy, article 135 of the Constitution makes it clear that local authorities will exercise only those powers that are transferred to them or created by central government. Article 135 states further that central government shall provide additional resources to local authorities commensurate with the responsibilities they bear. These provisions ensure that the extent of fiscal and administrative autonomy is largely left to central government to determine by law.

### **1.5.3.3 Libya**

Libya started off as a federal state in 1951, but a 1963 constitutional amendment abandoned federalism in favour of unitary government.<sup>131</sup> On taking power in 1969, Muammar Gaddafi dismantled local and regional government institutions and used divide-and-rule tactics within the military and security services to consolidate his own





power.<sup>132</sup> Under Gaddafi, the dominance of the Tripolitania region led to decades of bubbling resentment among Libyans living in the eastern and southern regions of Cyrenaica and Fezzan.<sup>133</sup> For example, Libyans living in the Cyrenaican city of Benghazi were required to spend a week in Tripoli merely to obtain a commercial licence.<sup>134</sup> It was in Benghazi that the rebellion against Gaddafi's rule began. When Tripoli fell in August 2011, sectarian tensions kept at bay under Gaddafi re-emerged.<sup>135</sup>

In 2011, the transitional government passed a law on local government, regulating local government councils across the country.<sup>136</sup> In 2012, the General National Congress passed the Local Administration Law, which divides local government into four levels: economic regions, provinces, municipalities and localities.<sup>137</sup> However, under this law, the Ministry of Local Government is responsible for overseeing the work of the local councils and is also their only source of revenue.<sup>138</sup> The councils have the power to make independent decisions on matters such as security, administration, the local economy, urban development and planning, but their decisions are subject to national approval.<sup>139</sup> The Constituent Assembly, currently drafting a new Constitution for Libya, is not bound by the provisions of the Local Administration Law, and is free to establish a system of decentralization that may differ from that established by the Local Administration Law.<sup>140</sup>

#### **1.5.3.4 Yemen**

Yemen's 1991 Constitution, enacted as part of an agreement unifying North Yemen and South Yemen, established a unitary republic that was highly centralized.<sup>141</sup> Yemen is currently divided into governorates at the regional level and districts at the local level.<sup>142</sup> These have elected councils, but the effective power remains with officials appointed by the central government. Former President Ali Abdullah Saleh's regime exerted authority over the country in part through a vast informal patronage network that marginalized areas outside the capital Sana'a.<sup>143</sup> These policies were also a major factor in stunting Yemen's growth and development: poverty is concentrated in rural areas, which account for 83 per cent of Yemen's poor and 87 per cent of its food-deprived citizens.<sup>144</sup> Since Saleh stepped down in 2011, executive power in Yemen has fragmented, and the central government's authority over much of the country has contracted.<sup>145</sup> Discontent in southern Yemen and throughout much of the rural hinterland contributed to Saleh's resignation.<sup>146</sup> These constituencies' main demands included equal access to government services and to employment opportunities, meaningful local governance, and a greater share of their

natural resources.<sup>147</sup> In January 2014, political factions agreed to implement a new federal framework, in response to demands for more autonomy from political groups in the south of the country.<sup>148</sup> Although the debate in Yemen focuses primarily on federalism, questions concerning decentralization and local government will also continue to play a central role, as negotiations proceed over the shape of Yemen's new Constitution.

### 1.5.3.5 Jordan

Decentralization and local democracy are also increasingly becoming an issue in Jordan. The country is divided into 12 governorates at the regional level, with centrally appointed governors and regional councils. At the local level it is divided into municipalities, with elected mayors and legislative municipal councils.<sup>149</sup> The Constitution of Jordan, 1952 (revised 2011), does not directly regulate or organize local government. Instead, article 121 provides only that 'Municipal affairs and local councils shall be administered by municipal or local councils in accordance with special laws.' The arrangements for political, administrative and fiscal decentralization are thus largely within the control of the central legislature.

Since first holding municipal council elections in 1999, political decentralization has increased but administrative decentralization has not occurred. Although now Jordanians can elect mayors along with municipal council members, municipalities have still not been given a role in policymaking: the Ministry of the Interior retains the power to make policy.<sup>150</sup> Municipalities do not have the ability to raise direct revenues, and as a result they face annual deficits and accumulated debt.<sup>151</sup>

Since 2011, activists and political groups have organized regular protests, demanding change to the country's political and economic landscape. Activists, political parties and opposition movements have called for an end to corruption, greater empowerment of elected officials, and political competition.<sup>152</sup> In response, King Abdullah II has replaced appointed governors, revised laws governing public gatherings and political activity, and amended the Constitution.

In January 2013, the country held parliamentary elections under a revised electoral law and overseen by an independent election commission.<sup>153</sup> Despite these reforms, calls persist for increased democracy at the national and local levels, particularly among Jordanians of Palestinian origin and other marginalized groups.<sup>154</sup>



### 1.5.3.6 Morocco

Despite some concessions to local government in its 2011 Constitution, the Moroccan government has still not adequately addressed the issue of decentralization. While the new Constitution establishes a framework for decentralization, it relies on future organic law to provide the details, including the number of councils, the electoral system, division of powers and other key components.<sup>155</sup> Under the Constitution, Morocco is divided into three levels of government below the central government: the regional level; the prefectural and provincial level; and the commune level.<sup>156</sup> Each level is headed by an executive officer appointed by the central government, and there is a directly elected council which plays a legislative and executive function in developing and monitoring regional development programmes.<sup>157</sup> These various levels are given their own competences, and the state has the power to transfer competences to them under the Constitution, though the competences are not spelled out in detail.<sup>158</sup> The balance of power under Morocco's 2011 Constitution remains heavily tilted in favour of the centrally appointed executive officials, at the expense of the locally elected councils.<sup>159</sup>

### 1.5.3.7 Iraq

Although Iraq's 2005 Constitution is not the product of the Arab Spring, its political power struggles are affected by many of the same dynamics that have been driving events in much of the rest of the region since 2011. Like much of the rest of the region, Iraq has a troubled history of centralization. For much of its existence since the 1920s, political and economic power was concentrated not only in Baghdad, but also in the hands of a single individual, leading to great disparities in terms of service delivery and standards of living between the capital and the rest of the country, many of which survive to this day.<sup>160</sup>

Until the 2003 war, Iraq formally had only two main levels of government: the central government and provincial government. As an exception to that rule, the Kurdistan Region was formally established pursuant to a 1974 autonomy law; however, conflict and a lack of genuine political will in the capital to decentralize power meant that the Region did not come into existence until 1991, following the Gulf War, when the Region became an almost entirely self-governing entity with practically no formal links to the capital. Following the 2003 war, the Region was formally reintegrated into the Iraqi state, and the 2005 Constitution ensured that the Region would maintain virtually all the autonomy

it had enjoyed prior to 2003. It was also decided that the Kurdistan Region should not be an exception, and that the remainder of Iraq's provinces should be entitled either to form regions of their own, or to merge and form larger regions. The 2005 Constitution is so permissive on region formation that it is theoretically even possible for two provinces that do not share a common border to merge and form a region of their own. The 2005 Constitution also deliberately blurred the lines between regions and provinces, sometimes suggesting (without making it absolutely clear) that provinces should enjoy the same amount of autonomy and authority as regions. Although no provinces outside the Kurdistan Region have yet been able to form regions, this is something that remains theoretically possible.

Pursuant to the 2005 Constitution, a 2008 decentralization law was passed. The law was heavily criticized by commentators and local politicians throughout the country, as it goes against the 2005 Constitution by heavily limiting the provinces' authority. From 2008 to 2013, frustration ran high across the country, as poverty remained stubbornly stagnant and service delivery barely improved, despite exponential increases in the state's annual budget. In particular, Basra province (in which much of the country's oil wealth is located) suffered perennial problems with its drinking water supply and a near total absence of garbage disposal. These difficulties, coupled with ongoing concerns relating to security, led in 2013 to the passage of an amendment to the 2008 law. The amended law granted significantly more authority to the provinces in a large number of areas, but (at the time of writing) has yet to be implemented as a result of ongoing legal challenges and the challenging security environment across the country.



## 2 Architecture of Decentralization: Internal Boundaries and Levels of Government

In this report, the term ‘architecture of decentralization’ refers to: (1) internal geographic boundaries between local government units, and the number and size of local governments; and (2) the structure of the system of decentralized government, focusing on whether local government units are symmetrical or asymmetrical. The architecture of decentralized government can influence the extent to which decentralization achieves its goals. Section 2.1 discusses both substantive and procedural considerations relevant to the initial drawing of local government geographic boundaries (2.1.1), and the subsequent alteration of those boundaries (2.1.2). Section 2.2 focuses on asymmetrical decentralization schemes in the form of distinct regimes for rural and urban areas. Section 2.3 summarizes the key considerations surrounding the structure of decentralization and discusses their relevance to the MENA region.

### *2.1 Internal boundaries*

#### *2.1.1 Initial drawing of local government geographic boundaries*

The initial drawing of internal boundaries is context specific. There are two main aspects: substantive considerations for drawing boundaries and the process used to delineate those boundaries.

##### **2.1.1.1 Substantive considerations for drawing boundaries**


There are numerous considerations relevant to a nation’s demarcation of boundaries between local governments. The **criteria** that may be used to help determine the geographic boundaries of local governments can be broken up into five categories:

- **Representation and democracy:** This entails taking account of the population of local government areas when drawing internal boundaries. A greater number of local governments will help to promote democracy through more effective representation by locally elected officials.<sup>161</sup>
- **Efficiency and economic concerns:** Capacity, geography, development potential, resources and economic viability fall under the umbrella of efficiency and economic

concerns.<sup>162</sup> These criteria are important to ensure that local governments are economically sustainable, that is, that they will have a tax base large enough to remain fiscally viable and to provide services.<sup>163</sup> Fewer, larger, local governments can lead to more efficient service delivery through economies of scale and easier coordination.<sup>164</sup> In contrast, smaller local governments will use a greater proportion of their resources on administrative costs,<sup>165</sup> rather than on public services.<sup>166</sup>

- **Identity:** Boundaries can be drawn on the basis of factors such as cultural, ethnic, religious, linguistic and historical considerations.<sup>167</sup> Reliance on these issues will tend to ensure that borders track naturally existing social and cultural divisions between groups of people within a society, by maintaining a relationship between geographic boundaries of local governments and the structure of society.<sup>168</sup> However, there are also strong arguments against drawing borders on the basis of social and cultural differences: these borders may exacerbate ethnic or regional tensions by fostering the perception of ‘insiders’ and ‘outsiders’, depending on who lives within the relevant internal boundaries.<sup>169</sup>
- **Pre-existing boundaries:** Local government boundaries may be determined on the basis of pre-existing administrative units.<sup>170</sup>
- **Broader reforms:** Borders of local governments may be drawn to reflect broader reforms made in the wake of recent conflict or crisis.<sup>171</sup>

If a nation is drawing its borders afresh, without the influence of broader agreements or political-geographic history, it should use some mix of representation, efficiency and identity criteria in creating local government units. The objective should be to ensure that local government units are representative, economically viable and acceptable to the population.<sup>172</sup> Some countries choose to enshrine substantive criteria for the initial exercise of internal boundary drawing either in the constitution or in legislation. For example, the Namibian Constitution, 1990, states that the criteria for internal boundaries should be ‘geographical only, without any reference to the race, colour or ethnic origin of the inhabitants of such areas’,<sup>173</sup> illustrating how criteria may be used to help address former injustices, such as the history of white-dominated rule in Namibia. Similarly, the Indonesian Law on Regional Government (Law No. 32 of 2004) provides that the establishment of regions within Indonesia by law must consider population (representation), economic capacity and size (efficiency), and sociocultural and socio-political characteristics (identity).<sup>174</sup>



While there is no exact formula to take into account when determining local government geographic boundaries, the criteria chosen should align with the goals that the designers of the decentralization process hope to achieve.<sup>175</sup> Thus, when a nation is pursuing decentralization reform primarily to improve efficiency in service delivery, considerations of capacity, resources, geography and demography will be particularly important.<sup>176</sup>

By contrast, local government boundaries in newly democratized or transitional countries may reflect existing internal boundaries. This approach provides stability (since the population is already familiar with existing internal boundaries), allows for the use of existing infrastructure, and is often the most convenient and least controversial route.<sup>177</sup> Kenya's experience is instructive. Under the 2010 Constitution of Kenya, the local government ('county') authorities established by the Local Government Act of 1963 and in existence immediately prior to the commencement of the Constitution would continue to exist.<sup>178</sup> In 1992 the county boundaries had been redrawn in the wake of the passage of the Districts and Provinces Act 5 of 1992, increasing the number of counties from the 41 established by a British colonial commission in 1963 to 47 – but largely following those original boundaries. However, between 2007 and 2009, the number of counties increased rapidly to over 250, with internal boundaries changing accordingly. This took place by executive decree and without legislative involvement. In 2009, the High Court found that all such boundary changes made after the 1992 statutory amendments were unlawful, since the 1963 Constitution of Kenya required the involvement of the Interim Independent Boundaries Review Commission and Parliament.<sup>179</sup> The ruling effectively restored the 1992 map of 47 counties, ensuring that by the time the 2010 Constitution came into effect, the 47 counties corresponding largely to the colonial map were 'the existing' local authorities that would continue to exist. Article 174 of the 2010 Constitution provides that the objectives of devolved government are, among others, to promote the democratic and accountable exercise of power, to recognize diversity, enhance the people's participation in government decision-making and increase powers of self-governance, to recognize the rights of communities to manage their own affairs, and to protect and promote the rights and interests of minorities and marginalized communities.

However, retaining pre-existing administrative boundaries, rather than drawing new boundaries on the basis of these objectives, may foster the ethnic politics of the colonial era,<sup>180</sup> and may emphasize imbalances between the counties in terms of their resource endowments, geographic size and population.<sup>181</sup> These imbalances and ethnic tensions may

lead to friction between counties, and may justify calls for changes to the old, colonial-era boundaries. In order to take account of this possibility, Kenya's 2010 Constitution provides in article 188 for the alteration of local government boundaries (see section 2.1.2).


Linked to the criteria used to draw internal boundaries is the specification of minimum requirements for local governments. Minimum requirements translate criteria into precise and measureable conditions: for example, a specific minimum population or territory size. Minimum requirements are usually set out in legislation and may include a requirement that there is sufficient capacity to ensure consistency in, for example, the levels and quality of service and efficiency across local governments.<sup>182</sup> For example, the Philippines Local Government Code of 1991 requires that new local governments should have an income sufficient to provide essential government facilities and services, and that the land area should be contiguous and adequate to provide basic services and facilities.<sup>183</sup> In order to have an impact, however, minimum requirements must be enforced. A number of South American countries have minimum requirements for local governments, but many local governments, for instance in Colombia and Peru, have been established without meeting these requirements, resulting in local government with income and infrastructure insufficient to allow effective or adequate service delivery.<sup>184</sup>

### **2.1.1.2 Procedures for initially drawing boundaries**

In addition to determining the substantive criteria on which local government boundaries will be based, a country wishing to decentralize may choose to set out a procedure for the drawing of new boundaries. In Kenya, one reason that existing boundaries were retained in the 2010 Constitution was that the Committee of Experts on Constitutional Review, the Parliamentary Select Committee and the National Assembly could not agree on a mechanism for determining the number of counties or for delineating county boundaries. The 2010 Constitution thus retained the existing boundaries, which – subsequent to a 2009 court ruling that boundary changes made by executive decree between 1992 and 2007 were unconstitutional (see above) – meant the boundaries as determined by parliament in 1992 remained unchanged.<sup>185</sup>

Namibia provides an example of a distinct and constitutionally enshrined process to determine new regional boundaries in the first instance. Namibia's 1990 Constitution provides in article 103(1) that regional boundaries will be established by the Delimitation





Commission, in accordance with the substantive criteria set out in article 102 (and discussed in section 2.1.1.1). Similarly, after apartheid, South Africa sought to redraw its local government boundaries in a way that was not based on race. To this end, in 1998 it created the Municipal Demarcation Board (MDB) by legislation.<sup>186</sup> The legislation itself sets out the process for boundary determination. First, the MDB notifies the public in the relevant area using newspapers and radio, and solicits their views on the matter. It then may decide either to hold a public meeting or to conduct an investigation (or both).<sup>187</sup> Finally, when the MDB makes its determination, notification is published in the *Provincial Gazette* and objections may be submitted.<sup>188</sup> However, the MDB faces complaints that it lacks transparency, shirks accountability, and has too few or under-skilled technical professionals to address complex land matters, including land sub-divisions and land management.<sup>189</sup>

Despite the problems with South Africa's MDB, an independent commission or demarcation board is, in general, an especially useful mechanism where a nation wishes to establish new internal boundaries that mark a clear departure from existing boundaries.

### *2.1.2 Subsequent alteration of local government geographic boundaries*

Given the likelihood that a country will experience changes in population density and increased urbanization, a decentralized nation must have a method for modifying local government boundaries, establishing new ones or merging existing ones. A flexible mechanism for shifting internal boundaries allows for adaptation to changing realities and ensures the preservation of effective local governments.<sup>190</sup>

#### **2.1.2.1 Substantive criteria for altering initial boundaries**

Some nations list the criteria that should be taken into account when altering local government boundaries in their constitutions or in local government legislation. As with the criteria for the initial drawing of boundaries, these criteria ideally should be set out in the constitution, so that they cannot easily be changed to satisfy political whim. Nonetheless, a number of countries rely on legislation to establish such criteria. Article 179(4) of Uganda's 1995 Constitution provides that 'the means of communication, geographical features, density of population, economic viability and the wishes of the people concerned' should be considered before altering existing boundaries. Similarly, article 188(2) of the 2010 Constitution of Kenya states that internal borders may be changed to take into account

‘population density and demographic trends; physical and human infrastructure; historical and cultural ties; the cost of administration; the views of the communities affected; the objects of devolution of government; and geographical features’. The Philippines’ Local Government Code of 1991 states that a local government unit cannot be divided or merged if that would reduce the income, population or land area to less than the requirements for the creation of a new unit. It further provides that the income classification of the unit within the new boundaries cannot fall below the income classification within the old boundaries.<sup>191</sup>

In contrast, the guidelines in Tanzania’s Local Government Act of 1982 are much vaguer, allowing the boundaries of a district council to be altered when it is deemed ‘necessary or expedient for the promotion of an efficient and effective system of local government’.<sup>192</sup> Given the many problems that may result from the creation of too many local governments, it is especially important to have clear, concrete criteria in place, preferably enshrined in a constitution, but at least set out in legislation, and to ensure that such criteria are enforced.

### 2.1.2.2 Procedures for altering initial boundaries

There are two main components to the procedure for altering local government boundaries: (1) the institution or process which proposes or initiates a change in internal borders; and (2) the institution or process which approves a proposed change.<sup>193</sup>

There are various models for **proposals** for a change in local government boundaries. They include the following:

- **National legislature approach:** In some countries, the legislature may initiate boundary changes, which must then be approved in a subsequent step by a different institution or a special majority of the legislature.<sup>194</sup> In Belgium, the legislature may propose changes to internal boundaries by an ordinary majority, but the change must be approved by a two-thirds majority of members of the legislature representing areas that would be affected by the proposed change (Constitution of Belgium, 1994, article 4). In Malaysia, the national legislature may propose regional boundary changes by an ordinary majority, but an ordinary majority in the legislatures of the affected regions must consent to these changes (Constitution of Malaysia, 1957, article 2). Of course, bills proposing changes to internal boundaries must be put before the legislature following the ordinary legislative process.

- **Mixed national executive-independent commission approach:** The national executive and an independent commission can act together to propose changes in local government boundaries. In Ghana, according to the 1992 Constitution, the president may, with the advice of the Council of State, either on receipt of a petition or not, initiate a change by appointing a commission of inquiry to look further into whether the boundaries should be modified.<sup>195</sup>
- **Independent commission approach:** The process may also be taken out of the hands of the elected branches and assigned to an independent body that proposes a change. In Namibia, changes to the boundaries of existing regions may be made only in accordance with the recommendations of the Delimitation Commission.<sup>196</sup> In Kenya, the Constitution specifies that changes to internal boundaries should begin with a recommendation from a commission – presumably the Independent Electoral and Boundaries Commission (IEBC),<sup>197</sup> established by the 2010 Constitution.<sup>198</sup> Where a national electoral commission proposes a new electoral area, this will amount to a proposal to change local government boundaries, as electoral constituencies and local government boundaries are coterminous.


There are two main approaches for **approving** proposed changes to local government boundaries:

- **National legislature approach:** In unitary systems, it is often the national legislature that finally approves proposals for changes to local government boundaries. In Kenya, an independent commission proposes a change to internal boundaries and the national legislature votes to approve it (Constitution of Kenya, 2010, article 188). In other countries, the national legislature approves changes simply by passing a bill put before it in accordance with the ordinary legislative process. The national executive will usually table such a bill. See, for example, Benin (Constitution of Benin, 1990, article 98); Bolivia (Constitution of Bolivia, 2009, article 158); Uruguay (Constitution of Uruguay, 1966, article 85(9)); and Uganda (Constitution of Uganda, 1995, article 179).
- **Referendum/plebiscite approach:** Alternatively, the population that would be affected by the change in internal boundaries may approve the change through a referendum or plebiscite. For example, article 5(4) of the 1992 Constitution of Ghana provides that if a commission of inquiry appointed by the president on the advice of the Council of State determines that there is a need and demand for change in a

particular area, it will recommend that the president hold a referendum in that area. If at least 80 per cent of voters in the area determined by the commission of inquiry vote in favour of modification, and if the voter turnout is at least 50 per cent, the borders will be modified (article 5(6)). In cases involving the merger of two or more regions, 60 per cent of voters in each region facing merger must vote in favour, in order for the merger to proceed (article 5(7)). A second example of this approach is in the Philippines, where article 10(10) of the 1987 Constitution provides that a majority of votes cast in a plebiscite held in the units directly affected must approve of any creation, division, merger, abolition or substantial boundary alteration of a province or local government.

With respect to the role of the legislature in boundary changes, a potential danger arises in systems where the legislature holds ultimate power to approve changes to internal boundaries. Although the national executive must usually propose legislation to the national legislature, and the legislature cannot act alone in effecting changes to internal boundaries, in parliamentary systems or in systems dominated by a single political party where there is a close relationship between the legislature and the executive, the two branches are likely to be ideologically aligned. This increases the likelihood that the legislature will approve without resistance any changes to internal boundaries that the government proposes.

Uganda's experience illustrates this problem. From 1991 to 2010, the number of Uganda's local government units ('districts') increased from 34 to 112.<sup>199</sup> Changing district boundaries requires only an ordinary law, and the dominance in both the executive and the legislature of the National Resistance Movement means that this arrangement has been easily abused to partisan ends.<sup>200</sup> Although article 179(4) of the Constitution requires that new districts be created 'based on the necessity for effective administration and the need to bring services closer to the people', evidence suggests that capacity has rarely been considered in creating new districts.<sup>201</sup> Critics have argued that these districts have been created in accordance with President Yoweri Museveni's wishes, as political patronage handed out in exchange for helping him win presidential elections.<sup>202</sup> Since efficiency and economic considerations have not been taken into account in creating these new districts, it seems likely that the new districts will exacerbate the problems that Ugandan districts already face, including the dilution of human resources, inadequate infrastructure, the creation of a heavier supervision burden on central government, and differences in



performance between districts.<sup>203</sup> Research shows that the newly created districts have performed much worse than the older ones.<sup>204</sup> A similar case is Ghana, where between 1992 and 2010 the number of local governments increased from 110 to 175.

Uganda's experience should serve as a warning to countries considering the design of procedures for changing internal boundaries. An approach that better avoids the pitfalls of an ideologically aligned executive and legislature is one in which an independent institution proposes changes, such as in Kenya. In addition, a procedure for change will tend to result in more successful local government and guard against partisan abuse if it integrates substantive criteria governing the creation of new local governments. This will help to ensure that any newly created units are viable. This also highlights the importance of allowing a role for either an independent commission or the local population in determining whether or not to alter local government boundaries.

The advantage of an approach dominated by the national executive and national legislature is that the central government may be better equipped to know whether the newly created local governments will be able to implement national policy effectively, and to consider the broader implications of how modifying local government boundaries will affect the country as a whole.<sup>205</sup> If the dangers alluded to above can be guarded against, this approach does offer benefits. The alternative approach is to allow approval of boundary changes, however they are proposed, by referendum. Given that the population is likely to have better information regarding the need for a change, and may also feel a connection with their local government and its boundaries, holding a local referendum or plebiscite may capture public opinion more accurately and is more likely to be seen as legitimate.<sup>206</sup>

### **2.1.2.3 The over-proliferation of local governments**

Inadequate human resources and infrastructure, an increase in administrative costs, and the fragmentation of resources are examples of the kind of problems that may result when too many local governments are created. While most OECD countries have a limited number of regional and local governments, and some are even reducing that number, in many developing countries the number of local governments is increasing.<sup>207</sup> The objective of decentralization may not always be better governance or improved service delivery: on the contrary, intergovernmental transfer formulas may provide an incentive to create new local government units by providing for the transfer of equal sums of money


to local governments, irrespective of size.<sup>208</sup> As Uganda's experience indicates, such arrangements may be exploited as political patronage. An assessment of decentralization in Africa found that, in the majority of African countries, the establishment of new local government units has been used as a way of distributing favours and has been motivated primarily by political interests.<sup>209</sup>

## *2.2 Levels of government: asymmetrical decentralization*

In addition to the drawing of local government boundaries, another major component in the architecture of decentralization is the number of levels of government and administration. Larger unitary nations may have three levels of government – central, regional and local – and they are sometimes referred to as 'regionalized' countries or 'regionalized unitary' countries.<sup>210</sup> An example of this three-level model is Indonesia, which has a central government, provincial government at the regional level, and regencies and cities at the local level.<sup>211</sup> Smaller unitary nations usually have only the central and the local level,<sup>212</sup> although it is also possible to have more than one level of local government. For example, in Uganda, where there is no regional level of government, local government 'districts' comprise counties, sub-counties, parishes and villages.<sup>213</sup> The districts, sub-counties and villages are elected local governments, while the counties and parishes are administrative units that are not politically decentralized.<sup>214</sup> In establishing multiple levels of government in a unitary system, it is important to set out clearly in law the responsibilities and the mandate that each level of government bears. Under Kenya's former deconcentrated system of government, local branches of central government departments frequently duplicated one another's actions in delivering services, because the system failed to allocate responsibilities and mandates clearly.<sup>215</sup>

Once the levels of government have been determined and the structure of the system of decentralization broadly established, one way of allocating responsibilities and mandates at the local government level is under an asymmetrical arrangement. This involves establishing distinct types of local government entities, with different powers and functions along each of the three dimensions of decentralization, in different parts of the country. There are two main types of asymmetrical decentralization:

- **Asymmetry in design** means that there are distinct regimes of local governance for different areas. For example, local government entities in urban areas, on the



one hand, and in rural areas, on the other, may enjoy different powers and perform different functions. Local governments in capital cities may enjoy different powers again, in order to reflect the unique position that capital cities occupy in decentralized countries.<sup>216</sup>

- **Asymmetry in sequencing** occurs during the implementation of decentralization. Different regional or local governments decentralize at different speeds, based on their capacity,<sup>217</sup> but ultimately they could, in principle, hold the same powers of decentralized government as all the other regional or local governments. Nonetheless, because capacity varies, asymmetry appears in practice. For the purposes of this report, this kind of asymmetry is referred to as ‘multi-pace decentralization’, which this report examines in Part 4.

The rest of this section focuses on the former type of asymmetry, exploring separate systems of local governance for major cities and rural areas, and special regimes for capital cities. The ‘special autonomy’ arrangements by which regional or provincial governments exercise unique or special powers occur in federal countries but because this report focuses on decentralization in unitary systems, these will not be discussed further.

### *2.2.1 Distinct regimes of local governance for urban and rural areas*

Effective local governance in urban areas is essential to any decentralization programme.<sup>218</sup> Urban areas play a key role in economic growth and innovation.<sup>219</sup> Due to their diverse demographics and socioeconomic conditions, cities have service needs that differ from those of rural areas. Similarly, the financial and human resources available to urban and rural areas are different.<sup>220</sup> Thus, in some nations, the local governments of major cities are governed by distinct legal arrangements.<sup>221</sup> In Kenya, local governments of urban areas function under the Urban Areas and Cities Act 13 of 2011, while local government in all other areas are statutorily guided by the County Governments Act 17 of 2012.<sup>222</sup> The functions of the two types of local government are different in terms of each statute.<sup>223</sup> It is common in nations with separate legal regimes for local government in urban and rural areas to set out different statuses, functions, powers and funding systems for each type of local government.<sup>224</sup> The allocation of powers to urban and rural authorities relates to their respective characteristics and needs. In Tanzania, urban authorities are responsible for providing public parks and libraries, regulating street trading and providing public transportation, while district (rural) authorities are responsible for regulating the cultiva-


tion of crops, taking measures for the prevention of soil erosion and regulating livestock husbandry.<sup>225</sup> Ideally, the existence of special regimes for urban areas will result in more efficiently run cities and better responsiveness to the urban character of the local government.<sup>226</sup>

In light of increasing urbanization in the developing world, it is important to have criteria for classifying new urban areas, as distinct from rural areas. Possible criteria to consider include population, public land availability, the state of the business environment in the relevant area,<sup>227</sup> and revenue raising and service delivery capacity. Prior to 2011, Kenya lacked any such criteria, which may explain the inconsistency in the granting of urban status to towns and cities.<sup>228</sup> Under Kenya's 2011 Urban Areas and Cities Act, the relevant criteria include having a population of at least 500,000, a city development plan, the capacity to generate sufficient revenues, a good system of management, capacity to deliver services, adequate infrastructure, and capacity for waste disposal.<sup>229</sup> Another example, the Philippines' Local Government Code, specifies that, in order to qualify for city status, an area must have at least a certain annual income and either 100 square kilometres of contiguous territory or at least 150,000 residents.<sup>230</sup> There is no universal approach to classifying urban areas, and the criteria in each country will depend heavily on the country's own context.<sup>231</sup> In developing countries with urbanizing populations, carefully crafted criteria will be invaluable, as urban areas continue to arise after the initial determination of urban and rural local governments.

### **2.2.1.1 Mechanisms for integrated urban governance**

Rapid urbanization, such as is occurring in many developing countries, can pose problems for effective local urban governance.<sup>232</sup> In many Asian nations, the outskirts of these new 'mega-cities' are governed by numerous distinct local governments, with no city-wide or umbrella government mechanism in place.<sup>233</sup> This lack of integration in the governance of urban areas presents many difficulties. One difficulty flows from an imbalance in access to resources. Even though all the local governments in a single, large urban area will have to perform similar functions and are likely to face similar challenges of government, fiscal resources tend to concentrate in the city centre, leaving local governments on the outskirts with little access to resources.<sup>234</sup> Another difficulty is the 'collective action' problem: where many local governments govern a single urban area, there is the risk that no local government will be willing to provide a benefit to other local governments by





addressing an issue that affects the entire urban area.<sup>235</sup> Similarly, many urban services, including public transportation and water, transcend local government boundaries and require coordinated action to ensure effective and efficient service delivery across the jurisdiction of all the local governments.<sup>236</sup>

Mechanisms that coordinate local government functions and activity across a single mega-city and adopt a more integrated approach to governance can help to address some of these difficulties. Available mechanisms include:

- **Inter-municipal agreements** achieve integration for a specific sector.<sup>237</sup> For example, Manila, in the Philippines, has specialized agencies, such as the Metropolitan Waterworks and Sewerage System and the Light-Rail Transit Authority, that oversee the integration of the water system and the rail system, respectively.<sup>238</sup> However, because of their limited and sector-based nature, inter-municipal agreements do not provide a comprehensive solution.<sup>239</sup>
- **Merger** combines all the constituent urban local governments into a single government. For example, Thailand created the Bangkok Metropolitan Administration by merging Thailand's capital Bangkok with the neighbouring city of Thonburi.<sup>240</sup> The 1987 Constitution of the Philippines provides in article X, section 13: 'Local government units may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law.' While merger is an obvious solution, it is not always possible, due to objections from local authorities.
- A **metropolitan level of governance** preserves existing local authorities, but establishes a supra-community entity responsible for issues that affect the mega-city as a whole or that cut across local government boundaries.<sup>241</sup> It may take the form of a metropolitan development council, a metropolitan development authority or a metropolitan government.<sup>242</sup> The Manila metropolitan area includes 17 separate municipalities, but the Metropolitan Manila Development Authority (MMDA) has responsibility for services that either have a metropolitan-wide impact or require greater expenditure than the individual municipalities can handle.<sup>243</sup> The MMDA's effectiveness, however, is hampered by interference from higher levels of government,<sup>244</sup> and its efforts at coordination are undermined by municipalities that retain autonomy and remain primarily loyal to their own constituencies.<sup>245</sup> In Ecuador,


adjacent local government units ('cantons') comprising more than 7 per cent of the nation's population may form a metropolitan district (Constitution of Ecuador, 2008, article 247). Where a metropolitan level of local government is established, in order to be effective it must have sufficient authority and autonomy to overcome challenges from self-interested local governments and to resist interference from regional or central levels of government.

- **Coordinating mechanisms** may be used to facilitate more streamlined governance across multiple urban local governments. The city government of Jakarta, Indonesia, covers the metropolitan area as it was defined in the 1970s. Newer areas of the city are governed by four additional city governments.<sup>246</sup> Jakarta has a coordinating mechanism in the form of a planning framework for the entire metropolitan region, the Coordinating Board for the Jakarta Metropolitan Area Development (BKSP).<sup>247</sup> The BKSP, made up of the governor of the provincial government and heads of the district government and municipalities within the Jakarta Metro Area,<sup>248</sup> is responsible for coordination in areas such as spatial planning, infrastructure, transportation, health and education.<sup>249</sup> However, its effectiveness is limited by the tendency of local leaders to act like 'little kings',<sup>250</sup> and by the fact that there must be consensus among the constituent authorities.<sup>251</sup> The BKSP does not have its own staff, resources or legal mandate, and as a result is heavily dependent on the provincial governments.<sup>252</sup>

### 2.2.1.2 Special regimes for capital cities

Unitary countries may choose to establish a special regime for their capital cities, setting them apart from other cities. The capital is typically the largest city and the most important economic centre, with the highest GDP, and thus presents governance challenges that differ from those posed by other cities.<sup>253</sup> These special regimes distinguish the capital city from other cities in the nation in a variety of ways. Capital cities will frequently report direct to central government, instead of to a local or intermediate level of government.<sup>254</sup> Although Indonesia has three levels of government – central, regional and local – Jakarta is considered a province, and is accountable directly to central government. All other cities in Indonesia are accountable to the relevant provincial government.<sup>255</sup>

Alternatively, capital cities may exercise the responsibilities of both regional and local levels.<sup>256</sup> Peru, like Indonesia, has three levels of government.<sup>257</sup> The Metropolitan Municipality of Lima is a special regime that has both regional and local functions and



responsibilities.<sup>258</sup> Article 198 of the Constitution of Peru, 1993, provides that Lima ‘does not belong to any region’ and enjoys special treatment under the law.

A third way in which a capital city may be treated differently is that it may be compensated for expenditure related to its position as capital. In Georgia, transfers from the central government finance the functions that Tbilisi is required to perform as the capital.<sup>259</sup> Capital cities may also receive national guarantees for investments they make.<sup>260</sup>

## *2.3 Options for constitutional design and application to the MENA region*

### *2.3.1 Options for constitutional design*

There are a number of considerations to balance when designing the architecture of local levels of government. Designers of a decentralization plan may look to representation, efficiency and identity in determining the geographic boundaries of local governments. Designers may also consider substantive criteria that will best fulfil the nation’s goals that it hopes to achieve through decentralization. If the architects of decentralization choose to redraw local government boundaries radically, they might consider establishing an independent authority for the task.

In addition, the constitution may provide criteria and a mechanism for the alteration of internal boundaries, allowing local governments to adjust to demographic and other changes. It may be prudent to have enforceable criteria in place for the creation of new local governments to help ensure that any newly established units are sustainable and efficient. Designers of a decentralization programme may want to consider involving more than just the central government in proposing or approving changes to internal boundaries, in order to mitigate the risk of partisan abuse. Options to achieve this include the central government–local plebiscite/referendum model or the independent commission–national legislature approach outlined above.

Distinct systems of local governance for urban and rural areas may help address the divergent needs of these areas. Nations that opt for separate systems may also want to draft criteria for reclassifying areas that urbanize in the future, including such criteria as population and capacity. With growing urbanization, it is especially important that large cities have the capacity to act in a unified manner, specifically through a coordinating mechanism with a clear legal mandate and adequate resources to fulfil its functions.

### *2.3.2 Application to the MENA region: Egypt and Tunisia*

#### **Constitution of the Arab Republic of Egypt (2014)**

Article 175 provides:

When establishing or abolishing local units or amending their boundaries, economic and social conditions shall be taken into account. The foregoing is organized by law.

The impact of this provision will depend on the subsidiary legislation to which the provision refers. The criteria provided for in draft article 175 are vague, which could lead to partisan manipulation and the proliferation of local governments. Article 175 does allow for the consideration of efficiency concerns, although subsidiary legislation could help clarify the specifics.


#### **Constitution of the Republic of Tunisia (2014)**

Article 131 provides:

Decentralization is achieved through local authorities comprising municipalities, districts and regions covering the entire territory of the Republic in accordance with the boundaries established by law. The law may provide for the creation of specific types of local authorities.

The 2014 Constitution of the Tunisian Republic is silent regarding the local design and boundaries of local governments. Article 131 represents the only provision describing the structure of local governments. The effect of this provision will depend greatly on subsidiary legislation. The Tunisian Constitution does not articulate the criteria for drawing local government boundaries, and does not establish a mechanism for the subsequent alteration of internal boundaries. In a transitional context, it is especially important to have safeguards against the political manipulation of internal boundaries. Legislation that provides appropriate criteria, and procedures for alteration that involve an independent commission, or a referendum or plebiscite, can help guard against such abuse.

Neither the Egyptian nor the Tunisian Constitution discusses whether there will be distinct systems of local governance for urban areas. Nor do they mention special regimes for their capital cities. However, these issues may still be addressed in subsequent legisla-



tion. As of 2012, 67 and 44 per cent of Tunisia's and Egypt's population, respectively, live in urban areas.<sup>261</sup> It is important for both Egypt and Tunisia to have functioning urban local governments. In addition, the Greater Cairo Region, which has a population of almost 20 million, is the largest extended metropolitan area in the MENA region.<sup>262</sup> It is made up of the governorates of Cairo, Giza and Qalubia, but these government entities are not integrated or coordinated in any way.<sup>263</sup> The Greater Cairo Region could benefit greatly from a coordinating mechanism with a legal mandate and sufficient resources to allow for uniform action throughout the metropolitan region.


### 3 Political Decentralization

Political decentralization involves the transfer of political authority to local governments from central or provincial levels of government, and comprises three elements: (1) local citizens' power to select local legislative and executive officials; (2) the rules that structure relations between different local government units; and (3) the rules that structure relations between the central government and local government. A primary objective of political decentralization is to ensure that members of local communities have a voice in selecting the officials who will take on the role of coordinating and overseeing local service delivery, and thus increasing the political accountability of local government officials to their local constituents.

Section 3.1 discusses the selection of executive and legislative officials through direct and indirect elections and the benefits and shortcomings of each approach. Section 3.2 outlines various models for organizing local government structures. Section 3.3 deals with the relationship between local governments, while section 3.4 focuses on the relationship between the central government and local government. Lastly, section 3.5 summarizes the key considerations regarding political decentralization and explains their relevance to the MENA region.

#### *3.1 Methods of selecting executive and legislative branches of local government*

If a system of local government is successful in giving local communities a voice in how they are governed and in making local government officials more accountable to those local communities, then one of the benefits of a system of decentralized government is an increase in 'democratic citizenship'. From the citizens' perspective, the concept of democratic citizenship captures the average citizen's affective attachment to the nation and its public institutions, and his or her feelings of ownership over the political process.<sup>264</sup> The election of local government officials through direct or indirect elections can promote democratic citizenship by increasing local participation in political processes and by enhancing local citizens' capacity to hold political actors accountable, as well as by creating space for civic dialogue and supporting market-led and environmentally sustainable local development.<sup>265</sup>



From a local official's perspective, political decentralization increases accountability by expanding information flows between the government and the people. This tends to promote transparent government, and may foster a sense of public ownership over the political process.<sup>266</sup> Because local citizens are more aware of public officials' actions, they are better placed to speak out against local government decisions that are contrary to their interests – or at least to punish local officials at the polls by refusing to vote for them in subsequent elections. This increase in accountability, and the threat of electoral failure, may reduce absenteeism by local officials, stimulate civil society, and encourage local officials to accommodate different political and social interests at the local level.<sup>267</sup>

### *3.1.1 Direct versus indirect elections: balancing democracy, populism and capture*

In local government, as in other levels of government, public officials must perform executive, legislative and administrative or bureaucratic functions. Executive and legislative officials may be elected, but administrative or bureaucratic officials are nearly always appointed.

The method by which legislative and executive officials are selected can be an important determinant of levels of accountability and democratic citizenship in local government. Local government elections can be either direct or indirect. In direct elections, each voter casts his or her vote for the individual candidates that he or she supports. The candidates who win sufficient votes in the elections will assume official positions directly, with no intermediate electoral process. There is no possibility, therefore, that a candidate will be elected to a position by an electoral college or some other intermediary institution, even though that candidate failed to win a majority of the votes cast.

In indirect elections, by contrast, a group of directly elected officials (usually members of the legislature) themselves elect another set of public officials (usually the executive). The latter officials are 'indirectly' elected.

### *3.1.2 Evaluating direct versus indirect elections*

#### **3.1.2.1 Direct elections**

In direct elections, individual citizens cast their ballots to select their representatives, and it is a straightforward matter of tallying votes to determine the winner of an election.


The close and direct connection between voters and officials is thus thought to ensure that public officials better represent voters and are more aware of their constituents' interests.<sup>268</sup> Indeed, when officials meet their constituents' local government needs, they are more likely to be re-elected in subsequent elections. Where local government officials seek re-election, this is a powerful motivation for them to respond to their constituents' needs, and a system of direct elections may facilitate this.<sup>269</sup>

However, where local government officials do not seek re-election, but are instead motivated by a desire to achieve higher office or commercial success after leaving office, those local government officials may not be as responsive to the needs of their constituents. This is of course true for indirectly elected officials as well, but the point here is that the benefits of direct election can be undermined by government officials whose primary motivation is not to meet local constituents' local government needs.

Direct elections carry two risks that should be borne in mind. The first is the risk of populism. Candidates for political office may make electoral promises to meet a large number of potential voters' demands, simply in order to win their electoral support.<sup>270</sup> This seems especially true in developing countries and young democracies where, for example, incumbent governments reduce tax rates in an attempt to increase their chances of re-election, even though this may have detrimental long-term consequences.<sup>271</sup> While voters in more established democracies may be more accustomed to, and are thus less likely to be influenced by, these populist pre-election promises, voters in young democracies are more likely to vote for populist electoral tactics.<sup>272</sup>

A second risk of direct electoral systems is political capture, in which special interest groups support a particular candidate for election and work to increase his or her chances of election. In return for this support, successful electoral candidates reward these special interest groups with access to government resources, patronage or public expenditure, or by pursuing a policy and/or legislative agenda that is favourable to that group.<sup>273</sup> The elected official is then said to have been 'captured' by the special interests that brought him or her to office. This is a threat to democracy, because the special interest groups may not represent the views of a majority – or even a significant minority – of the relevant electorate. In Uganda during the 1990s, only 13 per cent of funds transferred from the central government to local governments for the purposes of education were actually spent on education; the remaining 87 per cent was expended on matters unrelated





to education, including the distribution of private goods such as beer, salt and sugar, in order to neutralize voter dissatisfaction and to reward political patrons for their political loyalty.<sup>274</sup> Similar instances of capture of local government exist in both federal countries (Brazil, India, Nigeria, Pakistan) and decentralized unitary countries (the Philippines).<sup>275</sup>

The risk of capture can be reduced by increasing the size of the electorate, thus minimizing the impact that special interest groups can have on voters. The downside of this, however, is that public officials may become disconnected from individual constituents. There is also a limit to how large the electorate in a local government can be, and this consideration must be carefully weighed against the considerations of internal boundary determinations, as set out above in Part 2.

### **3.1.2.2 Indirect elections**

Indirect electoral systems, on the other hand, may insulate local government officials from populism and capture. Since indirectly elected officials must be elected to office by a separate, directly elected institution (usually a legislative institution), a ‘buffer’ is created between officials and the electorate. This precludes any resort to populist electoral tactics, and minimizes the impact that special interest groups can have on elections.

A distinct advantage of indirect electoral systems is that directly elected officials – such as a legislature or council – may be better able to monitor the activities of government officials than members of the general public who vote for government officials only once every four or five years.<sup>276</sup>

One drawback of indirect elections is that there is a greater chance that the aims and interests of officials and those of citizens will diverge.<sup>277</sup> Officials accountable to other officials, rather than directly to the people, may work to advance partisan or narrow political interests, rather than the interests of citizens, resulting in lower levels of responsiveness to broader public interests.<sup>278</sup>

### **3.1.2.3 Mixed models of election**

Direct and indirect electoral systems are often mixed, and indeed systems of indirect election are always mixed, because the members of the institution which elects the indirectly elected officials must themselves be directly elected. A common model of indirect

election, and thus a mixed model, involves direct election to a legislative institution, whose members then elect executive officials. A directly elected legislature allows for the representation of different interests and groups in the larger and deliberative legislature, as well as establishing an institution to which the executive branch of government is accountable. The indirectly elected executive is insulated from the risk of capture by special interest groups and because it cannot appeal directly to the people at election time, it has no incentive to adopt populist political strategies.

Finally, indirect electoral systems, if the legislative thresholds for election to executive office are carefully designed, may tend to produce executive leaders who enjoy broad support from the members of the legislature. Where an executive body enjoys stable support from a majority of the legislature, and the two branches of government are politically aligned, law-making and decision-making will be more efficient than when the two branches are ideologically opposed or represent starkly different political positions, as may happen when the executive and legislative branches are elected in separate direct elections.

### ***3.2 Local government political structures***

#### ***3.2.1 Models***

There are typically three centres of political authority in democratic government: legislative, executive and bureaucratic. Bureaucratic officials, because of the technical nature of the bureaucratic function, are very rarely elected. Rather, they are appointed by the elected branches of government – the legislative and executive branches.

The selection of executive and legislative officials may be organized in four general ways within local government: (1) legislature and executive elected in separate direct elections; (2) a directly elected legislature and an executive appointed by the central (or regional) government; (3) a directly elected legislature and an indirectly elected executive; and (4) a directly elected but combined legislative and executive council.

While these models can be described in pure or ideal form, in practice the structure of a country's local government system may take elements from each ideal type and blend them in hybrid models. The four models and possible hybrids are discussed below, with reference to specific country examples.



### 3.2.1.1 Directly elected legislature and directly elected executive

Also called the mayor–council model, this approach to structuring legislative and executive functions of local government envisages separate executive and legislative institutions, each elected directly on separate ballots. There are variations within this model, most notably between ‘strong mayor’ systems and ‘weak mayor’ systems, distinguished by the relative extent of power held by the mayor or local chief executive in relation to the legislative council. Kenya and the Philippines adopt a ‘strong mayor’ system, while Mozambique’s system has a relatively weak mayor.

#### Kenya

The Constitution of Kenya, 2010, describes the system of local or ‘county’ government. Article 176(1) provides that each county shall have a county government consisting of a county assembly and a county executive. The two are separate institutions with distinct functions: legislative authority is vested in the county assemblies (article 185), while executive committees are empowered to implement county and national legislation within the county, manage and coordinate functions of the county administration, and initiate county legislation for consideration by the assembly (article 183(1)–(2)).

The members of the county assembly are directly elected on a single-member constituency basis to represent wards within the county (article 177(1)(a)). The head of the county executive, the county governor, is elected directly by the registered voters in the county (article 180(1)). The county governor appoints the members of the county executive, who cannot be members of the county assembly, although the assembly must approve the governor’s appointment. The members of the county executive must not number more than one-third of the membership of the county assembly, and may not number more than ten in any case.

The county governor in Kenya has a separate electoral mandate from the county assembly, and the membership of the two institutions is distinct. The members of the county executive are not elected, but are appointed by the county governor; and even though the members of the county executive must be approved by the assembly, the county executive cannot be said to have been ‘indirectly elected’ by the assembly. Since the county governor has a separate electoral mandate and has discretion in appointing the county execu-

tive, constrained only by a requirement of approval by a simple majority of the county assembly, the county governor is strong relative to the county assembly.

## **The Philippines**

The system of decentralization in the Philippines includes the provinces at the regional level, and cities, municipalities and barangays at the local level. While article X of the Constitution of the Philippines, 1987, establishes the basic framework of local government and establishes the three different kinds of local government entity, comprehensive legislation known as the Local Government Code (1991) sets out the details of local government structure, including the manner of election for each kind of local government.


Section 41(a) of the Local Government Code provides for the direct election of the executive heads of city, municipal and barangay government. These executive officials are elected 'at large', meaning that the local government area is treated as a single voting district, with the respective executive head elected on a single-member constituency electoral system.

The governor, vice-governor, city Mayor, city vice-mayor, municipal Mayor, municipal vice-mayor, and Punong Barangay [highest elected official in barangay local government] shall be elected at large in their respective units by the qualified voters therein.

Section 41(b) provides that 'regular' members of the legislative councils of city and municipal governments shall be elected directly, 'by district, as may be provided for by law', while members of barangay legislative councils shall be elected 'at large'.

The regular members of the Sangguniang Panlalawigan [provincial legislative council], Sangguniang Panlungsod [city legislative council], and Sangguniang bayan [municipal legislative council] shall be elected by district, as may be provided for by law. Sangguniang Barangay [barangay legislative council] members shall be elected at large.

In addition to the directly elected members of the local legislative councils, section 41(b) makes provision for the heads of the local chapters of the formal association of local government organizations to serve as non-elected ex officio members of the city and municipal legislative councils:



The presidents of the liga ng mga Barangay and the pederasyon ng mga Sangguniang kabataan elected by their respective chapters, as provided in this Code, shall serve as ex officio members of the Sangguniang Panlalawigan, Sangguniang Panlungsod, and Sangguniang bayan.

The Code defines the League of Barangays in section 491:

There shall be an organization of all barangays to be known as the liga ng mga barangay [League of Barangays] for the primary purpose of determining the representation of the Liga in the sanggunians [councils], and for ventilating, articulating and crystallizing issues affecting barangay government administration and securing, through proper and legal means, solutions thereto.

Further, the Code provides that the presidents of the leagues of local councils will serve as ex officio members of the provincial legislative council, ensuring that local government and local concerns are represented at the provincial level:

The presidents of the leagues of sangguniang members of component cities and municipalities shall serve as ex officio members of the sangguniang panlalawigan concerned.

Finally, section 41(c) of the Code guarantees sectoral representation of women and workers, and provides for the selection of representatives from among ‘the urban poor, indigenous cultural communities, disabled persons, or any other sector as may be determined’ by the local legislature.

Article X, section 8 of the Constitution of the Philippines, 1987, sets specific term limits for local government officials, providing that local officials, except for Barangay officials, shall serve no more than three consecutive three-year terms. Moreover, the ‘[v]oluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.’ These term limit provisions may help to combat political entrenchment and the problems of cronyism and capture that it may breed.

## **Mozambique**

Article 275(2) of the 2004 Mozambican Constitution provides that the legislative branch of local government (the municipal assembly) is directly elected under a party-list pro-


portional representation system. The chief executive of each local government entity is also directly elected (article 275(3)). However, ordinary legislation provides that the local chief executive then appoints the members of the executive municipal council, at least half of whom must be drawn from within the municipal assembly.<sup>279</sup> At least half of the members of the executive council, therefore, must be elected to the municipal assembly before they can be selected by the chief executive to sit on the executive council. The entire council remains accountable to the legislative municipal assembly (article 275(1)).

These restrictions on the composition of the executive council, along with the constitutional provision providing that the executive council is accountable to the legislative municipal assembly, mean that the executive council in Mozambique is weaker relative to the local executive bodies in the Philippines, even though the local chief executive in both systems is directly elected. It is relevant that the provision requiring half of the members of the executive council to be appointed from within the municipal assembly is not set out in the 2005 Constitution but in ordinary law, meaning that the system could be changed by ordinary legislation and would not require constitutional amendment.

A second option for structuring the relationship between the legislative and executive branches of local government is to have a directly elected legislative council, with executive officials appointed by the central or relevant regional government. In practice, there are very few examples of this option.

## **Panama**

Until 1994, the local chief executive in Panama's local government system was appointed. Article 238 of Panama's 1972 Constitution (prior to amendment in 2004), provided: 'In each District there shall be a Mayor [Alcalde], who is the Chief of the Municipal Administration, and a Deputy Mayor, elected by direct popular vote for a five year term.' A proviso to the article allowed legislation to authorize the central executive branch to freely appoint and remove the mayor in each district. Until 1994, legislation in Panama allowed the president of Panama to appoint mayors. In 1994, the practice of appointing mayors was stopped and the system of direct, popular elections established, although it was not until 2004 that the Constitution was amended to reflect this position and require the election of mayors.<sup>280</sup>



Under Panama's 1972 Constitution, amended in 2004, the system of local government now fits the model of separate, directly elected legislative and executive functionaries (see section 3.2.1.1). Article 241 of the Constitution (corresponding to article 238 of the Constitution prior to amendment) no longer contemplates that legislation may allow the appointment of mayors. Rather, the chief executive at the district level of local government is elected directly. With respect to the legislative council, article 237 provides: 'In each district there shall be a body called the Municipal Council, composed of all Borough Representatives that have been elected within said District'. The Constitution does not provide for an executive council or committee to assist the mayor, while articles 242 and 243 clearly distinguish a municipal council's functions from the executive functions of a mayor.

## **Malaysia**

In Malaysia, the regional (state) governments appoint the chief executive and all councillors in each local government.<sup>281</sup> There is no separation between executive and legislative officials, however, and both types of official serve in the same institution (on combined executive and legislative local councils; see section 3.2.1.4).

### **3.2.1.3 Directly elected legislature and indirectly elected executive**

On this model, the legislative and executive functions of local government are exercised by distinct institutions, but only the legislative institution is elected directly by the people. Members of an executive council or committee are elected by the legislative council.

## **Ghana**

In Ghana, the highest level of local government is the 'district.' Article 241(3) of the 1992 Constitution of Ghana provides that the district assembly 'shall be the highest political authority in the district, and shall have deliberative, legislative and executive powers.' An executive committee is formed within the district assembly. Article 242 provides that each district assembly shall be composed of a person elected from each of the local government electoral areas within the district, the district chief executive, and other members – numbering not more than 30 per cent of the assembly's total membership – who may be appointed by the national president. The membership of the assembly is thus mostly

directly elected, although the provision allowing the president to appoint up to 30 per cent of each assembly's members makes Ghana's a unique system, in which the majority of the local legislature is directly elected and a minority of its members is appointed. The article provides further that members of the national legislature representing areas that fall within the district sit on the assembly as non-voting members.


Article 243 provides that the district chief executive is also appointed by the president, but with the prior approval of two-thirds of the members of the assembly (the seemingly high threshold is tempered by the fact that the president appoints up to 30 per cent of the assembly to begin with). Article 251 provides that an executive committee of the district assembly must be established, and the composition and procedure for its deliberations determined by law. The relevant law provides in turn that the executive committee shall be elected from within the membership of the assembly, by the assembly, and shall consist of no more than one-third of the members of the assembly.<sup>282</sup>

The executive committee in Ghana is thus indirectly elected, although the chief executive is appointed. This is something of a hybrid of the appointed executive model described in section 3.2.1.2 and a model with a completely indirectly elected executive. It is worth noting, finally, that the Constitution provides for the chief executive to be appointed by the president, while ordinary legislation provides for the rest of the executive committee to be indirectly elected. The appointment of the local chief executive is thus more deeply entrenched in Ghanaian law than the requirement that local executive committees be indirectly elected.

## **Uganda**

Responsibility for local government in Uganda is exercised by districts, composed of lower-level local governments or administrative units as provided for by law (Constitution of Uganda, 1995, article 176(1)). The Constitution provides that local government is 'based on a council ... which shall have legislative and executive powers' (article 180(1)). The members of the council are elected directly under a single-member constituency system, as representatives of electoral areas demarcated by the Electoral Commission such that the number of inhabitants in each electoral area is as nearly as possible equal (article 181(1)).





An executive committee must be established in each local government council to perform the executive functions of the council (article 186(1)). The Constitution provides that a district chairperson will be the political head of each district, and shall preside over the meetings of the executive committee. The district chairperson (i.e. the local chief executive) is directly elected in each district (article 183(1)(b)). The district executive committee, however, is appointed by the district chairperson from within the membership of the local government council and approved by a majority of the council. The vice chairperson must be approved by a two-thirds majority, and the rest of the members of the executive committee by a simple majority (article 186(3)–(4)). The district chairperson can be removed from office by a council resolution supported by two-thirds of the members of the council. Apart from the district chairperson, then, the local executive in Uganda is indirectly elected.

The system in Uganda is similar to that in Mozambique, where a directly elected chief executive heads the local executive committee. However, whereas in Mozambique only half of the members of the executive committee are drawn from within the local legislative council, in Uganda the entire membership of the executive committee is drawn from within the legislative council and approved by a simple majority of the legislative council (a two-thirds majority in the case of the vice chairperson). Uganda's system is also similar to Ghana's, where the members of the local executive council are indirectly elected from within the membership of the local legislative council. The biggest difference is that while the district chief executive in Uganda is directly elected, in Ghana he or she is appointed by the president and confirmed by a vote of the legislative council.

### **3.2.1.4 Combined legislature and executive**

The fourth model for local government comprises a single, directly elected body, which wields both legislative and executive power. This model exists in South Africa and Ecuador.

#### **South Africa**

In South Africa, the local government unit is the municipality. Executive and legislative authority is exercised by a single institution, the municipal council (Constitution of South Africa, 1996, section 151(2)). The members of the municipal council are elected directly, with half of the members elected by proportional representation according to party lists,


and half elected to represent wards within the municipality.<sup>283</sup> Each municipal council must have a chairperson (the speaker), elected from among its members at its first sitting following local elections. Municipal councils must also appoint a municipal manager as the head of administration and accounting for the municipality.<sup>284</sup> This form of local government is sometimes called the council-manager model, because executive and administrative responsibility for most matters of local government is delegated to a technocratic functionary, with the mayor, if there is one, playing a largely ceremonial or figurehead role.

In South Africa, municipalities may choose to have an executive mayor in addition to the municipal manager. Section 160 of the Constitution and chapter 4, part 1 of the Local Government: Municipal Structures Act 117 of 1998 (the Structures Act) provide that certain municipal councils may establish an executive committee to manage the executive functions of the council. The Structures Act sets out the details of these arrangements. Section 43 provides that members of the executive committee are elected by the members of the council from among their number, provided that no more than ten persons (20 per cent of the total number of councillors) and no fewer than three councillors are elected to the executive committee. Where an executive committee is established, it must elect a mayor from among its membership (section 48). Where a municipality is not empowered to establish an executive committee, it may elect an executive mayor (section 55) who, when the municipal council has more than nine members, must select a mayoral committee to assist him or her. The mayoral committee may consist of no more than ten councillors, or 20 per cent of the total number of councillors (section 60).

Municipal councils are authorized by the Constitution to administer certain local government matters, as listed in schedules 4 and 5 of the Constitution, as well as any other matter assigned to the municipality by national or provincial legislation, and may make and administer by-laws for those local government matters.

## **Ecuador**

In Ecuador, the highest level of local government is known as the canton. Article 253 of the 2008 Ecuador Constitution provides: 'Each canton shall have a canton council, comprising the mayor and council persons elected by universal suffrage in the canton'. Article 253 further provides that the 'urban and rural population of the canton shall be proportionately represented on the council'. Article 114 provides that 'authorities elected



by the people can be re-elected only once, whether consecutively or not, to the same office; and that those 'authorities elected by the people who submit their candidates for a different office shall resign from the one they are currently holding'. This provision sets term limits, and also appears to be aimed at limiting opportunities for political capture and corruption. Due to the relative newness of the Ecuadorian Constitution, no empirical studies have yet evaluated the impact of these provisions.

### *3.3 Cooperation between local governments*

While local governments are legally distinct from one another, they are often geographically contiguous, with social, economic and cultural ties cutting across political local government boundaries. The regulatory and administrative activities of different local governments may affect the same broader communities, economic and commercial interests, and environmental resources. As discussed in section 2.2.1.1, it is important that cooperation among local governments be facilitated, and that uniform regulatory standards for matters affecting interests that cut across political boundaries can be developed in a coordinated fashion. Similarly, competition among local governments seeking to attract businesses and residents can create an incentive for local governments to undercut one another, by offering more attractive tax rates, and by cutting the costs of compliance with regulatory rules, labour standards and environmental standards. While these efforts may succeed in attracting business and residents to an area, they may not serve the long-term interests of the local population.

Without any coordination between local governments, competition for scarce environmental resources may deplete those common resources. For example, in Jordan during the middle of the twentieth century, competition for scarce water resources produced conflict between local government authorities over limited water supplies. Authority for water management and supply was vested in the various local governments, although as water sources near to major towns such as Amman, Salt, Madaba and Irbid ran low, their local governments began to take water from surrounding areas, in some cases assisted by various agencies of the central government (e.g. the Domestic Water Supply Corporation and the Jordan Valley Commission). With numerous local governments and central government agencies competing for water, and with no comprehensive picture of water usage or water demand, local governments struggled to ensure secure and sustainable water supplies. Moreover, conflict over available resources emerged between the different local governments.<sup>285</sup>


Conflict over resources, as in Jordan, is usually a result of a lack of coordination between local governments. One solution is model legislation, drafted by the central government or a non-governmental institution, which local governments are encouraged or required to adopt. Model legislation sets uniform standards, for example for water usage, and ensures cooperation between local governments – or at least coordination of their functions to avoid conflict. Central governments may also enact legislation that requires local governments to cooperate with each other.

Aside from avoiding conflict, cooperation between local governments can improve overall efficiency of service delivery. However, cooperation should not result in simply merging local governments, thus recentralizing government functions and undermining the objectives of decentralization (see section 2.2.1.1).

### *3.4 Relationship between the central government and local governments*

While decentralization involves a significant transfer of authority to local governments for service delivery, decentralization does not imply that the central government will relinquish all authority. The primary role of central government in a decentralized system is regulatory, setting baseline standards for local governments and monitoring compliance with those standards.<sup>286</sup> The idea of accountability at the local level, which is one of the aims of political decentralization, requires local government to be held responsible for failures to meet its constitutional obligations or for exceeding the powers legally conferred on it.<sup>287</sup> Local government accountability thus implies that central government performs monitoring and oversight functions to ensure that local governments comply with standards, remain within the boundaries of their powers, and fulfil their local government functions. In many countries, these monitoring and oversight functions are performed by a central government ministry, often the ministry of local government. Alternatively, the central government may create an independent commission tasked with overseeing decentralization or acting as an advocate for local governments at the national level.

A high court such as a constitutional court or supreme court can also perform oversight functions and maintain local government accountability. For example, a private person or institution, as well as a central government, can challenge local governments in the courts if a local government fails to meet its obligations or oversteps its authority. On the other hand, a local government can bring a claim against the central government or another



local government in the event that its authority has been wrongfully usurped. Alternative forms of dispute resolution should be in place as well. For example, article 41(3) of the South African Constitution, 1996, provides that an organ of state, including an administration at any level of government, ‘must exhaust all other remedies before it approaches a court to resolve the dispute’.

### *3.4.1 Central government ‘step-in’ powers*

In cases where one or more local governments are found to be in a state of crisis or otherwise unable to fulfil the obligations of local government, the central government may be able to step in to assume responsibility for local government functions. These can be thought of as ‘step-in’ powers, but it is important to note that because national states of emergency are often distinct from localized crises, constitutions often include separate provisions for national states of emergency, on the one hand, and for central government step-in powers at the local level, on the other.

Without sufficient safeguards, however, there is the potential for central government to abuse these step-in powers for partisan purposes, especially when a local government is dominated by a political party opposed to the party that controls the central government. Undue meddling, even when minor, can undermine the broader decentralization scheme by frustrating the objectives of decentralization or impeding the functioning of the system and undermining popular support for a particular political party at the local level.

There are two important ways to minimize this danger. The first is to limit the circumstances under which step-in powers can be assumed by the central government. This involves spelling out very clearly, ideally in the constitution, what constitutes a crisis of sufficient gravity to trigger step-in powers. Where the relevant legal provision sets out a vague and open-ended set of circumstances under which the central government may assume step-in powers, the central government may intervene more easily and in more cases. The opportunities for partisan abuse are accordingly wider when intervention can be justified on the basis of vague legal provisions that can accommodate a wide range of circumstances. A provision that more narrowly and clearly defines the circumstances under which central government step-in powers may be used will help to avoid ‘pretextual’ interventions, which, while justified on the pretext of some vague emergency, are in reality designed to undermine political opposition at the local level. It is important also

to specify that when the circumstances that justify intervention have ended, so too must the central government's authority to exercise step-in power.

The second mechanism for minimizing partisan abuse is to narrowly and clearly define the scope of emergency step-in powers themselves, once the central government has assumed step-in power. Ideally the constitution, or at least legislation, must clearly specify the extent of central government powers once it has assumed responsibility for local government affairs in a particular local government area. In this respect, it is important that there should be meaningful oversight, by either the national legislature or the judiciary, of the exercise of step-in powers by the central government. Local governments must have recourse to the courts to challenge both the initial invocation of step-in powers and individual exercises of step-in power.

In the South African Constitution, 1996, article 100 provides for central government intervention in provincial administration, while article 139 provides for provincial government intervention in local government. Article 139 further provides for the dissolution of municipal councils.

The South African provision is a good example of how the opportunities for partisan abuse of the step-in power can be reduced by clearly outlining the circumstances under which intervention may occur, and by clearly defining the actions that provincial government may take during an intervention (see Box 3.1).

**Box 3.1 Constitution of the Republic of South Africa, 1996: Intervention in provincial or local government**

<b>Section 100. National intervention in provincial administration</b>	<b>Section 139. Provincial intervention in local government</b>
(1) When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including–	(1) When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including–

<p>(a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and</p> <p>(b) assuming responsibility for the relevant obligation in that province to the extent necessary to–</p> <p>(i) maintain essential national standards or meet established minimum standards for the rendering of a service;</p> <p>(ii) maintain economic unity;</p> <p>(iii) maintain national security; or</p> <p>(iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as whole.</p>	<p>(a) issuing a directive to the Municipal Council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations;</p> <p>(b) assuming responsibility for the relevant obligation in that municipality to the extent necessary to–</p> <p>(i) maintain essential national standards or meet established minimum standards for the rendering of a service;</p> <p>(ii) prevent that Municipal Council from taking unreasonable action that is prejudicial to the interests of another municipality or to the province as a whole; or</p> <p>(iii) maintain economic unity; or</p> <p>(c) dissolving the Municipal Council and appointing an administrator until a newly elected Municipal Council has been declared elected, if exceptional circumstances warrant such a step.</p>
<p>(2) If the national executive intervenes in a province in terms of subsection (1)(b)–</p> <p>(a) it must submit a written notice of the intervention to the National Council of Provinces within 14 days after the intervention began;</p>	<p>(2) If a provincial executive intervenes in a municipality in terms of subsection (1)(b)–</p> <p>(a) it must submit a written notice of the intervention to–</p> <p>(i) the Cabinet member responsible for local government affairs; and</p>

<p>(b) the intervention must end if the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and</p> <p>(c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the national executive.</p> <p>(3) National legislation may regulate the process established by this section.</p>	<p>(ii) the relevant provincial legislature and the National Council of Provinces, within 14 days after the intervention began;</p> <p>(b) the intervention must end if–</p> <p>(i) the Cabinet member responsible for local government affairs disapproves the intervention within 28 days after the intervention began or by the end of that period has not approved the intervention; or</p> <p>(ii) the Council disapproves the intervention within 180 days after the intervention began or by the end of that period has not approved the intervention; and</p> <p>(c) the Council must, while the intervention continues, review the intervention regularly and may make any appropriate recommendations to the provincial executive.</p>
	<p>(3) if a Municipal Council is dissolved in terms of subsection (1)(c)–</p> <p>(a) the provincial executive must immediately submit a written notice of the dissolution to–</p> <p>(i) the Cabinet member responsible for local government affairs; and</p>




- (ii) the relevant provincial legislature and the National Council of Provinces; and
- (b) the dissolution takes effect 14 days from the date of receipt of the notice by the Council unless set aside by that Cabinet member or the Council before the expiry of those 14 days.
- (4) If a municipality cannot or does not fulfil an obligation in terms of the Constitution or legislation to approve a budget or any revenue-raising measures necessary to give effect to the budget, the relevant provincial executive must intervene by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including dissolving the Municipal Council and–
  - (a) appointing an administrator until a newly elected Municipal Council has been declared elected; and
  - (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the municipality.

Article 202 of the Constitution of Uganda, 1995, distinguishes the circumstances and processes by which the central government may assume administration over local governments from states of emergency more generally.<sup>288</sup> The article provides for the takeover of district administration by the president, with the consent of the national legislature (see Box 3.2).

**Box 3.2**

<b>Constitution of Uganda</b>
<b>Section 202. Takeover of district administration by the President</b>
<p>(1) The President may, with the approval of two-thirds of all the members of Parliament, assume the executive and legislative powers of any district in any of the following circumstances—</p> <p>(a) where the district council so requests and it is in the public interest to do so;</p> <p>(b) where a state of emergency has been declared in that district or in Uganda generally; or</p> <p>(c) where it has become extremely difficult or impossible for the district government to function.</p>
<p>(2) The exercise by the President of the power conferred by this article may be done through such persons or officers as the President may appoint; and the legislative functions shall be exercised by statutory instruments.</p> <p>(3) Unless approved by Parliament for a longer term, the exercise by the President of the power conferred by this article shall be for a period not exceeding ninety days.</p> <p>(4) Upon the expiry of the term under clause (3) of this article—</p> <p>(a) the President shall hand back the administration of the district to the incumbent district government; or</p> <p>(b) if Parliament decides that the prevailing circumstances still make it impossible for the incumbent district government to resume the administration of the district then—</p> <p>(i) where the unexpired term of the council is longer than twelve months, the President shall cause elections to be held for a new district council within sixty days; or</p> <p>(ii) where the unexpired term of the council is less than twelve months, the President shall continue to administer the district until the next elections are held.</p>

This provision sets out the circumstances under which the president or his appointees may take over the administration of local governments, but also imposes the procedural hurdle that the national legislature should approve the intervention by a two-thirds majority. Along with the limitation of the period of the intervention to 90 days (unless the



legislature approves a longer intervention), this sets clear limits on the president's ability to assume local government responsibility in a particular local government area.

The article provides that the president may assume the executive and legislative powers of the district. The president may not exercise any powers other than those already conferred on local government by the Constitution and, unlike article 139 of the South African Constitution, does not endow the president with a special power to dissolve an existing local council.

### *3.5 Options for constitutional design and application to the MENA region*

Although political decentralization is a context-specific process that will depend significantly on the facts on the ground, key considerations include the following:

- Both direct and indirect election systems have their advantages and disadvantages. While direct elections tend to reflect more accurately the wishes of the constituency, direct election systems are more susceptible to populism and to political capture. Conversely, while indirect election systems are less likely to succumb to populism or capture, they are inherently less democratic.
- Cooperation and coordination among local governments can help to boost efficiency, while limiting destructive forms of competition between local governments. However, cooperation or merger between local governments can undermine the overall objectives of decentralization, and mechanisms should be in place to regulate merger, inter-municipal cooperation and the establishment of metropolitan-level local governments.
- Although decentralization increases the authority of local governments, the central government remains responsible for oversight and monitoring. A successful decentralization scheme allows the central government to maintain an effective oversight role, while limiting its ability to abuse its authority.

#### *3.5.1 Analysis of the relevant constitutional provisions*

In the MENA region, authoritarian governments have often exercised strongly centralized government power and limited the power and responsibility of local government entities. One area

of concern in the constitutional systems established in the wake of the Arab Spring, consequently, is the step-in power of central government. Although systems of decentralized government are being established in the region, the objectives of decentralization may be undermined by the opportunities for recentralization and partisan political abuse that extensive step-in powers create. One example of this danger is that the 2014 constitutions of Egypt and Tunisia do not include separate provisions for national states of emergency and for emergency step-in powers at the local level. Instead, both constitutions provide for the declaration of a state of emergency that may enable central government to assume responsibility for local government functions.

On the other hand, the failure to provide for central government to step in to assume responsibility for local government functions outside the declaration of a national state of emergency may prevent central government from stepping in to offer much-needed support to a local government or from stepping in to assume local government functions when a particular local government is unable to discharge its local government obligations.

### 3.5.1.1 Egypt


#### Constitution of the Arab Republic of Egypt (2014)

Article 154 provides: State of emergency

After consultation with the Cabinet, the President of the Republic may declare the state of emergency as regulated by Law. Such declaration must be presented to the House of Representatives within the following seven days to decide thereon as it deems fit.

If the declaration takes place while the House of Representatives is not in regular session, the House must be invited to convene immediately in order to consider the declaration.

In all cases, the declaration of the state of emergency must be approved by a majority of the members of the House of Representatives. The state of emergency shall be declared for a specified period not exceeding three months, which may only be extended for another similar period after obtaining the approval of two-thirds of the House members. In case the House of Representatives has not been elected, the matter shall be referred to the Cabinet for approval provided, however, that it is presented to the new House of Representatives at its first session. The House of Representatives may not be dissolved while the state of emergency is in force (article 154).



The state of emergency framework in the new Egyptian Constitution is very broad. Although, when read on its own, article 154 provides for reasonably strong civilian oversight, a state of emergency can be called for a wide range of reasons, so long as the president consults his Cabinet.

A significant concern is that the Egyptian Constitution, unlike other modern constitutions, such as those of South Africa and Uganda, does not include a separate provision establishing central government step-in powers. The only circumstance under which the central government may step in to assume or assist with local government functions is under a national state of emergency.

### **3.5.1.2 Tunisia**

#### **Constitution of the Republic of Tunisia (2014)**

Article 80 provides:

In the event of imminent danger threatening the nation's institutions or the security or independence of the country, and hampering the normal functioning of the state, the President of the Republic may take any measures necessitated by the exceptional circumstances, after consultation with the Head of Government and the President of the Assembly of the Representatives of the People and informing the President of the Constitutional Court. The President shall announce the measures in a statement to the people.

The measures shall guarantee, at the earliest possibility, a return to the normal functioning of state institutions and services. The Assembly of the Representatives of the People shall be deemed to be in a state of continuous session throughout such a period. In this situation, the President of the Republic cannot dissolve the Assembly of the Representatives of the People and a motion of censure against the government cannot be presented.

Thirty days after the entry into force of these measures, and at any time thereafter, the President of the Assembly of the Representatives of the People or thirty of the members thereof shall be entitled to apply to the Constitutional Court with a view to verifying whether or not the circumstances remain exceptional. The Court shall rule upon and publicly issue its decision within a period not exceeding fifteen days. These measures cease to be in force as soon as the circumstances justifying their implementation no longer apply. The President of the Republic shall address a message to the people to this effect.

Tunisia's Constitution also confers broad emergency powers on the central government, raising similar concerns over threats to local government as in Egypt. As far as the relationship between the central government and local governments is concerned, Tunisia's 2014 Constitution does not offer clear rules or principles, raising concerns about the integrity of local government in the longer term.

With respect to relationships between local governments, however, article 140 of the 2014 Tunisian Constitution is more promising:

Local authorities may cooperate and enter into partnerships with each other with a view to implementing programmes or carrying out activities of common interest.

Local authorities may also establish partnership relationships and decentralized cooperation with local authorities in other countries.

Rules for cooperation and partnership between authorities shall be regulated by law (article 140).

Like Ecuador and the Philippines, Tunisia has adopted a flexible approach to coordination between local governments. Article 140 leaves all the details to be established later by implementing legislation. The long-term impact of article 140 will depend on subsequent legislation, but it does at least set a principled foundation for cooperation, and ultimately better service delivery, at the local government level.



## 4 Implementation and Sequencing

This Part discusses the implementation and sequencing of decentralization. While nations that decentralize face an array of difficult substantive decisions regarding the scope and specifics of the project, there are procedural considerations as well. These include the amount of time it will take to implement a decentralization scheme, the sequencing of the various components of the transition, the monitoring of these processes, and the decision to pause or continue towards decentralization. A poorly sequenced or haphazardly implemented decentralization programme can result in costly delays and complications.

Section 4.1 discusses the key items to consider prior to implementing a decentralization programme, including the goals of decentralization, local capacity and the legal framework. Section 4.2 outlines various methods of sequencing a decentralization programme. Section 4.3 lays out different approaches to monitoring the decentralization process after implementation. Finally, section 4.4 considers the relevance to the MENA region of key observations about implementation and sequencing.

### *4.1 Preliminary considerations*

Prior to implementing a decentralization programme, the central government may wish to develop a clear blueprint of how decentralization will unfold. First, this will involve planning: evaluating local capacity and establishing the primary goals of the decentralization plan. Second, planning will inform the legal framework that will provide a basis for implementation and lay out in detail how decentralization will function in practice.

#### *4.1.1 Planning*

First and foremost, a decentralization plan should be engineered around the goals that it aims to accomplish. The objectives of different countries' decentralization programmes may vary: some countries decentralize primarily to improve service delivery at the local level or in areas that have suffered historical neglect. If that is the case, the country may prioritize administrative decentralization over political decentralization. Other countries decentralize primarily to enhance local representation and democratic citizenship. In these cases, the country may implement political decentralization ahead of administrative decentralization.<sup>289</sup> While decentralization typically attempts to achieve both of these

objectives in the long run, the underlying reasons that spur reforms tend to influence how decentralization is implemented and sequenced in a particular country.


Second, a plan for decentralization must take capacity into consideration. Capacity concerns are both a background issue to consider prior to developing a decentralization programme and an operational issue to be remedied through ongoing training, support and monitoring.<sup>290</sup> Locally elected officials and locally appointed bureaucrats often lack the capacity to exercise responsibility for public services, manage public finances or maintain proper accounting procedures. Under a centralized government scheme, local politicians or bureaucrats are unlikely to have had the opportunity to develop such skills and capacity.<sup>291</sup> Any decentralization plan must ensure that local governments are not overwhelmed by a sudden influx of new responsibilities, and that any shortfalls in capacity are quickly addressed.

Capacity building is also important for central agencies in developing local systems, supporting local governments and monitoring the implementation of reforms.<sup>292</sup> Great disparities between different parts of the country may point to the need to implement an asymmetrical design, as discussed in section 2.2, or a multi-pace decentralization process, discussed in section 4.2.3, in which the local governments take on varying levels of responsibility at different times, based on their individual capacities. Along with the objectives of a particular country's decentralization programme, local capacity in particular local government areas will influence the pace and shape that a decentralization process takes, from the legal framework itself, through implementation, to the use of monitoring mechanisms to oversee the progress of the programme.

#### *4.1.2 Legal framework*

Before implementing a decentralization programme, the legal framework should be in place. The legal framework of the decentralization process is typically spread across the constitution, legislation and regulations. The balance between constitutional provisions, legislation and regulation varies by country, based on each country's particular legal tradition and the context in which decentralization occurs. In most countries, however, the legal architecture for decentralization is likely to be grounded both in the constitution and in comprehensive decentralization legislation.<sup>293</sup>





The level of detail regarding decentralization varies greatly across constitutions. Some Constitutions provide more detail than others. For example, the Philippines' 1987 Constitution provides significant detail regarding decentralization. Article II, section 25 of the Constitution guarantees the autonomy of local governments. Article X, section 5 provides that '[e]ach local government shall have the power to create its own source of revenues and to levy taxes', while section 6 guarantees each local government a 'just share, as determined by law, in national taxes'. While the Constitution lays the groundwork for decentralization, these provisions are further clarified and elaborated in the 1991 Local Government Code.

Enshrining the system of decentralization in a constitution does have its drawbacks, however. Constitutions typically lack flexibility and are harder to adapt to changing circumstances. An example from India, although a federal country, is illuminating: the decision to specify revenue assignments in the Indian Constitution soon resulted in an outmoded revenue structure that required constitutional amendment to adapt to changing financial circumstances.<sup>294</sup> In addition, at the time a constitution is ratified, a country may not have fully decided on the exact shape that its decentralization reforms will take, and thus it may not be prudent to commit to a policy, in a constitution that is difficult to amend, if the system of decentralization has not yet been fully designed.

It is thus unsurprising that some countries add constitutional provisions codifying the structure of a decentralized system only after the programme of decentralization is initially set out by ordinary legislation. Like the Philippines, Uganda has very detailed constitutional provisions setting out its decentralization policy.<sup>295</sup> A key difference between Uganda and the Philippines, however, is that the decentralization process in Uganda began in earnest in 1993 with the enactment of the Local Governments Act, two years prior to ratification of the Ugandan Constitution in 1995. In effect, the Ugandan Constitution codified much of what had already been established by statute. Article 176(1) of the Ugandan Constitution, 1995, provides that the 'system of local government ... shall be based on the district as a unit under which there shall be such lower local governments and administrative units as Parliament may, by law, provide', and article 176(2)(a) provides that 'functions, powers and responsibilities are devolved and transferred from the Government to local government units in a coordinated manner'. Article 177(3) provides that the 'system of local government shall be based on democratically elected councils', while article 180(1) provides that each local government council shall have 'the highest political authority within its area of jurisdiction and ... shall have legislative and executive powers'.

Uganda's experience demonstrates that a decentralization process need not depend on express constitutional authority to proceed, and that constitutional provisions may simply codify decentralization reforms that have already been implemented, as in Uganda by the Local Governments Act.


An alternative approach is for the constitution to set out basic principles and guidelines for decentralization, while subsequent legislation articulates the formal and technical details of the system of decentralization. Legislation of this kind often establishes mechanisms for the election of local officials, provides a framework for revenue and expenditure assignments, and sets out the status of central and local civil servants.<sup>296</sup> This approach has been taken in South Africa and the Philippines, for example, where the Local Government: Municipal Structures Act 117 of 1998 and the Local Government Code (1991), respectively, give life to a constitutional commitment to decentralization by articulating and implementing a system of decentralization.

A third approach is for legislation to design and implement a system of decentralization in the absence of constitutional commitments to decentralization or the expression of principles or objectives of decentralization in a constitution. In Indonesia, for example, legislation provides the backbone for decentralization. In 1999, after the fall of Suharto, Indonesia enacted the Law on Local Government (Law No. 22/1999) and the Law on the Fiscal Balance between the Central Government and the Regions (Law No. 25/1999) to establish its decentralization process<sup>297</sup> (see section 4.2.1). However, unlike Uganda, which eventually enacted a new Constitution that enshrined most of its decentralization reforms, Indonesia constitutionalized only a limited number of fundamental reforms by way of constitutional amendments in 2000. The bulk of these reforms remain statutory, and not constitutional.<sup>298</sup>

#### *4.2 Sequencing decentralization*

Central governments that implement decentralization typically adopt one of three different approaches:

- First, countries can opt to decentralize **uniformly**, in which no particular dimension of decentralization (political, administrative, fiscal) is prioritized. This may occur rapidly or over a longer period of time, depending on the circumstances. Indonesia and Uganda implemented uniform decentralization processes.

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- Second, countries may decide on a more **incremental** approach, focusing first on a particular dimension of decentralization, typically either administrative or political, and then turning to the remaining dimensions. Ghana and Colombia took incremental approaches to decentralization: the former focused first on administrative decentralization, while the latter first focused on political decentralization.
  - Third, countries also have the option of adopting a **multi-pace** approach to administrative decentralization that lets local governments take on administrative responsibilities at the pace that suits their own capacities, resulting in either asymmetry by design (as discussed in section 2.2) or asymmetry in practice. In theory, all local governments will over time end up with the same responsibilities and functions. Ecuador implemented a variation of this multi-pace decentralization process.

#### *4.2.1 Uniform decentralization*

One approach to decentralization is to implement fiscal, administrative and political decentralization simultaneously, across all local governments. This can happen rapidly or through a more drawn-out process. A rapid approach to decentralization is attractive in circumstances where a more gradual approach may not succeed, for example during an economic crisis or during transition from authoritarian rule, when the window of opportunity to pursue fundamental reform may be narrow. Under these circumstances, there may be significant but fleeting support for wide, sweeping and rapid reforms.<sup>299</sup> Indonesia introduced major institutional, structural and economic reforms in 1999 in the wake of radical political change, and followed up with subsequent reforms to sustain these changes.<sup>300</sup> Uganda, on the other hand, spent about six years planning a decentralization process, and implemented that decentralization plan uniformly over a subsequent three-year period.

##### **4.2.1.1 Indonesia's big bang**


Indonesia's decentralization, known as the 'big bang,' implemented fiscal, administrative and political decentralization reforms simultaneously, in a brief period of time.<sup>301</sup> The extraordinary political circumstances following the Asian Financial Crisis of 1997 and the downfall of Suharto in 1998 provided compelling reasons for Indonesia to make reforms to all three dimensions of decentralization in a short time. In 1999, the legislature passed

the Law on Local Government (Law No. 22/1999), which established three primary levels of government: the central government, provincial governments at the regional level, and regencies and municipalities at the local level.<sup>302</sup> Commentators point out that regencies and municipalities were given 'obligatory' decentralized administrative responsibilities, which included health, education, public works, the environment, communications, agriculture, industry and trade, capital investment, land, cooperatives, and infrastructure services.<sup>303</sup>

Law No. 22/1999 laid out a strict timetable. All implementing regulations had to be prepared within a year of the law being passed, and within two years the law's provisions were to come into effect.<sup>304</sup> Within one year, by May 2001, Indonesia had decentralized responsibility for select public services to regencies and municipalities.<sup>305</sup> With regard to fiscal decentralization, by 2002 the provincial and local share of government spending had increased from 17 per cent to 30 per cent, with provincial governments spending 30.8 trillion rupiah, and local governments spending 90.8 trillion.<sup>306</sup> By then, the central government had reassigned two-thirds of its civil servants to regency and municipal control and handed over more than 16,000 service facilities to provincial and local governments. Politically, local populations had by 2002 elected their own local councils and their executive heads and deputy heads.<sup>307</sup>

Despite the complexity of the sequencing and the lack of a clear implementation plan, decentralization in Indonesia went relatively smoothly and the country remains in relatively sound fiscal health.<sup>308</sup> Surveys conducted in 2002 and 2006 found that more than 70 per cent of households were more satisfied with the quality of decentralized health and education services than prior to decentralization.<sup>309</sup>

There has been lingering uncertainty, however, about the proper role of different levels of government, and the role of the provincial governments remains poorly defined.<sup>310</sup> Revisions to the law in 2004 empowered provincial governors to supervise governance in regencies and municipalities and to 'coordinate the execution of the [central] Government's affairs' in the provinces, regencies and municipalities.<sup>311</sup> Through the governors, the Ministry for Home Affairs can theoretically supervise local policy and law-making. However, the oversight functions of the central ministries, such as the Ministry of Finance, involved in overseeing local governments are unclear.<sup>312</sup> This has led to conflict and coordination problems between various levels of government.



A separate source of confusion is the flood of new legislation as a consequence of local governments' law-making powers.<sup>313</sup> While some local laws have been praised for being innovative and appropriate, others have been criticized for being unclear, unnecessary, exploitative and, in some cases, unconstitutional.<sup>314</sup> Critics of this proliferation of unworkable laws point to a lack of legal drafting skills among regency and municipal law-makers, lack of local citizen input into the legislative process, and local corruption as sources of these problems.<sup>315</sup>

#### **4.2.1.2 Uniform decentralization in Uganda**

Uganda's decentralization process, while not as rapid as Indonesia's, is another example of uniform decentralization. Uganda spent six years developing its decentralization laws and framework and building political consensus, and the government rolled out its decentralization programme across the country over a three-year period.<sup>316</sup> After toppling Milton Obote's highly centralized authoritarian regime in 1986, the National Resistance Movement (NRM), led by future President Yoweri Museveni, sought to expand local democracy.<sup>317</sup> In 1993, Uganda embarked on a comprehensive decentralization process, with district councils as the highest level of local government.<sup>318</sup> Below the district level are two sub-levels of local government with elected councils, sub-counties and villages, and two administrative units, counties and parishes.<sup>319</sup>


After the enactment of the Local Governments Act in 1993, responsibilities and resources were divided between central and local governments, and annual transfers of funds from the centre to the local councils were formalized. While the national government retained responsibility for national security, planning, immigration, foreign affairs and national projects, all other functions were devolved to various levels of local government.<sup>320</sup> District governments were made responsible for handling all funds from the central government and were granted authority to impose taxes and enact by-laws.<sup>321</sup> These reforms were incorporated into and strengthened in the 1995 Constitution. For instance, it specifically empowers districts to levy and collect taxes.<sup>322</sup> Finally, in 1997, the Local Governments Act established the electoral laws for selecting district council members, delineated the councils' planning and legislative powers, further increased the powers of the districts to generate local revenue, and formalized the processes of distributing revenues to the lower levels of local government.<sup>323</sup>

Although the decentralization reforms were implemented smoothly, with regard to service delivery the outcomes have been mixed.<sup>324</sup> On the one hand, under the authority of district governments the net enrolment ratio in primary schools increased from 67 per cent in 1995 to 90 per cent in 2004.<sup>325</sup> On the other hand, while access to social services has improved in rural areas, improvements in the quality of services have lagged. Primary school dropout rates remain high, while infant and maternal mortality rates have not changed since the reforms were implemented.<sup>326</sup> Furthermore, despite the fact that 8 per cent of local budgets has been spent on roads and public works since 1999, access to rural transport and electricity remains low in rural areas.<sup>327</sup>

These problems are, in part, due to the proliferation of districts without regard for whether these districts have the capacity to provide the services.<sup>328</sup> Local governments with sufficient capacity may be able to respond quickly and precisely to the needs of their constituents without having to rely on central or regional government approval or authority. Where a local government must consult higher levels of government before it can act, responsiveness to local needs may decrease.<sup>329</sup> Since the initial decentralization reforms occurred, the central government has placed restrictions on local governments, including on local discretionary spending, the use of own-source revenues, and the procurement process.<sup>330</sup> In addition, fiscal transfers from the central government have been used to cover local governments' fixed expenses, such as salaries, rather than the cost of service delivery.<sup>331</sup> Local governments continue to face professional staffing shortages, poor attitudes and absenteeism exacerbated by funding constraints.<sup>332</sup> Rural districts rely on transfers from the centre for about 90 per cent of their budgets.<sup>333</sup> The over-proliferation of new districts may have contributed to a weakening of local government capacity, and has unnecessarily increased administrative costs.<sup>334</sup> Without more revenues, some observers believe that local capacity may continue to fall short of what is required to provide sufficient levels of services to the local population.<sup>335</sup>

#### *4.2.2 Incremental decentralization*

Unlike the uniform approach, incremental decentralization proceeds in stages. A country can implement either administrative or political decentralization first, and then turn to implementing the other. Central governments tend not to focus on fiscal decentralization first, since they are unlikely to provide local governments with fiscal resources without also giving them administrative responsibilities or political autonomy. The sequence in



which these responsibilities are transferred will affect the trajectory of a country's decentralization programme, and may affect the relationship between the national and the local governments.

#### **4.2.2.1 Administratively focused decentralization**

Administratively focused decentralization may begin with deconcentration or delegation (see section 1.2.1.2). Deconcentration entails the central government establishing local field offices of the central government or central government departments to carry out centralized functions of government at the local level. Delegation involves establishing local government entities and delegating authority to those entities to perform specific centralized government functions.

Deconcentration and delegation, as abbreviated forms of administrative decentralization that fall short of full administrative decentralization, precede political and fiscal decentralization. Indeed, full administrative decentralization cannot occur without some degree of political decentralization, since the objective of full administrative decentralization is for local governments to be accountable to local constituencies for their performance of local government functions. With deconcentration and delegation, on the other hand, local administrative officials remain dependent on the central government for resources, and remain accountable only to the central government, rather than to local constituencies.<sup>336</sup> As a result, a focus on administrative decentralization is unlikely to strengthen democratic citizenship, since it will not significantly expand the link between the people and local officials.

Central governments tend to prefer a process where administrative decentralization precedes political and fiscal decentralization and proceeds through deconcentration and delegation, because it allows the central government gradually to transfer responsibility for local services to local governments, while retaining political or fiscal control over local officials.<sup>337</sup> Prioritizing administrative decentralization also guarantees that central government has more power in negotiating subsequent political decentralization reforms, since local governments will be reliant on the central government for fiscal support and will not have an electoral mandate from the local population.<sup>338</sup>

Ghana offers an illustration of administrative-focused decentralization. It is divided at the regional level into ten regions, and into districts at the local level.<sup>339</sup> After coming


to power in 1981, the Provisional National Defence Council (PNDC), Ghana's effective government between 1981 and 1993, introduced an 11-point decentralization plan.<sup>340</sup> However, the PNDC abandoned plans to decentralize politically, and instead delegated administrative responsibilities to local administrative officials.<sup>341</sup> The PNDC appointed district secretaries and interim management committees to manage district assemblies.<sup>342</sup> In 1982, the PNDC decreed that it had transferred 86 functions, including basic social infrastructure services, community development, parks, libraries and agriculture extension services to district governments.<sup>343</sup> After transferring further responsibility to local administrative units in 1985, the PNDC cut back on the central government's administrative expenditure by dismissing over 40,000 civil servants employed by central government and slashing the salaries of the remaining civil servants by 50 per cent.<sup>344</sup>

It was not until 1988 that the PNDC introduced political decentralization, enacting the Local Government Law.<sup>345</sup> However, the central government retains a firm hand on the composition of local government institutions: the Local Government Law allows for the direct election of at least 70 per cent of each legislative district assembly, with the president empowered to appoint up to 30 per cent of each district assembly. These provisions are codified by article 242(d) of Ghana's 1992 Constitution. With respect to the composition of local executive institutions, the district chief executive is appointed by the president with the prior approval of two-thirds of the assembly, and the rest of the members of the executive committee are elected by the assembly from among its members. With the strong involvement of central government in the political composition of local government, it is perhaps unsurprising that most local administrative officials at the district level continue to answer to the central government rather than to the district assembly<sup>346</sup> (see further, section 3.2.1.3).

Ghana did not introduce fiscal decentralization until 1994, and even then the fiscal autonomy of the country's districts has remained limited. Districts derive about 85 per cent of their budget from central government and donors.<sup>347</sup> Although article 245 of the 1992 Constitution gives the districts the ability to levy and collect taxes as prescribed by parliament, in practice central government holds exclusive authority over the great bulk of tax revenues.<sup>348</sup>

Ghana's experience illustrates that the focus on administrative decentralization may result in the subordination of district governments to central government and ensure that





central government preferences are reflected at the local level. Although given a variety of administrative responsibilities, locally elected assembly members were – politically and fiscally – ultimately answerable to the centre, rather than to the people in their districts.<sup>349</sup> This may explain why voter turnout at district assembly elections hovered between 32 and 44 per cent in the 2002 and 2006 elections, whereas national elections saw voter turnout of 69–81 per cent in 2004 and 2008.<sup>350</sup> Many district assembly seats go uncontested, and local politicians avoid making electoral promises to voters, since they recognize that they are unlikely to be able to keep them.<sup>351</sup>

Fiscally, the annual budget rarely mentions local government, and a recently enacted national procurement law has removed local government expenditure discretion.<sup>352</sup> In other words, the prioritization of administrative decentralization has resulted in the retention of political power by the centre and the retention of administrative functions at the central level.

#### **4.2.2.2 Politically focused decentralization**

In a politically focused decentralization programme, the central government transfers the power to elect local executive or legislative officials to the people living within that local government unit before decentralizing service delivery or fiscal control over expenditure and revenue. Without local control over fiscal or administrative resources, the role of these locally elected legislative or executive officials is limited to listening to local concerns and raising them with central government.<sup>353</sup> Nonetheless, locally elected officials can still expand democratic citizenship by providing a voice for their constituents in national political processes.<sup>354</sup> National politics may also drive political decentralization: majority parties whose prospects of winning future national elections look remote, but that still retain strongholds in some areas of the country, may be inclined to decentralize politically in order to preserve a political space for themselves at the local level.<sup>355</sup> Another benefit of focusing on political decentralization first is that it is relatively easy to prepare for and hold local elections within an expedited timeline.<sup>356</sup>

Colombia is divided into departments at the regional level and districts and municipalities at the local level.<sup>357</sup> Political decentralization in Colombia occurred as a result of some two hundred civic strikes that took place throughout the country in the 1970s and early 1980s in protest at poor local service delivery by central government ministries and agen-

cies, a system of municipal mayors appointed by the central government, and pervasive corruption.<sup>358</sup> The Conservative Party, sensing that it would soon be unable to compete nationally in the country, but desirous of holding on to power in the areas of the country where it still enjoyed some support, acceded to popular calls for mayoral elections, and in 1984 Colombia passed an amendment to the 1886 Constitution to provide for the popular election of municipal mayors.<sup>359</sup>


In 1988, the first cohort of elected mayors formed an association, with the purpose of representing their collective interests at the national level and promoting further decentralization.<sup>360</sup> Colombia's 1991 Constitution, following the trends begun in the 1980s, provided for fiscal decentralization: article 357 of the 1991 Constitution provides that fiscal transfers to municipal governments 'will be increased annually by a percentage equal to the average percentage variation experienced by the current revenue of the Nation during the preceding four (4) years.'<sup>361</sup> Between 1993 and 2002, this resulted in an increase in fiscal transfers to local governments from 14 to 22 per cent of GDP.

Regarding administrative decentralization, in 1993 an agreement was struck between the central and local governments to distribute administrative responsibilities more equitably between the central and local levels of government. National legislation provided, for example, that the national department of education was responsible for paying for teachers with funds guaranteed by central government, while the municipal governments took over responsibility for the construction and maintenance of schools.<sup>362</sup> Municipal governments also play a role in the oversight of both policymaking and fiscal transfers.<sup>363</sup>

Due to the prioritization of political decentralization, municipal governments in Colombia were capable of effectively representing local interests at the national level, and subsequent decentralization reforms largely followed their preferences.

#### *4.2.3 Multi-pace decentralization*

While good arguments exist for uniform or incremental decentralization, in which all local governments decentralize at the same pace and in the same order, and reach the same result at the same time, in some instances it may be necessary to establish a system in which differences in capacity are expressly recognized and taken into account. This may mean setting different end-stage goals for different local governments and establishing a system of asymmetrical decentralization (see section 2.2); or it could mean that differ-



ent local governments ultimately reach the same goal, but at different speeds. Multi-pace decentralization allows local governments with different capacities to manage resources and deliver services to take on the level of responsibility commensurate with their abilities.<sup>364</sup> Assigning different responsibilities based on varying levels of capacity is common in both federal and non-federal countries. Applying this principle to the sequencing of a decentralization process means that some local governments advance into the later phases of decentralization, while less-developed local governments remain in the initial phases, performing administrative functions together with, or under the close supervision of, the central government. The responsibilities and fiscal assignments vary by local government, although in theory the decentralization process would strive to ensure that all local governments end up with the same degree of political, administrative and fiscal decentralization.<sup>365</sup>

Under a multi-pace decentralization plan, advancement depends on the local government's capacity: local governments with limited capacity take on fewer administrative responsibilities, while those with greater capabilities take on a broader role in local service delivery.<sup>366</sup> One approach would involve all local governments decentralizing to some extent, taking on some administrative responsibilities, such as planning, health care and local economic development in coordination with the central government.<sup>367</sup> After a set period, the central government would evaluate each local government's capacity to meet appropriate service-delivery benchmarks.<sup>368</sup> If the central government finds that a local government has achieved satisfactory results, that local government would take on additional responsibilities. Any local government that does not meet the benchmark would continue at the current level and would be re-evaluated at a later date.<sup>369</sup> Alternatively, local governments could choose for themselves how far they wish to decentralize and petition the central government for increased responsibilities. The central government would be responsible for establishing clear guidelines about how local governments can advance from one stage of decentralization to another, and for providing assistance to local governments that fall behind.

#### **4.2.3.1 Ecuador's multi-pace decentralization**


In 1998, Ecuador adopted a new Constitution, which was in force until it was replaced by the 2008 Constitution. Between 1998 and 2008, under the provisions of the 1998 Constitution, Ecuador followed a multi-pace approach to decentralization. The

1998 Constitution divided Ecuador into provinces at the regional level and cantons at the highest level of local government.<sup>370</sup> Administrative decentralization lagged behind political and fiscal decentralization: canton mayors were elected in competitive elections and mayors had control over the canton budgets, but most major areas of service delivery remained the responsibility of central government.<sup>371</sup> The cantons themselves resisted attempts by central government to give them increased administrative responsibilities,<sup>372</sup> and article 226 of the 1998 Constitution provided that local governments could take on additional administrative responsibilities so long as adequate resources were made available. Aside from six spheres, including defence and foreign policy, all other responsibilities could potentially be transferred to the cantons.

The Constitution lacked any provision allowing central government to resist transfer requests or to take back authority once granted to the cantons.<sup>373</sup> Two-thirds of cantons which pursued the transfer of responsibilities between 1998 and 2004 sought responsibility for either the tourism or the environment sector, while one-third of cantons applied for the transfer of responsibilities for other competencies, including social welfare, education, housing, health, agriculture and infrastructure.<sup>374</sup> The fact that different cantons voluntarily assumed responsibility for different spheres at different times had the effect of creating a multi-pace system of decentralization.

In practice, both central government and a number of cantons were hesitant about administrative decentralization. The central government, lobbied by central government bureaucrats and public sector unions, did not always want to transfer resources to cantons, despite the constitutional requirement to do so on request,<sup>375</sup> with the result that the central government simply ignored requests to transfer authority. Moreover, the central government often had legitimate difficulty in determining what constituted 'adequate resources' for funding a particular service in a particular municipality.<sup>376</sup> From the cantons' perspective, the incentive of resources transfer was not sufficient to justify taking on additional responsibilities.<sup>377</sup>

Finally, the differences between the various cantons in Ecuador were not related only to local capacities, but also to local politics. Mayors who won by significant margins and political parties with stronger links to civil society were more likely to pursue greater administrative decentralization than were cantons where the political authorities were not so closely linked to the local constituency.<sup>378</sup> The 1998 Constitution allowed each



local government to choose to assume responsibility for certain competencies, and thus fostered a system of asymmetrical decentralization, in which different local governments were responsible for different functions, and were accordingly allocated different amounts of fiscal resources.

Ecuador's 2008 Constitution, does not include a provision allowing multi-pace decentralization at the request of each local government. Rather, article 239 of the 2008 Constitution provides for a closer link between fiscal and administrative decentralization, and requires that local governments assume responsibility for functions to be determined by subsequent legislation.<sup>379</sup> This differs from the 1998 Constitution, and eliminates the possibility of the emergence of an asymmetrical system of decentralized local government. It remains to be seen whether these reforms will result in improved service delivery at the local level.

#### *4.3 Decentralization strategies: monitoring and evaluation mechanisms*

In addition to setting out the process for decentralization, countries may wish to establish a monitoring mechanism to evaluate local governments' progress in implementing decentralization reforms, and to allow adjustments during and after the implementation process. These mechanisms should ensure that decentralization is accompanied by legal and institutional reforms designed to maximize efficiency and increase the transparency and accountability of local governments.

The objective of monitoring mechanisms is to determine whether administrative functions have been devolved to the level of government that is best placed to ensure efficiency in the performance of those functions, and to ensure that each local government to which administrative functions are decentralized is capable of meeting the obligations imposed by those functions. A monitoring mechanism may have the added benefit of increasing accountability at the local level and reducing the opportunities for corruption during the decentralization process.<sup>380</sup> Monitoring mechanisms can provide information about the activities of local governments to both the central government and local constituencies, to ensure that local officials are held accountable from above and from below.

Some countries create a special body or committee, or else contract an independent expert, to monitor the decentralization process and report back to the central government, as in the Philippines (see section 4.3.1). Other countries rely on a host of regular govern-


ment institutions to monitor and oversee decentralization. Uganda has taken this latter approach (see section 4.3.2). If the country opts for the former approach, a central supervisory institution will be mandated to monitor, evaluate and provide feedback on the performance and progress of decentralized local government. This allows a central government to react swiftly to any difficulties encountered by local governments and make the necessary adjustment during the process of decentralization.<sup>381</sup> Adjustments may include, for example, delaying or hastening the transfer of administrative responsibility, or increasing fiscal transfers to accommodate local expenditure.

The alternative approach involves spreading responsibility for monitoring and oversight among a handful of different institutions. The advantage of adopting this more diversified approach is that it does not entrust responsibility for monitoring the decentralization process entirely to a single institution. In turn, this does not require the vesting of the same level of capacity and institutional competence in a single body. The biggest drawback to a multifaceted approach of this kind, however, is that monitoring and evaluation may not be as comprehensive, and some monitoring and evaluation institutions may not be as effective as others.

#### *4.3.1 The Philippines Rapid Field Appraisal system*

Shortly after the Philippines implemented decentralization reforms in terms of the Local Government Code in 1991, the Local Development Assistance Program (LDAP) created the Rapid Field Appraisal (RFA) system in 1992 to conduct needs assessments and give feedback on the progress of the decentralization process.<sup>382</sup> From 1992 to 2000, the LDAP oversaw ten RFAs to monitor the progress of decentralization.<sup>383</sup> The appraisal began with consultative workshops to establish the progress of decentralization, involving central government agencies, local governments and non-governmental organizations.<sup>384</sup> Following each workshop, a team of experts and consultants gathered quantitative and qualitative data throughout the country over a period of two to four weeks.<sup>385</sup> Field research consisted of informant interviews, focus group discussions, visits to service facilities and the review of secondary reports.<sup>386</sup> Quantitative information derived from these reports was used to supplement the interviews and analysis.<sup>387</sup>

The initial RFAs focused on national and local compliance with the Local Government Code, whereas later RFAs concentrated on sector projects, such as the decentralization



of health care and education.<sup>388</sup> The RFA teams synthesized their data and produced a written document of their findings, which they presented to the Philippines National Economic and Development Authority (NEDA), other central government agencies and selected groups of local governments.<sup>389</sup> If a problem stemmed from non-compliance on the part of the central government, NEDA would conduct meetings with the relevant central government agencies to ensure compliance with the decentralization policies.<sup>390</sup> Eventually, researchers began consolidating their findings into guidelines that discussed local planning and ways for local governments to regularize and institutionalize the decentralization process.<sup>391</sup>

In 2011, the Philippines conducted an eleventh RFA, following a similar framework, to determine the impact of its decentralization reforms nearly 20 years after they were first introduced. This RFA found that decentralization in the Philippines had moved beyond political questions of whether or not decentralization was a good policy, to debates about how best to organize and utilize regional and local governments.<sup>392</sup> Today, local governments' requests to central government agencies primarily concern the involvement of central government bureaucrats as experts and facilitators for the dissemination of best practice and proven technologies.<sup>393</sup> The RFA concluded that decentralization in the Philippines has been a success, and the question now is how to improve further the service delivery performance of regional and local governments.<sup>394</sup>

#### *4.3.2 Uganda's ad hoc approach to accountability*

After Uganda's slow but uniform process of decentralization (see section 4.2.1.2), the central government devised a number of measures to monitor the performance of decentralized local government and enhance local government accountability. Under the Local Governments Act of 1997, the Ministry of Local Government shares monitoring responsibilities with the Ministry of Public Service, the President's Office, the Auditor-General, the Electoral Commission, the Local Government Finance Commission and specific central government ministries.<sup>395</sup> The Act further specifies that the central government ministries shall inspect and monitor local governments within their specific sectors and offer technical advice, support, supervision and training, as necessary.<sup>396</sup>

At the local level itself, the resident district commissioner – a senior civil servant appointed by the president under section 70(1) of the Local Governments Act of 1997 – is

obliged under section 71(1)(4) of the Act to ‘monitor and inspect the activities of local governments’, and is authorized to ‘advise’ the district chairperson or ‘instruct’ the chief internal auditor to carry out a special audit and submit a report to the council (section 71(2)(2)). To assist local monitoring efforts, both the central and local government provide the local and national press with information about fiscal transfers to local authorities and other matters.<sup>397</sup> The central government has in the past supported civil society organizations at the local level to assist citizens in holding local officials accountable, as well as in reaching out to the central government for assistance.<sup>398</sup> Finally, elected council members at all levels are required to monitor service delivery to ensure accountability.<sup>399</sup>

While in the Philippines a single organization has a mandate to oversee and evaluate the decentralization process, in Uganda a large number of institutions share overlapping mandates to monitor local governments. Effective oversight may be compromised in a situation like this, where numerous institutions exercise oversight of local government with little coordination between them.


#### *4.4 Options for constitutional design and application to the MENA region*

The sequencing and implementation of decentralization reforms will be a critical component in decentralization’s success in the MENA region. While Libya and Yemen may adopt a federal constitutional scheme and establish regional governments, both countries will nevertheless have to decide what responsibilities, resources and degree of autonomy to decentralize to local governments.

The provisions referring to decentralization and local government in the Egyptian Constitution, 2014, and the Tunisian Constitution, 2014, however, leave many of the details of decentralization to be worked out in subsequent legislation. Decentralization may nonetheless proceed in both Tunisia and Egypt – both historically centralized government systems – through ordinary legislation. As both Uganda and Indonesia demonstrate, constitutional provisions, while vital for the long-term impact of decentralization, need not constitute the first step in the decentralization process.

The massive political upheavals in the MENA region have provided a unique opportunity to implement fundamental changes to the governing structures of Egypt and Tunisia, and also of Libya and Yemen. It may prove easier for these countries to implement decentralization programmes in the immediate wake of democratic and constitutional reform, while the mo-





mentum for transition remains strong. If any of these countries delay implementation of the decentralization process for too long, the window of opportunity for decentralization may close, and government power may again be concentrated at the central level of government.

#### *4.4.1 Emerging best practices*

The following best practices with regard to implementing and sequencing a decentralized system of government can be extracted from the above comparative review of systems of decentralization:

- Providing detailed provisions in the constitution concerning decentralization will help insulate the process politically, and minimize backsliding towards recentralization. This may occur before or after decentralization reforms are implemented.
- Prior to implementation, a comprehensive blueprint that takes into account the specific objectives of a country's decentralization and local capacity constraints should be developed. The existence of such a blueprint will maximize the chances of a decentralization programme's success. Capacity considerations and specific objectives will influence the sequencing and pace of decentralization.
- A centralized monitoring mechanism to evaluate and make adjustments during and after implementation of the decentralization programme is preferable to an ad hoc approach involving a number of disparate institutions at both the central and the local level.

#### *4.4.2 Analysis of relevant constitutional provisions*

##### **4.4.2.1 Egypt**

###### **Constitution of the Arab Republic of Egypt (2014)**

Article 242 provides:

The existing system of municipal administration shall continue to be in force until the system stipulated herein is gradually implemented within five years of the date of entry into force of this Constitution, without prejudice to Article 180 thereof.

Under Egypt's 2014 Constitution, the local government system contemplated in articles 175–183 will be implemented within a five-year period but until that system is implemented, article 242 provides that the existing system of local government will continue to exist. While article 242 states that the process of implementation will not prejudice article 180 – which provides for the election of local council members to serve four-year terms – article 180 itself provides only that elections shall be regulated by law, but does not indicate when these elections shall occur.

The Egyptian Constitution of 2014 is thus very thin on the detail of implementing the decentralization process, and does not conform to the emerging best practices outlined above.

#### **4.4.2.2 Tunisia**

##### **Constitution of the Republic of Tunisia (2014)**

Article 148 provides

The dispositions of Chapter VII relating to local authorities enter into effect as soon as the laws that are mentioned within the Chapter enter into force.

The implementation of local government in Tunisia depends on the passage of laws mentioned in chapter VII of the Constitution. The specific contours of the decentralization process will not be known until these laws are passed. For instance, article 131 provides that 'decentralization is achieved by local authorities comprised of municipalities, districts and regions covering the entire territory of the Republic in accordance with boundaries established by law'. Similarly, article 134 provides that local authorities 'possess their own powers, powers shared with the central authority, and powers delegated to them from the central administration', but leaves the contours of these powers, along with fiscal powers, to the determination of future legislation. Articles 140 and 141 provide similarly that future legislation will determine the types of partnerships that elected councils may enter into with one other, as well as the specific composition and responsibilities of the High Council of Local Authorities, a representative body for all elected local councils.

The Tunisian Constitution of 2014 thus sets out the details and structures of decentralized local government, but leaves the process of implementation – and indeed the initiation of the process of implementation – to ordinary legislation.



## Conclusion: Is the MENA region ripe for decentralization?

It is an important consideration whether the timing is right for a country to embark on a process of decentralization. The examples considered in this report include cases where particular events or significant political changes open the window to decentralization. In Ghana, for example, following a military coup and a change of government, the military leadership (the PNDC) began a decentralization process. Similarly, in Uganda the resistance movement that toppled the Obote regime seized the opportunity of a change in government to decentralize government and foster democracy at the local level. In both Ghana and Uganda, decentralization occurred by way of policy and legislation, and was only subsequently codified in a new constitution. In South Africa, decentralization was part of the constitutional transition that moved South Africa from apartheid to democracy. In all three cases, fundamental changes in the political system made decentralization both possible, as part of a wave of change, and appropriate, as centralized governments were replaced with democratic and popularly supported governments.

The MENA region is ripe for decentralization, for similar reasons: constitutional transitions or amendments are occurring throughout the region, as old governments and old forms of government are gradually being replaced.

More than this, decentralization has the potential to bring benefits to the MENA region, as countries transition from centralized, authoritarian systems to democratic systems. Three benefits stand out. First, the countries of the MENA region have suffered from a lack of attention to rural areas and towns away from the political capitals. As a result, service delivery outside the major cities has been poor and access to bureaucratic officials has been difficult. Indeed, the Arab Spring began with the self-immolation of Mohamed Bouazizi in Sidi Bouzid, located in Tunisia's rural, underdeveloped and historically neglected interior region. Local governments that are familiar with the needs of local constituents and are accountable to those constituents are likely to be better placed to provide services at a local level. Because the lack of service delivery was a motivating factor in the Arab Spring, improved service delivery at the local level is likely to increase political stability.

Second, the distribution of wealth and resources in the MENA region has historically been influenced by an urban bias. A system of decentralized local government established by and operating according to law will regulate the distribution of resources to all local government entities, and ensure that historically neglected, mostly rural areas will receive a share of national wealth through the local government that represents them.

Third, decentralization carries benefits of democratic citizenship. By bringing the people closer to local government representatives who are directly accountable to the people they are obliged to serve, decentralization can forge a connection between the people and government – a connection that has historically been missing from the MENA region, where authoritarian governments have held power in the absence of free and fair democratic elections and where there has been very limited accountability to the people. Decentralization can strengthen democracy by increasing accountability in government, broadening citizen participation at the local level, fragmenting centralized political power and reducing the opportunities for consolidation and centralization of power in a single political office, fostering political competition, and – in societies divided along ethnic, religious or other grounds – allowing a degree of political autonomy that may help to preserve national unity and promote stability.

Decentralization holds benefits for the countries of the MENA region, as they rebuild democratic systems in the transition from authoritarian regimes. In addition, the moment of democratic rebuilding is a good opportunity to establish a system of decentralized local government. The constitutional design options presented and analysed in this report are intended as a resource for countries in the process of political decentralization.



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- <sup>382</sup> Hawes, 'Local Development Assistance Program Impact Evaluation', p. 1.
- <sup>383</sup> *ibid.*, p. 4.
- <sup>384</sup> Asia Foundation, 'Rapid Field Appraisal (RFA) of Decentralization', p. 11.
- <sup>385</sup> *ibid.*, p. 7.
- <sup>386</sup> *ibid.*, p. 11.
- <sup>387</sup> *ibid.*
- <sup>388</sup> Hawes, 'Local Development Assistance Program Impact Evaluation', p. 22.
- <sup>389</sup> *ibid.*, p. 19.
- <sup>390</sup> *ibid.*
- <sup>391</sup> *ibid.*, p. 23.
- <sup>392</sup> Asia Foundation, 'Rapid Field Appraisal (RFA) of Decentralization', pp. 28–29.
- <sup>393</sup> *ibid.*, p. 28.
- <sup>394</sup> *ibid.*, p. 29.
- <sup>395</sup> Local Governments Act, 1997, section 98; Mitchison, 'Devolution in Uganda', p. 242.
- <sup>396</sup> Local Governments Act, 1997, section 97; Mitchison, 'Devolution in Uganda', p. 246.
- <sup>397</sup> Dickovick and Beatty Riedl, 'Comparative Assessment of Decentralization in Africa', p. 10.
- <sup>398</sup> *ibid.*
- <sup>399</sup> *ibid.*, p. 11.





Comparative constitutional law is at the heart of democratic development. Legal scholars, policy makers, constitutional drafters, judges and advocates all over the world have looked to other jurisdictions for ideas on how their own challenges can be addressed and to better understand which reforms are likely to be successful in their own countries. Since 2011, at least 10 countries in the Middle East and North Africa have either replaced, reformed or reconsidered their constitutional frameworks. In that context, national, regional and international institutions have contributed to the legal scholarship that already existed by bringing the knowledge that has been developed in other jurisdictions closer to the region.

This report, which was produced by the Center for Constitutional Transitions, International IDEA and the United Nations Development Programme examines what more can be done by national constitutions to improve the delivery of services through decentralization, in particular by exploring the impact that different forms of decentralization and sequencing can have on the outcome. The report studies existing frameworks within the region, including some of the new constitutions that were drafted since the uprisings began in late 2010, as well as a large number of comparative examples from other jurisdictions, to determine what lessons exist for the broader region.

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