



Local Democracy

13

International IDEA
Constitution-Building Primer





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Contents



- 1. Introduction 3
 - Advantages and risks 3
- 2. What is the issue? 4
- 3. Approaches to constitutionalizing local democracy6
 - General approaches 6
 - Constitutionalizing the formal structure of local democracy 7
 - Constitutionalizing the substantive powers of local communities 11
 - One size does not fit all: asymmetry and special-purpose authorities 13
- 4. Contextual considerations 15
 - Transformation or consolidation 15
 - Trust 16
 - Symbolic messages 16
 - Degree of consensus 16
 - Negotiating strategies 17
 - Political demand 18
 - Security situation 18
 - Civil- versus common-law contexts 18
 - Federalism 19
 - International standards 19
- 5. Protecting and enhancing local democracy 21

Conduct of elections	21
Censure, impeachment and recall	21
Direct local democracy	22
Participatory local democracy	22
Rights of intervention	23
6. Alternatives to local democracy	25
Centrally appointed local authorities	25
Local government through traditional leadership	25
7. Decision-making questions	27
8. Examples	29
References	35
Annex.....	38
About the author.....	38
About International IDEA	38
About this series	39

1. Introduction



In this Primer, the term ‘local democracy’ refers to the decentralization of power and responsibility to democratic institutions at village, municipal, city, town, district, county, and equivalent local levels—typically, but not exclusively, through elected mayors, councillors and other local officials.

In contrast, the decentralization of powers to larger, intermediate-level units (e.g. states, provinces and regions) is discussed in International IDEA Constitution-Building Primer No. 12, *Federalism*.

Advantages and risks

Local democracy is intended to ensure that local policies reflect the needs and preferences of local communities. Effective local democracy can facilitate public participation, improve service delivery, strengthen communities, and improve development outcomes.

However, excessive localization can result in patchy and fragmented service delivery, especially where powers granted to local authorities outstrip the capacity of local authorities to deliver. Localization of power can also create local oligarchies or local autocracy in which unaccountable powers are exercised without real democratic representation or accountability.

2. What is the issue?



This Primer focuses on local democracy as an issue to be addressed in the process of constitution-building and constitutional reform. It discusses what a constitution should say about the place of local democracy in the constitutional order, and about the status, role, structures, organization, powers and financing of local democratic institutions and processes.

Constitution-building or major constitutional reform often takes place at a moment of transition or even crisis in a nation's history, when the old system of government has become unacceptable to a majority of the people and a new system is generally desired. This usually occurs at a time when the people are demanding more from their government, both in terms of more inclusion and openness in the policymaking process and in terms of better public services and a more equitable distribution of resources. Given the role that local authorities—city mayors, municipal councils, county assemblies and so forth—play in the delivery of services, and given their prominence as the public face of the state, public pressure for the renewal of democracy at the national level is very likely, in many cases, to be matched by a demand for the strengthening of local democracy.

With the exception of a handful of city states (Monaco, Nauru, Singapore, Vatican City), almost all states have at least some local government institutions. However, the extent of local autonomy varies. In some countries, local authorities act simply as service-delivery agencies for the central state, with little control over their policies, budgets and resources; in others, local authorities can enjoy wide discretion over a broad range of policy areas, and have control over their own sources of revenue.

The quality of local democracy also varies widely. Some countries, even if they meet basic criteria for democracy at the national level, are only minimally democratic at the local level; dark pockets of authoritarianism, oligarchy or



corruption may persist (McMann 2014). Other countries have well-developed institutions of local democracy that sometimes offer a more inclusive and participatory form of democracy at the local level than at the national level.

Effective local democracy is increasingly recognized as a prerequisite for ensuring sustainable and equitable economic and social development, promoting good governance and encouraging democratic values. For some, the attractions of local democracy are intrinsic: regardless of its effect on outcomes, the value of local democracy lies in the opportunity for increased participation, which strengthens civic culture, builds social capital and enables people to act as more active citizens. Others take a more instrumental view of the benefits of local democracy, focusing on the ability of local democracy to improve service delivery and developmental outcomes through increased public accountability.

In addition to this Primer, International IDEA has produced a number of resources which address wider institutional, financial, political and public policy issues surrounding local democracy. These include *Democracy at the Local Level: The International IDEA Handbook on Participation, Representation, Conflict Management and Governance* (International IDEA 2001) and the *State of Local Democracy Assessment Framework* (International IDEA 2013).

3. Approaches to constitutionalizing local democracy



General approaches

In addressing local democracy in a constitution, constitution-builders will typically face three challenges. First, they need to find an appropriate and workable balance between: (a) public demands for local democracy; (b) the practicality of local democracy in terms of efficiency, capacity and resources; and (c) countervailing demands for unity, uniformity and resource sharing. Second, they need to ensure that local government is democratic and does not merely result in a transfer of power to unrepresentative, unresponsive and unaccountable local elites. Third, they need to express the principles and institutions of local democracy in the text of the constitution in a way that balances: (a) the need to protect local autonomy from the centralizing tendencies of national governments; with (b) a need for flexibility and responsiveness to adapt to changing needs, demands and circumstances.

To address these issues, many constitutions contain a specific chapter or series of articles on local democracy. These may include provisions establishing the structures of local democracy, providing for local elections (and sometimes for local referendums and other forms of public participation) and conferring powers and duties on local authorities. However, the extent to which local democracy is constitutionally specified and embedded (as opposed to being regulated only by ordinary law) varies between countries. In this regard, three broad categories of constitutions can be identified:



1. No constitutional prescription

There are some constitutions that make no mention, or only minimal mention, of local democracy. These are mainly older constitutions, or constitutions of small, centralized countries with a weak tradition of local government (e.g. Botswana, Jamaica and Latvia). The absence of constitutional provisions does not mean that these countries lack local government institutions but, rather, that such institutions' powers, structure and very existence stem from ordinary laws that are made by the legislative majority, without any special constitutional recognition or protection. Federal constitutions may also be silent about local government, if local government is regulated by the constituent units and not by the federal legislature (as in Australia, Canada and the United States).

2. Limited constitutional prescription

Some constitutions make a general commitment to local democracy, and perhaps establish the basic principles on which local democracy is to be based, but without going into great detail (Bangladesh, Ireland, Malta). The Constitution of Ireland, as a typical example, has since the adoption of the 20th Amendment in 1999 affirmed the principle of local democracy by specifying that there should be elected local governments throughout the country, and that elections should take place at least every five years, but leaves the details of local government, including the structures, composition, powers, duties and financing of local authorities, to ordinary legislation.

3. Detailed constitutional prescription

There are several constitutions that prescribe the structures, composition, powers, duties and financing of local institutions in considerable detail (e.g. Brazil, Ghana, India). Such a prescriptive constitution may require that otherwise reluctant central or state-level authorities devolve power, or it may impose a degree of uniformity and standardization on otherwise chaotic institutions.

Constitutionalizing the formal structure of local democracy

Levels (or tiers) of local government

Some constitutions establish and prescribe the various levels of local government. For example, the Constitution of France (article 72) states that, 'The territorial communities of the Republic shall be the communes, the departments, the regions, the special-status communities and the overseas territorial communities', although it also allows for other territorial communities to be created by statute. The Constitution of Italy (article 118) refers to 'regions, metropolitan cities, provinces and municipalities', while the Constitution of Tunisia (article 133) refers to 'municipal, regional and district' authorities. In these and many other

cases, the formal structure of the local government system—in terms of the number of tiers or levels of local authorities—is specified in the constitution and cannot be changed by ordinary legislation. This gives the local authorities at each specified level a degree of constitutional recognition, legitimacy and protection.

In other cases, a constitution may refer generally to local government but without specifying the levels of government or the overall structure of the local government system. These matters are left to ordinary legislation. The Constitution of Vanuatu (article 83), for example, simply states that, ‘legislation shall provide for the division of the Republic of Vanuatu into Local Government Regions and for each region to be administered by a Local Government Council’.

Boundaries

In most cases, the boundaries of local government areas are determined by national laws (or, in a federal/regionalized country, by state/provincial/regional laws). Some constitutions, however, prohibit changes to local boundaries without the advice and consent of the local councils concerned or may even require that such changes be approved by the local people in a referendum. This protects the territorial identity of local communities and prevents a centralizing government from amalgamating or dividing local communities against the wishes of the people. Such provisions also make altering boundaries—for reasons of administrative efficiency or in response to changing demographic circumstance or economic needs—more difficult, and can store up problems for the future.

In situations where the demand for greater local democracy is motivated by a desire to enhance the rights and protect the identity of ethnic, cultural, linguistic or religious minorities, there will usually be a need to ensure that the boundaries of local authorities reflect these communal boundaries, even at some cost to economic or administrative efficiency, and that the powers vested in local authorities include culturally sensitive subjects such as education, while also protecting the rights of ‘minorities within minorities’.

Think Point 1

How important is it, in your specific context, to specify the levels of local government? Is it necessary as part of an agreed decentralization arrangement? Will it help protect the status of existing local government bodies or provide a constitutional basis for the creation of new ones? What are the risks and disadvantages, in terms of the loss of flexibility in response to future demographic changes? What consequences does this have for other parts of the constitution, such as the amendment formula?



Electoral system

The way in which the members of local councils and other local governing bodies are chosen can have a profound effect on the representativeness, responsiveness, accountability and legitimacy of local government, as well as affecting the distribution of power and resources. In many constitutions, the electoral system for local government is left open, to be determined by ordinary legislation. However, constitution-makers may decide that the electoral system is of such importance—either for its own sake or as part of the overall political bargain between the groups negotiating the constitution—that it should be specified in the constitutional text. For example, the Constitutions of Poland and the Netherlands prescribe the use of proportional representation for local elections, whereas those of India and Kenya prescribe a single-member plurality system.

Frequency of elections/term limits

Some constitutions specify the terms for which local councils and local officials are elected. This may be a way to constitutionally address previous problems in the quality of local government. In Ireland, for example, there had been a tendency for the national government to meddle in the timing of local elections, delaying them, sometimes for long periods, when it was not politically expedient from the point of view of the governing party at the national level. This was remedied by the insertion of a constitutional provision (article 28A) requiring that local elections must be held every five years. In the Philippines, the problem of the continual re-election of incumbents was addressed by a constitutional rule (article 10, section 8) prohibiting local officials from being elected for more than three consecutive terms.

Selection of local executive officials

In almost all forms of democratic local government, an elected council serves as a representative and deliberative body with responsibility for approving local laws, ordinances or regulations, for scrutinizing the local executive and for approving budgets. The structure of the executive branch at the local level can vary. In some jurisdictions, directly elected mayors have extensive executive powers. In others, the mayor (who may be appointed by the council) has a more neutral and ceremonial role, while local leadership is vested in an executive committee of the council (which acts like a local cabinet in a parliamentary system). In some places, councils are required to appoint a non-political administrator, usually known as a city manager, to oversee the implementation of the council's decisions.

These different executive and administrative arrangements are not usually specified in the constitution but are determined by ordinary legislation. In some countries, however, the constitution may prescribe rules for the election or appointment of mayors and other executive officials (see Box 3.1 for an insight

into the German system). For example, the Constitution of Slovakia (article 69) prescribes that mayors should be elected ‘on the basis of universal, equal and direct suffrage for a four-year term’, and the Constitution of Japan (article 94) states that, ‘The chief executive officers of all local public entities...shall be elected by direct popular vote within their several communities’. Constitutions may also provide for a degree of local choice or flexibility in determining executive and administrative arrangements. For example, the Constitution of Austria (article 117) allows for the election of mayors by the council or directly by the people, as determined by each *Land* (province).

Box 3.1. Directly elected mayors: lessons from Germany

‘Apart from Bavaria and Baden-Württemberg, which always had directly elected mayors, until 1990 mayors were elected by the council. In the wake of re-unification, after 1990, and the new enthusiasm for grassroots democracy, direct elections of mayors were introduced in all large federal states (*Länder*) and with some exceptions for the heads of counties as well. This gave the citizens the opportunity to exert a direct influence on the leadership of the local authority. Apart from strengthening democratic participation by the citizens, the aim was to emphasize the common good over special interests. The other aim was increased efficiency through streamlining the leadership. Research has shown that the power and influence of mayors and with them the [number of] administrative experts has increased, while that of the elected councillors, who are serving in an honorary capacity and not in a full-time capacity, has decreased. The influence of citizens was also strengthened.’ (Tessmann and Kirchner 2011)

Representation of women, minorities and marginalized groups

The arguments for and against specific, constitutionally mandated representation for women, ethnic or linguistic minorities or marginalized groups (such as quotas, reserved seats, etc.) may apply at both the local and national levels. Indeed, such constitutional provisions may be more extensive at the local than at the national level, since more radical provisions can be tried on an experimental basis locally, with a view to being adopted nationally if they are successful.

- The Constitution of India, for example, reserves seats for members of ‘scheduled castes and tribes’ (marginalized communities) at the local, state and central levels, but the reservation of at least one-third of seats for women applies only to local councils (articles 234D and 234T). The

Constitution of Mauritius, likewise, permits gender quotas at the local level but not at the national level.

- Special provisions for the representation of minorities may be part of an overall power-sharing arrangement. In Kosovo, the Constitution (article 62) requires that in municipalities where an ethnic minority comprises at least 10 per cent of the local population, the deputy mayor must belong to that minority.

Constitutionalizing the substantive powers of local communities

Constitutional specification of local powers

Even if a constitution establishes the framework and basic institutions of local democracy, the substantive powers allocated to local authorities usually depend on ordinary legislation. Several constitutions make this dependence explicit, specifying that the powers, functions and responsibilities of local authorities will be determined by parliament (Czech Republic, article 104; Portugal, article 241; Cabo Verde, article 257; Tunisia, article 134). This means that the national authorities can alter this distribution of power at will—an approach that is flexible and responsive to national-level priorities.

A few constitutions, in contrast, identify specific policy areas or competencies over which the local authorities have constitutionally mandated powers, functions and responsibilities (e.g. Brazil, article 30; Ecuador, article 264; Nigeria, schedule IV; South Africa, article 156 and schedules 4B and 5B). Although less flexible, this constitutional allocation of power provides some protection for local authorities from dependence on the national legislature, which may be necessary, in particular, in situations where local authorities represent minorities whose autonomy, were it not constitutionally guaranteed, would be unlikely to be respected by national-level politicians. As an intermediate position, a constitution may expressly permit—and anticipate—the devolution of power in certain policy areas, while making such devolution dependent on subsequent enabling legislation (e.g. India, articles 243G and 243W).

Some jurisdictions give local authorities a power of general competence. This is the authority to act in any matter not otherwise prohibited or limited by law (as opposed to requiring specific delegation or conferral of authority by legislation. In England, for example, local authorities have traditionally had only such powers as were vested in them by statute, and any other function performed by them was deemed *ultra vires* (beyond its powers); the Localism Act of 2011 conferred upon them a general power of competence, meaning that henceforth local authorities could do anything that an individual could do that was not otherwise prohibited by law. This can increase the scope for local initiative and innovation, since it

means that local authorities do not need to seek explicit legislative authority for every new policy. However, the power of general competence does not restrict the right of the legislature to intervene, when it deems it necessary to do so, by prohibiting or compelling certain actions.

Think Point 2

What is the problem with local democracy in the country at present? Is the problem: (a) that it does not have sufficient powers, resources or capacity to carry out the functions required of local democracy in a thriving democratic society? Or (b) that the powers it has are not being used effectively or efficiently, due to corruption, complacency and ineptitude? Often the two problems go hand in hand, and it may be necessary for constitutional designers to consider how to delegate greater powers and resources to local authorities, while also guarding against the misuse of those powers and resources.

Recognizing the principle of subsidiarity

One possibility is to recognize the principle of subsidiarity in the constitution. Subsidiarity is a principle for allocating powers that have been widely—although not universally—accepted as a guide to finding a balance between local autonomy and national cooperation. Subsidiarity requires that higher-level institutions (such as national governments) should not unnecessarily interfere in the internal life of a community of a lower level (such as a local government) so as to deprive the latter of its functions, but instead should support the lower level in case of need and help to coordinate its activity with the activities of the rest of society in order to achieve the common good. In other words, local authorities should do all those things that they can do, and especially those things that they can do better and more effectively than higher-level authorities, and should have the broadest practicable autonomy over those functions. This does not mean, however, that higher-level authorities should abdicate responsibility; on the contrary, they have a duty, in pursuit of the common good, to: (a) support and coordinate the local authorities in order to equip them to perform their functions properly; and (b) take more direct responsibility for those functions that cannot (for reasons of scale, size, complexity or their effect on others) be adequately handled locally.

Applying the principle of subsidiarity may require, in some contexts, multilevel government, such that some functions are exercised by low-level local authorities (communes, districts, villages) while others—perhaps those that are most expensive or that require more uniform provision—are exercised by higher levels of government (e.g. regionally, provincially or nationally). Subsidiarity may be

recognized in a constitution either as a legal norm to be enforced by the courts (in which case the judiciary becomes very influential in determining which functions should be exercised at which level) or as a political norm to be enforced through democratic processes (in which case the constitutional recognition of the principle has a mainly declaratory purpose).

Financial provisions

Fiscal decentralization enables local authorities to raise and spend their own money, giving them the ability to act autonomously without having to depend on conditional grants from the central government.

- Many constitutions are silent on the issue of local government finance, simply leaving it to the legislature to determine the degree to which local authorities may exercise financial powers. This can result in local authorities being very dependent on the allocation of resources by the central government, with a consequent loss of autonomy (Fjeldstad and Heggstad 2012: 1).
- Some constitutions therefore include specific references to the financial powers of local authorities, such as their right to levy certain taxes, to enjoy a certain percentage of national revenues or to raise money in other ways, such as through loans, bond issues or charges, user fees and fines. Ghana, for example, has a special fund to allocate a share of national revenues to local authorities (articles 250 and 252), while the Constitution of Costa Rica (article 170) guarantees that at least 10 per cent of the national budget will be allocated to local authorities.

One size does not fit all: asymmetry and special-purpose authorities

Asymmetry

Constitutions can provide for asymmetry in the design of local government institutions, such that some parts of the country have a special degree of autonomy (or, conversely, a higher level of central control), depending on their circumstances, capacity and needs. A common arrangement is for capital cities and/or other major cities to have a bespoke set of powers or governance structures. The local governance system in Kenya, for example, is based on the devolution of powers to counties, but the Constitution (article 184) also enables the national legislature to make specific provision for the governance of major cities. Islands or non-contiguous territories may also require special arrangements: in Spain, for example, special provisions exist for the cities of Ceuta and Melilla, which are exclaves.

Special-purpose authorities

In some countries, there are special-purpose authorities responsible for the management of a particular policy or service at the local level. These exist alongside, but are distinct from, general-purpose local authorities such as municipal councils. Most commonly, these include school boards, as well as housing, park and port authorities. Such specialist authorities may be suitable to meet particular needs: for example, in a linguistically divided society, it might be necessary for cities to maintain separate school boards for different language groups (a provision that exists, for example, in the Canadian province of Ontario, where English-speaking and French-speaking schools are run by different local school boards). However, over-reliance on special-purpose authorities can result in confusion, overlapping jurisdictions, a lack of accountability and conflicting policies. It can be difficult for ordinary citizens to know who to hold responsible in these cases. Moreover, elections to school boards and other special-purpose local bodies often suffer from low turnout, even compared with the usual turnout for other local elections. An additional consideration is cost: establishing special-purpose authorities will increase administrative overheads, which could be prohibitive, especially in developing countries.

4. Contextual considerations



The most appropriate way in which to craft the local-democracy provisions of a constitution, and the best point of balance between the flexibility of short, generic and porous provisions, on the one hand, and the certainty offered by clear, detailed and rigid provisions on the other, must depend on the context of each country. There is no one correct answer that can be applied in all circumstances, but the following contextual factors are among those that may need to be taken into consideration.

Transformation or consolidation

The extent of constitutional specificity may depend on whether there are existing local institutions in place that the constitution aims to recognize or protect, or whether new institutions are being created.

- If a new constitution is intended to bring about a general devolution of power and responsibility to localities as part of a process of decentralization, then more detailed provisions may be necessary to establish these institutions without excessive reliance on implementing legislation. This will give a clear constitutional mandate for decentralization and prevent a relapse into power hoarding by the central government.
- If, however, a new constitution is intended to build on existing practice, and perhaps allow for gradual evolution, then briefer and more general constitutional provisions may be appropriate.

Think Point 3

Is the intention of proposed constitutional reforms to (a) decentralize power; (b) protect the status quo; or (c) consolidate power in the centre?

Trust

A constitution that gives national legislatures broad freedom to determine the shape and powers of local government depends on a high level of mutual trust and confidence between local communities and the national legislature. A detailed and rigid constitution, in contrast, is likely to be attractive when levels of trust and national consensus are low, as more detailed constitutional bargains will increase the certainty of mutual expectations.

Symbolic messages

Constitutions are not just legal documents that regulate institutions and rights. They are also political documents that reflect and communicate important aspects of a nation's identity and of the ethos and character of the state. A strong commitment to local democracy in a constitution might be valued for symbolic reasons—as a sign that the state is committed to localism—even if the implementation of this commitment is heavily dependent on ordinary law.

Degree of consensus

Thin and generic constitutional provisions on local government may be appropriate when the participants in the constitution-building process disagree on the role, scope and extent of local government, e.g. if there is significant division between 'centralizers' and 'localists' (see Box 4.1. for an example of such divisions). In these situations, 'by law' clauses (which enable the legislature to give substance to constitutional provisions by means of ordinary laws) may be used in order to: (a) remove final decision-making on the issue of local government from the constitution-making process, and thereby prevent such a disagreement from blocking the adoption of a constitution that is otherwise broadly supported; and (b) lessen the stakes for both winners and losers, since the decisions taken by law do not have constitutional status and are therefore more easily reversible.

Box 4.1. Ideology and decentralization: the Czech case

Once the Czech Republic became an independent state, the issue of regional government was a source of tension between then-Prime Minister Vaclav Klaus and then-President Vaclav Havel. Klaus held the view that regional governments would simply add another layer of bureaucracy, and that real empowerment for the people would come primarily through market liberalization. Havel held the view that regionalization would strengthen Czech democracy, deepen civic engagement and help bridge the gap of alienation between the citizen and the state.

This example is interesting because it shows the importance—often unacknowledged—of *ideology* in discussions of decentralization. Their disagreement was not based on a simple struggle for power between central and regional elites, nor was the case for decentralization made on the basis of a need to accommodate particular minorities or communities. Instead, it reflected two different conceptions of what democracy means: is it primarily concerned with the choices of individuals or with the voices of citizens in the public square?

For Klaus, the issue of regionalism was primarily one of additional cost and administrative effectiveness; for Havel, it was primarily one of citizen engagement and civic participation. One often finds, as in the Czech case, that the economically determinist ideologies of left (communism) and right (neo-liberalism) favour centralization, since they see people as primarily economic actors and see little intrinsic merit in democratic participation, while the ideologies of the centre, which are not economically determinist (civic republicanism, Christian democracy, left liberalism), tend to favour decentralization.

Negotiating strategies

Participants in constitutional negotiations who think they can achieve more of their preferred goals for local democracy through the ordinary legislature than they can through the constitution-building process may have an incentive to support thin, generic provisions.

In contrast, territorially concentrated ethnic, cultural or linguistic minorities, who will be in a permanent minority in the national legislature, may have a procedural advantage in constitution-building (since constitution-building processes usually require supermajoritarian approval, giving minorities veto power), and so will have an incentive to ensure that robust guarantees of local autonomy are included in the constitutional text. In these cases, local autonomy may be part of a wider constitutional package, which could include, for example, rights to special representation for minority communities in the national

legislature, particular minority veto rights, the recognition of multiculturalism and multilingualism in the national constitution.

Political demand

The strength, intensity and nature of the political demand for local autonomy will influence the appropriate extent and direction of decentralization. For instance, if the demand for local autonomy arises in response to failures of governance and service delivery, particular attention should be paid to constitutional reforms that will increase the effectiveness of local governance (such as strengthening accountability and oversight institutions, and increasing opportunities for public participation in determining development goals and outcomes). If the demand for decentralization stems mainly from perceived unfairness in the sharing of resources, provisions to ensure fairer distribution (for example, through constitutionally mandated revenue sharing) may be required.

Security situation

In some contexts, persistent security concerns, such as drug-related violence or armed insurgency, may prevent the effective decentralization of power to local communities. Often, these security restrictions will apply only in certain parts of a country, while the rest of the country may be able to enjoy relatively effective local democracy. In these cases, a degree of constitutional flexibility (e.g. enabling central appointees to take over certain functions, such as law enforcement and the maintenance of order) may be needed. However, to avoid the risk of authoritarian centralization, these provisions might have to be combined with proper safeguards (e.g. legislative approval, time limits, judicial review of the decision to impose central direct rule and so forth).

Civil- versus common-law contexts

There are marked differences in the structure, role and functioning of local democracy between: (i) countries mostly influenced by the civil-law (Roman) tradition, where local government is often derived from Napoleonic institutions; and (ii) countries mostly influenced by the common-law tradition, whose systems of local government have evolved, however remotely, from medieval English practices. In many civil-law countries, there is, for instance, an integrated and pyramidal system of local administration based on a uniform set of divisions and subdivisions that covers the whole territory, while common-law countries often have heterogeneous structures, with cities and towns having a different form of government from the surrounding counties or districts.

Moreover, in many civil-law countries, local officials such as mayors have a dual function, acting both as the head of the local council and as a member of the state's administrative hierarchy. This means that mayors may have a dual responsibility: to the local council as its executive leader, and to the state (often through a centrally appointed official such as a prefect) as the principal representative of the state in the locality. As a consequence, they may be subject to administrative direction and veto by higher authorities, all the way up to the interior minister, in the performance of their state duties.

In common-law countries, in contrast, local officials are usually officials of a town or borough, which is a distinct public corporation, and not public functionaries of the state. Since they do not, as a rule, form part of the state's administrative hierarchy, local officials do not usually take orders from higher authorities. Constitution-builders are rarely (if ever) in a position to change a country's whole legal tradition and administrative culture. So these differences need to be seen as part of the contextual background within which reforms take place. Thus, when looking for models and examples, it may be more appropriate to consider geographically remote countries with the same legal-administrative tradition rather than to look to neighbouring countries with a different tradition.

Federalism

Some federal and regionalized constitutions say very little about the forms, structures and powers of local government because these matters are determined by the legislatures (or, in some cases, by the state-level constitutions) of the federated units. In Canada, for example, the Constitution (article 92) simply states that, 'In each Province the Legislature may exclusively make Laws in relation to [...] municipal institutions in the Province'. In other federal countries, however, the constitution explicitly devolves power further downwards to local communities and specifies provisions for local democracy in more detail, e.g. in the Constitutions of Brazil, India and Spain.

International standards

Decentralization is often supported by the international community and by international development agencies as a means of promoting good governance and sustainability, improving public services, tackling poverty and consolidating democracy (UN-Habitat 2002; United Nations General Assembly 2004).

Certain international organizations have developed standards and guidelines for local government that may need to be consulted during the process of constitution-making. For example, the Commonwealth issued the so-called Aberdeen Principles on Good Practice for Local Democracy and Good Governance (Commonwealth Local Government Forum, 2005) in order to

ensure that local development is participatory and citizen-focused, that it benefits local people and that citizens have a say in their governance and development.

One of the most important international instruments is the European Charter on Local Self-Government (1986), which recommends that local government should be constitutionally recognized wherever possible (see the box below), that local authorities should have broad powers with scope for independent action, that they should be able to determine their own administrative structures and that they should be consulted on boundary changes.

Furthermore, various international associations of local authorities, such as United Cities and Local Governments (UCLG 2008), the International Union of Local Authorities and the Global Parliament of Mayors, promote good practices: constitution-builders addressing the issue of local government may wish to consult these organizations for additional guidance (see Box 4.2 for an example).

Box 4.2. Recognizing local government in the constitution: Ireland and Malta respond to international obligations

Ireland (population 4.6 million) and Malta (population 0.4 million) are both unitary parliamentary democracies. Their constitutions at first made no mention of local government, since local government—following the British model—was seen as a merely administrative matter to be regulated by ordinary law. As members of the Council of Europe, Ireland and Malta became signatories to the European Charter of Local Self-Government, which requires local democracy to be constitutionally recognized where possible. Their constitutions were subsequently amended to grant this recognition.

In Ireland, the 20th Amendment, approved by the people in a referendum in 1999, gives local government constitutional status and sets a maximum term of five years for local councillors, ending an earlier practice whereby local elections could be postponed for political reasons. In Malta, there was no democratically elected local government until 1993, when local councils were established by law. In 2001, the Constitution of Malta was amended to give the institution of local councils and the principle of local democracy constitutional status, reinforcing their legitimacy and permanence.

5. Protecting and enhancing local democracy



Conduct of elections

To ensure the integrity of electoral processes, bodies such as boundaries commissions (which determine the boundaries of electoral districts or constituencies in many countries), electoral commissions or electoral tribunals (which oversee the registration of voters and the conduct of elections), and also the courts and administration, should be independent both from locally elected institutions and from the central government. Constitutions may further prescribe that the functions of independent scrutiny, accountability and public ethics institutions (including anti-corruption commissions, ombudsmen, auditors) extend to local bodies, providing an external check against the misuse of power by local officials. In many constitutions, these so-called fourth-branch institutions have constitutionally protected status, guaranteeing their independence and neutrality. For more information on boundaries commissions, electoral commissions and other such bodies, consult International IDEA Constitution-Building Primer No. 19, *Fourth-Branch Institutions*.

Censure, impeachment and recall

Mayors and other local executive officials are usually elected for a fixed term. But what happens if an elected official is grossly incompetent or negligent, or if they abuse their authority? In such cases, there needs to be a mechanism by which a mayor or other senior local official can be lawfully removed from office. This may take the form of (a) a censure mechanism that enables the council to dismiss the

mayor, usually by a qualified majority, for stated cause; (b) an impeachment mechanism that enables the council to charge the mayor with certain crimes or misdemeanours, which are then tried through a judicial or quasi-judicial process; or (c) a recall mechanism, which enables members of the public to petition for the removal of a mayor or other official. In the latter case, if a specified number of signatures are obtained (and, usually, certain other conditions met), then the people may be called on to vote in a recall election to remove a mayor or other official. Recall mechanisms are much more common at the local level than they are at the national level, with countries as diverse as Japan and Peru making regular use of recall mechanisms to discipline local officials.

Direct local democracy

Many countries allow local authorities the right, under statutory provisions, to hold referendums on matters of local concern. Some give explicit constitutional recognition to this right, including Peru (article 32), Poland (article 170) and Portugal (article 240). Such referendums may be a powerful tool of local political engagement. In Peru, for example, local referendums have been used to defend the environmental interests of local communities from mining companies (Enlace Nacional, 2013). In Germany, there is also a right of citizens' initiative, which is expressed in the constitutions of all 16 *Länder*: this enables residents to demand that an issue be put to a local referendum by popular petition (requiring support from 2.5 per cent to 17 per cent of the local electorate, depending on the *Land* in question) (Tessmann and Kirchner 2011).

Participatory local democracy

In Botswana, there is a form of participatory village meeting, known as a *kgotla*, that plays an important role in rural government (Hope and Somolekae 1998: 88–90). At these public gatherings, individuals are allowed to make contributions, as well as submit petitions and complaints. This traditional form of governance, presided over by the village chief, has been integrated into Botswana's Local Government Act, and is considered to be of such importance that cabinet ministers are required to attend regular *kgotla* meetings (Ayittey 1991: 483).

In Bolivia, since the enactment of the Law on Public Participation in 1994, there has been a system of participatory democracy aimed especially at increasing the political voice of indigenous people, peasants and rural communities.

In Brazil, around 140 municipalities (of which Porto Alegre was the first, in 1989) have adopted a system of participatory budgeting through grass-roots meetings at the neighbourhood level. These participatory institutions manage, through the neighbourhood and functional delegates that they elect, much of the city's discretionary expenditures. It has had some success: primary health has

improved in underprivileged neighbourhoods, the number of (nursery) schools has increased, the streets have been paved and water supply and sewerage systems have become available for almost every household. Furthermore, civil society has been empowered, and the previously clientelistic modes of decision-making have been replaced by more transparent and inclusive processes (Sintomer, Herzberg and Röcke 2008: 167–8).

However, these institutions of participatory democracy—in Botswana, Bolivia and Brazil—exist only at the sub-constitutional level, being established by ordinary legislation or simply by local practice, rather than being established on a constitutional basis.

Rights of intervention

While local democracy requires that locally elected councils and officials have sufficient autonomy to provide for the well-being of the locality, and are responsible to the people of the locality for the proper exercise of these autonomous powers, there may be cases in which higher authorities must temporarily intervene in the running of local authorities. Such intervention may be necessary on security grounds (for example, in situations where localized conflict makes the holding of local elections impracticable) or may be used to ensure that service delivery is not imperilled by gross failures of governance. However, the excessive or improper use of the right to intervene can undermine local accountability. To allow intervention, while limiting its excessive or improper use, constitutional provisions may specify the circumstances under which higher levels of government may intervene in local decision-making and may regulate the procedures for such interventions.

- The Constitution of Belgium (article 162.6) takes a broad approach, requiring that provision be made by law for ‘the intervention of the supervisory authority or of the federal legislative power to prevent the law from being violated or public interests from being harmed’.
- The South African Constitution (article 139) adopts a more detailed and prescriptive approach in which there are clearly defined constitutional safeguards. There is a scale of intervention by provincial governments in municipal affairs that can be invoked ‘when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation’. The provincial government may issue a directive to a municipality, take over the delivery of a particular function or service and, under ‘exceptional circumstances’, dissolve a municipal council and appoint an administrator for the municipality until new municipal elections can be held. Any such intervention, however, must be reported to the Cabinet and to the National Council of Provinces (the upper house of

South Africa's legislature), both of which have the authority to end the intervention. Provincial governments may also impose a recovery plan on local authorities that cannot deliver essential services or cannot meet their financial obligations.

6. Alternatives to local democracy



Centrally appointed local authorities

There are some countries that, despite having representative government at the national level, do not provide for elected local government. In Malaysia, for example, local authorities are appointed by the state governments. Such arrangements fall short of democratic standards for local government, but they might be justified in exceptional cases, such as when the state capacity is very low or when serious security risks preclude the holding of local elections in certain areas. If it is necessary to rely on such appointed institutions, consideration could be given to a constitutional rule requiring local officials to be appointed on an inclusive and representative basis, perhaps after a process of (formal or informal) consultation with the public or community leaders.

Local government through traditional leadership

In other cases, traditional rulers such as tribal chiefs or religious leaders may, formally or informally, perform local governance roles, such as resolving conflicts, maintaining order, collecting taxes or acting as village chiefs. Some countries acknowledge this reality by giving traditional leaders a recognized place under the constitution: this confirms the power and influence of traditional leaders, but also places certain responsibilities upon them and places their power within more precise legal limits. In Sierra Leone, for example, the Constitution of 1991 and the Chieftaincy Act of 2009 provide a legal structure for the election of chiefs and the performance of their duties. These institutions can be subject to a degree of



public influence and responsibility (for example, where tribal leaders are expected to act on the advice of tribal elders or where village chiefs are elected by the villagers) and may therefore be regarded as a form of indigenous democracy that might be appropriate in certain specific contexts.

7. Decision-making questions



1. What is the purpose of local government? Is it merely a vehicle for delivering national policies, subject to such local adjustments as may be necessary? Or does it have a wider role in promoting the well-being of communities? In aiming to achieve this, can it take initiative, and does it enjoy substantial autonomy?
2. What is the country's financial capacity? Has a preliminary costing been undertaken? Are these costs sustainable? Have they been compared to the costs of alternatives? What measures can be taken—for example, through constitutional flexibility—to ensure that the country is not burdened by a local government system it cannot afford?
3. What is the country's human capacity? Is there a sufficient number of educated, capable people to staff an extensive system of local government? Does this capacity exist in all parts of the country?
4. Are there ethnic, linguistic, religious or cultural minorities that need to be accommodated? How far can this accommodation be achieved through territorial decentralization? What other reforms to the constitution might be necessary (e.g. language rights, non-discrimination clauses, reserved seats in central institutions)?
5. Are there existing, well-functioning local government institutions that can be granted further powers? Or would these institutions have to be created from scratch? If the latter is the case, should they be established by the constitution or by subsequent organic laws or ordinary legislation?

6. Are demands for local autonomy uniform throughout the country, or are they only expressed in certain parts? If the latter is the case, could asymmetric arrangements that provide for the special autonomy of those areas be a better solution than a one-size-fits-all scheme of local government? Conversely, are there particular areas (e.g. tribal areas, areas suffering from conflict) where the standard forms of local democracy cannot apply?
7. How can local government be made properly representative of, and responsive to, the people? What decision-making structures (electoral system, terms of office, executive structures) would be suitable in each context? Is there a demand not only for local autonomy but also for more democracy at the local level?
8. What fail-safes or guarantees are needed to ensure that decentralized powers are not used in corrupt, partisan or ineffective ways? Should there be a reserve power for higher authorities to intervene in local government in cases of emergency or failures of governance? If so, how can such mechanisms be protected against abuse?
9. How are local government boundaries to be determined? Should local authorities have a right to be consulted on boundary changes? Should boundary changes require the consent of the people?
10. How can the fiscal arrangements of local government be made more flexible to respond to changing needs and resources while at the same time protecting localities from undue financial dependence on higher levels of government?
11. What is the political party situation? How do political parties shape the working of the proposed institutions of local government? Would these institutions still be workable if the party system were to change?

8. Examples



Table 8.1. Constitutional provisions on local government

Country	Existence of local government	Powers of local government	Funding arrangements	Electoral arrangements
Bangladesh 1972 Constitution (revised 2014)	Article 51(1): Local government in every administrative unit of the Republic shall be entrusted to [elected] bodies.	Article 59(2): the functions of local government are: administration; the maintenance of public order; the preparation and implementation of plans relating to public services and economic development	Article 60: local government has the power to: impose taxes for local purposes; prepare budgets; maintain funds	Article 59(1): local governments are bodies composed of 'persons elected' in accordance with the law

Country	Existence of local government	Powers of local government	Funding arrangements	Electoral arrangements
Brazil 1988 Constitution	<p>Title III: Organization of the State</p> <p>Article 18: local governments are counties.</p> <p>Their creation, incorporation, merger and subdivision are regulated by state law and depend upon consultation with populations.</p>	<p>Counties have both joint powers with the union, states and the federal district (article 23) and their own powers (article 30)</p> <p>Article 23 describes a series of joint powers, such as public health, culture, environment, agricultural production and traffic safety</p> <p>Article 30 describes the powers of counties, which include legislation, the organization of districts, public services, pre-school and elementary education, the promotion of territorial order and the protection of local historic and cultural patrimony</p> <p>Article 144: local governments or counties may organize county guards to protect property, services and facilities</p>	<p>Article 145: Counties may levy taxes, fees and assessments for public works</p> <p>Article 158: The following taxes are allocated to counties: federal tax on income and earnings of any nature; 50% of the federal tax on rural property within the county; 50% of state tax on ownership of automobiles within the counties' territory; 25% of state tax on free movement of goods, services and transportation from the county</p>	<p>Article 29: Elections are set out by an organic law, which has to include the following: the terms of office for the prefect, vice-prefect and aldermen, which is four years; elections for these positions have to be held simultaneously and have to be direct</p>

Country	Existence of local government	Powers of local government	Funding arrangements	Electoral arrangements
<p>Czech Republic</p> <p>1993 Constitution (revised 2002)</p>	<p>Article 8:</p> <p>Guarantee of territorial self-government</p> <p>Article 99:</p> <p>Local government is composed of municipalities and regions</p> <p>Article 100:</p> <p>Municipalities are part of the regions</p>	<p>Article 104:</p> <p>The powers of municipalities shall be provided by statute and concern matters not entrusted to the regions</p> <p>Municipalities may issue generally binding ordinances</p>	<p>Article 101:</p> <p>Municipalities, regions and other territorial self-governing units may own property and manage their own budget</p>	<p>Article 102:</p> <p>Representative bodies, including those of municipalities, are elected every four years by the universal, equal and direct right to vote</p>
<p>Dominican Republic</p> <p>2010 Constitution</p>	<p>Article 12:</p> <p>The state is divided into the national district, regions, provinces and municipalities</p>	<p>Article 202:</p> <p>The powers (attributions and faculties) of mayors will be determined by law.</p>	<p>Article 200:</p> <p>Town councils can establish municipal taxes, as long as doing so does not interfere with</p> <p>National taxes; Inter-municipal commerce and exports; the constitution and laws</p> <p>Article 206:</p> <p>The investment of municipal resources is subject to the development of participative budgets that favour integration and citizen co-responsibility in policies of local development</p>	<p>Article 22(3):</p> <p>Citizens have the right of popular, legislative and municipal initiative</p> <p>Article 201(2):</p> <p>Mayors and aldermen will be elected every four years</p> <p>Article 203:</p> <p>The law will establish the conditions and the scope of exercising referendums, plebiscites and the municipal normative initiatives</p>

Country	Existence of local government	Powers of local government	Funding arrangements	Electoral arrangements
<p>Ghana</p> <p>1992 Constitution (revised 1996)</p>	<p>Article 240:</p> <p>A system of decentralized government and administration will be set up</p> <p>Article 241:</p> <p>Ghana is divided into districts, the highest authority being the district assembly</p> <p>Article 255:</p> <p>In each region, a regional coordinating council will be established, consisting of</p> <p>the regional minister; the presiding member and the district chief executive; two chiefs from the regional house of chiefs; the regional heads of decentralized ministries</p>	<p>Article 241(3):</p> <p>The highest political authority is the district assembly, with deliberative, legislative and executive powers</p> <p>Article 245:</p> <p>The functions of district assemblies are:</p> <p>the formulation and execution of plans, programmes and strategies in order to mobilize resources for the development of the district;</p> <p>the levying and collection of taxes, rates, duties and fees</p>	<p>Article 250:</p> <p>The salary of the district chief executive will be determined by the parliament. It is paid through the Consolidated Fund</p> <p>The salaries of the presiding member and of other members will be determined by the district assembly, paid out of the assembly's own resources</p> <p>Article 252:</p> <p>The parliament will create a fund known as the District Assemblies' Common Fund</p> <p>Not less than 5% of the total revenues of the country will be paid to the district assemblies for development</p> <p>The distribution of the Common Fund shall be determined by a formula established by the parliament</p> <p>A District Assemblies' Common Fund administrator will ensure the effective and equitable administration of the Common Fund</p> <p>Public bodies and the state can make grants-in-aid for the district assemblies</p>	<p>Article 50:</p> <p>When two or more candidates are nominated, the one who receives the most votes is the one elected</p> <p>Article 51:</p> <p>The Electoral Commission has the duty to establish regulations in order to ensure, among others things, the conduct of public elections and referendums</p> <p>Article 246:</p> <p>Terms</p> <p>Elections for the district assemblies will be held every four years</p> <p>The term of office of the district chief executive is four years, with a maximum of two consecutive terms</p> <p>Article 248:</p> <p>Candidates for local elections will present themselves as individuals who are not linked to political parties</p> <p>Political parties may not campaign against a candidate</p>

Country	Existence of local government	Powers of local government	Funding arrangements	Electoral arrangements
<p>Indonesia</p> <p>1945 Constitution (reintroduced 1959, revised 2002)</p>	<p>Article 18:</p> <p>The territory of Indonesia is divided into provinces, regencies (<i>kabupaten</i>) and municipalities (<i>kota</i>)</p>	<p>Article 18(2):</p> <p>The authorities will exercise their power according to the principles of regional autonomy and duty of assistance</p>	<p>Article 18(B):</p> <p>The relations between the central government and regional authorities in finances, public services, and the use of natural and other resources shall be regulated and administered with justice and equity according to law</p>	<p>Article 18(3-4):</p> <p>Members of local representative bodies, as well as Governors, Regents (<i>bupati</i>) and Mayors (<i>walikota</i>), shall be elected democratically</p>
<p>Poland</p> <p>1997 Constitution</p>	<p>Article 15:</p> <p>Public power is decentralized, the division of the territory is established by statute</p> <p>Article 16:</p> <p>Local government shall participate in the exercise of public power.</p> <p>The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility</p>	<p>Article 94:</p> <p>Local government can establish laws (legal acts) that are applicable within their own territory</p> <p>This is one of the sources of law</p> <p>Article 163:</p> <p>The public tasks of local government are those that are not reserved by the Constitution or statutes to other authorities</p> <p>Article 165:</p> <p>Local governments have the right to ownership and property rights</p>	<p>Article 167:</p> <p>Local government shall receive public funds in order to perform their duties, as well as subsidies and grants from the state budget</p> <p>Municipal revenues belong to the municipalities</p> <p>Article 168:</p> <p>Local governments can establish taxes and charges as established by law (statute)</p>	<p>Article 169:</p> <p>Elections will be universal, direct, equal and secret</p> <p>Elections will be established by statute</p> <p>Article 170:</p> <p>Referendums are permitted for matters concerning the community, such as the dismissal of a body that was directly elected</p> <p>Referendums will be established by statute</p>

Country	Existence of local government	Powers of local government	Funding arrangements	Electoral arrangements
<p>Spain</p> <p>1978 Constitution (revised 2011)</p>	<p>Section 137:</p> <p>The territory is divided into municipalities, provinces and autonomous communities</p>	<p>Powers not constitutionally specified—dependent on laws enacted at national or autonomous community level</p>	<p>Section 142:</p> <p>Local government will be financed by means of their own taxation, and by revenue sharing from national taxes and taxes raised by autonomous communities</p>	<p>Section 140:</p> <p>Government and administration performed by town councils composed of mayors and councillors.</p> <p>Councillors are elected through universal, equal, free, direct and suffrage; mayors are elected by councillors or residents</p> <p>Further provisions about local elections shall be established by law</p>
<p>Tunisia</p> <p>2014 Constitution</p>	<p>Article 131:</p> <p>Local government is composed of municipalities, districts and regions</p> <p>Laws can provide for the creation of other types of local authorities</p>	<p>Article 134:</p> <p>Local government has its own powers, shared powers with the central authority and delegated powers from the central government</p> <p>Joint and delegated powers are distributed according to the principle of subsidiarity</p> <p>Local governments' own powers are regulatory powers</p>	<p>Article 135:</p> <p>The financial system will be regulated by law</p> <p>However, local governments have both their own resources and resources provided by the central authority according to the principle of proportionality</p> <p>The creation or transfer of powers through the central government will be accompanied by the corresponding resources.</p>	<p>Article 133:</p> <p>Constitution differentiates between municipal and regional councils (elected through general, free, direct, secret, fair and transparent elections) and district councils (elected by members of municipal and regional councils)</p> <p>Article 139:</p> <p>The participation of citizens and civil society is guaranteed concerning development programmes and land-use planning</p>

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Annex



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