

A GLOBAL DIALOGUE ON FEDERALISM

LOCAL GOVERNMENT AND METROPOLITAN REGIONS IN FEDERAL SYSTEMS

THEME TEMPLATE

COUNTRIES

This theme draws on the following countries as case studies: Australia, Austria, Brazil, Canada, Germany, India, Mexico, Nigeria, South Africa, Spain, Switzerland, and the United States.

GENERAL

While local government is found in all federal countries, its place and role in the governance of these countries vary considerably. In some local government is considered an essential part of the federal nature of state and recognized in the constitution as such. In others local government is simply a creature of the subnational states/provinces. When referring to local government it is more correct to refer to local governments (plural) as these institutions come in all shapes and sizes, performing widely divergent functions. They range from metropolitan municipalities of mega-cities, to counties, small town councils, and villages. Their focus is either multi-purpose in the case of municipalities or single purpose in the case of special districts and school districts. What unites these institutions of state is that there is no level of government below them. That is also their strength and democratic claim; they are the government closest to the people.

The earliest federal constitutions (United States, Switzerland, Canada, Australia) did not refer to local government (and if they did, then merely as a competence of state/provincial government). Local government was thus merely a creature of statute at the discretion of the state/province. Since the Second World War, however, federal constitutions have increasingly recognized local government as a constituent part of the federal state. A principal reason for this growing recognition of local government is the democratic potential of the government closest to the people. This was the case in Germany, Brazil, Nigeria and South Africa. In India, entrenching local self-rule in the constitution was seen as vital for the mobilization of local resources for development. On the other hand, changes to the Swiss Constitution, giving recognition to local government, merely recorded the entrenched status of municipalities in the political life of that country.

The place and role of local government have also come strongly to the fore in the governance of metropolitan regions. Where local governments have to deal with the challenges of massive conurbations, they are also staking claims to be partners at the federal table of government. Articulating this view is, for example, the mayor of the

metropolitan council of Toronto. He points out that the city's budget is larger than many Canadian provinces, yet it is not regarded as a partner in government. The claim he voices is thus for money, power and respect. Urban governments require new fiscal tools to meet their increasing responsibilities, they need powers commensurate to the challenges of urbanization, and finally, given the vital role they play in the social and economic wellbeing of the country as a whole, they want respect - a seat at the table of government.

In systems where the federal state is conceived of as comprising only the federal government and states/provinces, the former usually has little or no direct relations with local government and concerns and interests of the latter are mediated by the states/provinces. Where government powers are divided and shared among the three orders of government, direct relations between the federal government and local government usually follow, producing an inherently more complex system of government.

Increasingly local government plays a significant role in government. The constitutional recognition of local government over the past half century bears testimony to this. The complaint by local government about the off-loading of more and more responsibilities on municipalities is a recurring theme world wide. In the age of globalization, where the world is getting smaller, communities have a renewed interest in the comfort zone government closest to them may offer. Although the majority of local governments are still to be found in small towns and villages, with the town hall meetings exemplifying local self-government, the majority of the population in most country's live in cities and metropolitan regions, the governance of which is not only more complex, but also affects the health of the entire country. These developments on the role and place of local government place new demands on the theory and practice of federalism.

The purpose of the theme is to examine the role and place of local government and metropolitan regions in 12 very different federal or federal-type countries and to explore their relationship with the other orders of government and their impact on the system of federalism as a whole. *Consistently with the purpose of the Global Dialogue, to assist countries to learn from each other's experiences, country chapters should explain not only the formal institutional arrangements but also their operation in practice, to enable them to be adequately understood.* This template provides a guide to the information that each chapter should contain. Questions that are irrelevant to any country should be ignored. If the template omits questions relevant to a particular country, however, or takes an unduly narrow perspective, please let the theme coordinator know, so that the template can be adjusted accordingly, to make the outcomes as useful as possible. *Views in various sections should be based on the consensus reached in the country dialogue and should not be the personal opinion of the authors. Note that each chapter, including tables and annexures, should not exceed 10,000 words.*

Some **cross-cutting questions** that should be covered at some point in each country chapter and should guide the development of the chapter, include the following:

- Has local government become a partner in the federal system of government, or is it still under the tutelage of states/provinces? What are the principal historical, social or political reasons for the place that local government occupies in the system?
- Where local self-government has received constitutional entrenchment, what has been the impact on the functioning of local government? Are local governments more democratically accountable and are they providing better services? Are citizens better off?
- Has the relationship between local government and the federal government changed? Are there direct relations between local government and the federal government or do states/provinces mediate that relationship?
- How has the recognition of local government as a partner in the federal system of government affected the relationship between the federal government and states/provinces? Is there competition between the large local governments, such as metropolitan cities, and states/provinces for power and resources?
- Where local government is a partner in the federal system, what has been the impact on the system as a whole? Have intergovernmental relations become more complex and unwieldy?
- What does the future hold? What are the likely developments?

Section 1: Introductory overview of the country

- Briefly describe some key features of the country to assist the understanding of your chapter. What is the size of the territory? What is the population size? What is the population composition in terms of ethnic origins, language, culture, religion, etc.? Provide basic economic indicators such as growth rate, GDP, composition of economic activity, debt burden, etc.
- Briefly describe some key features of the country. Is it a republic or is there still some form of monarchy? Does it rely exclusively on representative government? How does the party system work? Are there any dominating parties which alternate power? Is the legal system based on the common law, on civil law, on another legal system or a combination of influences? Is the system of government stable, recently established, or unsettled?
- Provide a brief overview of the institutions of government at federal and subnational level that exist in the country, to enable the more detailed material that follows to be put in context. How are the legislatures and executives chosen?
- How is the government held accountable to citizens? What are the institutional arrangements – legislative, legal, judicial, civil, etc - to provide oversight of government?

Section 2: History, structures and institutions of local government

- What is understood in your country by the term local government? And what is its function?
- Describe briefly the historical developments pertaining to local government. Are there aspects of the history of the country that can assist in understanding the

- place of local government in your system of government? Has local government's place in government changed over time?
- Is the entire country subject to local government or are there areas falling under federal or state/provincial rule directly?
 - Outline the key institutions that are grouped in your country under the term local government: counties, municipalities, town councils, school districts (in the USA), special district, rural local authorities (the panchayats in India), villages, traditional or tribal authorities. What is the size of the institutions both with regard to territory and population?
 - Are there cities as constituent states such as in Germany?
 - Are there single-purpose authorities, such as school districts? What are their focus and incidence? Why are single-purpose rather than multi-purpose institutions used?
 - Are there multi-layered local government structures – municipalities and districts/counties – exercising jurisdiction over the same territory?
 - Do municipalities establish joint institutions? What is their purpose and how often do they occur?
 - What are the institutional arrangements for metropolitan regions? Are there elected metropolitan councils? Single-purpose authorities dealing with, for example, water, environment, transport?
 - Do traditional forms of government (traditional leaders, tribal councils) play a governance role at local level?
 - How are local governments established, boundaries changed? Is there a trend towards the consolidation of local authorities? What control do local authorities and communities have over the demarcation of boundaries and amalgamation?
 - The institutional arrangements of local government are often an important indicator of the role that local authorities play. Do small municipalities with few resources have a limited role, while large municipalities perform significant governance functions? Is there a divide between urban and rural municipalities with regard to their role? Does size matter? How does the size of local authorities affect their relationship with other orders of government and the role they play?

Section 3: Constitutional recognition of local government

What is the constitutional nature of this order of government? In particular –

- Is local government constitutionally entrenched as an order of government in the federal constitution? If so, what was the rationale for the constitutional recognition? Does the rationale continue to be important today?
- What is the nature and ambit of the constitutional recognition?
- Is local government accorded powers that make local self-government meaningful?
- Does local government have original taxing powers?
- Are the special features in the constitution such as according local government directly a seat in the federal government?

- Are the institutional arrangements of local governments governed by the constitution? If one type of local government gets entrenched in the constitution, why did that type get entrenched and others not?
- Are all local governments accorded equal or symmetrical constitutional recognition or is the pattern asymmetrical where some local governments have more constitutional favor than others? For example, is there asymmetry in the way the constitution deals with local authorities of metropolitan regions?
- Does the capital city have a special status? Are there special arrangements with respect to voting rights, jurisdiction and intergovernmental relations?
- If there is no national recognition, does local government receive any protection in subnational constitutions? If so, what is the nature of such recognition?
- If there is no constitutional recognition for local government, are there (or have there been) initiatives in that direction? How do state/provincial governments respond to these initiatives?
- More broadly viewed, what is the significance or impact of the constitutional recognition of local self-government, or absence thereof? Does it enhance democratic and accountable government? Does it lead to greater political participation and better government?

Section 4: Governance role of local government

The governance role of local government is a function of its powers and functions. Issues to address are:

- What are the powers and functions of local government? Are the powers constitutionally entrenched, or conferred in legislation? Is the allocation of powers symmetrical or asymmetrical, depending on the size of a local authority?
- How are powers defined - narrowly or in plenary? Is there a general residual power of local government? Does local government have powers that matter?
- Are there powers that local government has sole responsibility for and others that are shared with other orders of government?
- To what extent do local authorities serve as agents for other orders of government?
- Are local authorities under an obligation (by federal or state law) to perform certain functions and provide certain services? If so, how are they financed?
- Given their powers and functions, what do local authorities actually do? What functions are the core of local government in terms of expenditure and personnel? Do they provide directly or indirectly goods and services like water, sewage, waste management, electricity, public transport, housing, etc? Is there a tendency to privatize these services?
- What is the contribution of local government to total government expenditure (compared to federal and state/provincial government)? What is the size of the local bureaucracy relative to the other orders of government?
- How do local authorities perform their functions? Do they have autonomy in hiring and firing personnel?

Having ascertained the powers and functions of local governments, the focus shifts to the institutions that exercise power and fulfil the functions of local government.

- What are the political institutions of local authorities? What is the democratic nature of local government? How are councils elected?
- Who has the vote: residents, non-nationals, property owners?
- Do elected councils fuse legislative and executive branches of government?
- Is the mayor directly or indirectly elected?
- How is executive power exercised – in committee or by an executive mayor?
- How do communities hold elected representatives accountable? Are there participatory processes of decision making?

Section 5: Financing the governance role of local government

- What is the constitutional and legal framework for the financial management of local authorities?
- Does local government have any constitutionally entrenched revenue-raising powers? Are local authorities free to change their taxing policy without prior approval of other orders of government?
- What are the revenue sources of local government (rates, taxes, levies, transfers, etc)? Are there any tax-base sharing agreements?
- What are the borrowing powers of local government?
- What percentage of local revenue is self-generated? Is there a vertical fiscal imbalance? How does this compare with state/provincial revenue streams?
- Is there a gap between the assigned duties and functions of local government and the available revenue?
- Is there horizontal fiscal imbalance and are there equalization programs?
- What are the form and extent of intergovernmental transfers? Conditional, unconditional? Of transfers, how much come from the federal government and how much from states/provinces?
- Are there controls over local expenditure? May local authorities run deficits?
- Are there special arrangements for local authorities governing metropolitan regions?
- In general, has local self-government contributed to greater financial accountability and efficiency?

Section 6: Supervising the local government by other orders of government

In most countries local government is supervised by “superior” orders of government. Supervision includes standard setting, support, routine review of decisions, monitoring of performance, and intervention. The extent of supervision also defines the level of local autonomy. Issues to be addressed include:

- The override of local laws and decisions by superior levels of government.
- Is a superior level of government able to dismiss a democratically elected council? If so, under what circumstances?
- May a superior level of government take over a local authority?
- What are the obligations (and practice) to “bail out” bankrupt local authorities?

- What has been the practice of supervision? Have superior orders of government exercised a tight rein on local authorities or allowed a tradition of local autonomy to develop?
- What is the practice of supervising the local authorities of metropolitan regions?

Section 7: Intergovernmental relations with other orders of government

- How do local authorities organize among themselves to deal with other orders of government? On a national or regional basis? What is the role of organized local government? How does organized local government manage the great differences between small rural municipalities and large urban ones? How representative are the bodies of organized local government and how powerful are they?
- What are the primary relationships of local government – with the state/provincial government or federal government, or both?
- What are the type of matters covered by the relations between local government and the other orders of government, including planning and implementation of federal/state programmes?
- What is the nature of these relationships? Are they mainly top-down with federal/state government dictating outcomes to municipalities, or are there areas in which local government is regarded as a partner in co-determining policies and programs?

Local-state/provincial relations

- How does local government relate with state/provincial governments? What is the nature of the relationship between local-state/provincial governments – is it hierarchical or are there areas where they interact more on an equal basis? Do states/provinces establish policy frameworks and urban policy?
- Are there state/provincial ministries responsible for local government? Where the relationship is non-hierarchical, are there dedicated structures for intergovernmental relations? Is the local government relationship with state/provincial government cooperative or conflictual?

Local-federal relations

- How does local government relate to the federal government? Does the federal government relate directly in some instances with local authorities?
- Are there federal ministries dedicated to local government?
- What impact does local government's relationship with the federal government have on its relationship with state/provincial government?
- Is local government regarded by the federal government as a full partner in government and treated as such? Does local government form part of any federal intergovernmental forums? Given the local government-state/provincial relationship, does the state/provincial government mediate the local government's relationship with the federal government?

- Given their size and importance, do the local authorities of metropolitan regions have separate relations with the other orders of government? What is the nature of these relations?
- More broadly, how has the emergence of local self-government affected federal-state relations? Has it made intergovernmental relations more complex, cumbersome and slow?

Section 8: Political culture of local governance

- Are there organized party politics at local level? Does it differ depending on the size of the local authority? How are the politics of metropolitan regions organized?
- What is the popular interest in local elections? How does voter turnout at local government elections compare to federal or state/provincial elections?
- Is equitable gender representation an issue?
- What link or interaction is there between politics at local level and politics at the other orders of government? Are local politicians often recruited by federal parties? Do federal parties influence local decisions and policies?
- How does the political culture impact on intergovernmental relations?

Section 9: Local government role in the evolution of the federal system: emerging issues and trends

Emerging issues and future developments that affect the place and role of local government in a particular federal system, should be discussed. Such issues include:

- Metropolitan regions and cities, their growth and significance. Are there a separate regime for them? Are they vying with states/provinces for resources and power?
- International relations and cooperation: Transfrontier cooperation between municipalities. Large cities engaging in international relations.
- The place of local government in regional arrangements (for example, the European Union).

Theme coordinator

Professor Nico Steytler, Director of the Community Law Centre, University of the Western Cape, South Africa