

North-South Local Government Co-operation Programme

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Aspects of Local
Self-Government:
Tanzania, Kenya, Namibia,
South Africa, Swaziland
and Ghana

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North-South Local Government Co-operation Programme

Basic facts

The North-South Local Government Programme is coordinated and administrated by the Association of Finnish Local and Regional Authorities, the AFLRA (Suomen Kuntaliitto in Finnish) and funded by the Ministry for Foreign Affairs of Finland. The Programme is an initiative of the AFLRA and was launched in 2002.

The overall objective of the Programme is to strengthen the capacity of local government to provide basic services and to promote good governance and local democracy, while taking into consideration the principles of sustainable development. The programme also promotes awareness-raising, tolerance and development education.

The main activity of the Programme is to support co-operation between Finnish local governments and local governments in Southern countries (OECD/DAC list). The geographical focus in 2008-2010 is Africa. The Programme also produces information – through research, studies and by organising training – on issues related to local governments and decentralization in African countries. This study is part of the North-South Local Government Co-operation Programme's publications.

For more information, please see

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Expertise and guidance from the Association of Finnish Local and Regional Authorities (AFLRA)

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Introduction

This study examines aspects of local self-government (often also referred to as legally autonomous sub-national entities or autonomous local authorities) in the six African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study in 2008: Ghana, Kenya, Tanzania, South Africa, Swaziland and Namibia.

The study aims to provide an overview on local self-government in the above mentioned countries by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework. The principles were formed using the European Charter of Local Self-Government and the United Nations Human Settlements Programme's (UN-Habitat) *International Guidelines on Decentralisation and the Strengthening of Local Authorities* as a basis.

The principles examined in the study are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised (concentrating on the remuneration of political office-holders), and financial resources of local authorities.

The study was conducted as a desk study. The structure of the study is designed in a way that the country sections can be read as independent entities. The study does not attempt to compare the local self-government in the selected countries in a detailed and systematic way, but tries to present the information in a form which enables the reader to detect similarities and differences in the aspects of local self-government between the countries.

The country studies aim to highlight some of the important governance issues and relations of power that shape local self-government in the countries examined. The study also provides the reader with relevant information that is useful for obtaining further information on local government in African countries.

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Summary

This study examines aspects of local self-government (so called legally autonomous sub-national entity/autonomous local authority) in mainland Tanzania. The object of the study is to provide basic information on local self-government in Tanzania by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework.

The principles applied as a framework in the study were formed using the European Charter of Local Self-Government and the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities as a basis. The principles are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities.

The concept and purpose of local government authorities is defined in the Constitution of the United Republic of Tanzania. The Constitution also assigns some basic functions to the local government authorities. The composition, basic functions and duties of each district and urban local government authority are prescribed further in the Local Government (District Authorities) Act 1982 and in the Local Government (Urban Authorities) Act 1982.

The local government authorities regulate and manage many public affairs within their area of jurisdiction, but they execute many essential aspects of their authority with the approval of the Minister responsible for local government. The by-laws and the budgets prepared by the higher level local government authorities have to be submitted to the Ministry responsible for local government (PMO-RALG) for approval. The Local Government Acts provide the Minister responsible for local government substantial powers to regulate the powers and functions of the local government authorities. In addition, in the five national priority sectors of primary education, basic health, agriculture extension and livestock services, and local public works, the local government authorities are responsible for delivering the services, but the central government remains responsible for the policy-setting and financing the local delivery of the services through intergovernmental transfers, which limits the extent of local self-government in Tanzania.

Tanzania has adopted a policy of decentralisation by devolution, which is based on the principle of subsidiarity. The extent of the implementation of the policy has varied in the main policy areas.

The local government authorities have powers to tax and set rates for levies, fees and charges by making by-laws prescribing them. The share of the local government authorities' own source revenues of the total revenues of the local government authorities is very small. The local government authorities rely to a large extent on formula-based recurrent sector block grants in their service provision in the national priority sectors. Only the Local Government Capital Development Grant (LGCDG) system grants initiated in fiscal year 2005-2006 allow the local government authorities to use a significant amount of discretion in prioritising the use of the grants in line with local priorities for development expenditures.

Abbreviations

ASDP	Agricultural Sector Development Programme
ASDS	Agricultural Sector Development Strategy
CEO	Council Education Officer
CLGF	Commonwealth Local Government Forum
DAS	District Administrative Secretary
DC	District Commissioner
HSSP	Health Service Strategic Plan
LGCDG	Local Government Capital Development Grant
LGRP	Local Government Reform Programme
MKUKUTA	National Strategy for Growth and Reduction of Poverty (NSGRP)
MoE	Ministry of Education and Vocational Training
MoHSW	Ministry of Health and Social Welfare
NSGRP	National Strategy for Growth and Reduction of Poverty
PEDP	Primary Education Development Programme
PMO-RALG	Prime Minister's Office – Regional Administration and Local Government
RAS	Regional Administrative Secretary
RC	Regional Commissioner
RS	Regional Secretariat
UN-Habitat	United Nations Human Settlements Programme
URT	United Republic of Tanzania

1 Introduction

The present study examines aspects of local self-government in mainland Tanzania. The object of the study is to provide basic information on some selected aspects of local self-government in Tanzania by using some of the internationally recognised principles of local self-government as a guideline and framework. The study is part of a larger study concentrating on providing information on issues shaping local self-government in the African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study.

The study uses a selected set of internationally recognised principles of local self-governance as a starting point to the study. The questions concerning the application of the principles in different countries and contexts as well as the criteria for the selection of and defining the principles used as a framework in the study are discussed in further detail in Chapter 2. To summarise the application of the principles, the selected principles are used as a relatively flexible framework guiding the approach and concentration of the study. These guiding principles are listed in Annex 1 of the present study. The study does not try to compare the local self-government in the selected countries in a systematic way or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

The present study aims to provide an overview on the scope of local self-government in Tanzania by giving an overall picture of the local government authorities' basic powers and responsibilities to regulate and manage public affairs, possibilities to exercise initiative within their powers and functions, and the exclusiveness of their authority. Aspects of these are described by concentrating on the framework set by the Local Government District and Urban Authorities Acts of 1982, which prescribe the general powers and a wide range of mandatory and optional functions to the local government authorities. The study also concentrates on the financial resources of the local government authorities, and their effects on some aspects of local self-government in Tanzania.

Tanzania has been implementing an ambitious local government reform programme since the end of the 1990s. The legislations are being amended to reflect the Government's policy of decentralisation by devolution. Many of the reforms effecting local self-government are being generated through national and sector-specific development strategies and programmes, and the legislative amendments are not always up-to-date with these reforms. As will be discussed in the following chapters, the legislation in Tanzania gives wide powers to the Ministers to regulate the powers of the local government authorities. The legislations also refer loosely to national development plans, which the local governments have to comply with. Therefore the study tries to highlight the effects of some development policies and programmes on local self-government, as exploring only the legislations would give only a partial picture of the situation on the ground.

In addition to describing the mandatory and optional functions prescribed to the local government authorities in the Local Government Acts of 1982, the study concentrates on the powers and functions of the local government authorities in the five key service sectors, which have been defined as national priorities in the Policy on Local Government Reform of 1998. These sectors include primary education, basic health services, agriculture extension and livestock services, local water supply, and local public works (for example road maintenance). In addition to providing information on the basic responsibilities of Local Government Authorities in these sectors as provided by the Local Government Acts of 1982, as well as looking at how these sectors are funded, the study explores in a slightly more detail the role of the local government authorities in the education, health, and agriculture sectors. The discussions in are not exhaustive, but rather try to give an overall picture on the legislative and policy framework within which the local government authorities operate.

The study was conducted as a desk study. The material of the study comprises mainly of legislations, government reports and different kinds of studies. The original acts have been used as references as often and as widely as possible within the scope of the study. As the legislation in Tanzania is going through many reforms, some of the amendments to the acts were not available on the Internet or through inquiries. If the legislation in question was not available (either at all or with the amendments made), other material is used as reference. The legislations that were used as primary sources together with their amendments are listed in the references.

The study first produces an overview on local government authorities, and the local government reform agenda and programme in Tanzania. After that the composition, powers and functions of the local government authorities are discussed in further detail. The study then describes some aspects of the financial resources available to the local government authorities. Finally the study illustrates some elements of the role of the local government authorities as service providers in primary education, basic health care and agricultural extension services before summarising some central issues identified in the study relating to the principles used as a guiding framework in the study.

The concept of local government is recognised in the constitution of the United Republic of Tanzania, but other than that the local government is a non-union matter. The present study concentrates on the mainland Tanzania only. Whenever Zanzibar (the Unguja and Pemba islands) is also in question in the study, it will be explicitly mentioned.

2 Principles of Local Self-Government

There are some internationally recognised principles shaping the conception of local self-government, such as the *European Charter of Local Self-Government*¹ and the *International Guidelines on Decentralisation and the Strengthening of Local Authorities* published by the United Nations Human Settlements Programme (UN-Habitat)². However, there are no global standards or charter on local self-government, which would be applicable to countries worldwide, even though the guidelines of the UN-Habitat represent a product of efforts to create a global charter on the principles of local-self-government comparable to the European Charter of Local Self-Government.

The European Charter of Local Self-Government was adopted by the Council of Europe and opened for signature by the member states of the Council of Europe on 15 October 1985. The European Charter of Local Self-Government is not an attempt to create common local government legislation in Europe, but the Charter sets a framework for local self-government at the local level, which the states member to the Charter must uphold. The Charter allows flexibility for the member states in determining their framework. The Charter provides that the member states ratifying, accepting or approving the Charter must consider themselves bound by at least twenty paragraphs of Part I of the Charter, ten of which from among specified paragraphs. The principles in the Charter form a flexible framework and a set of goals which the member states parties to the Charter should aspire to achieve.

After the European Charter of Local Self-Government was opened for signature, the national associations of local authorities which participated in the drafting of the Charter sought to create a world-wide charter on local self-government. Some national spheres of government also supported the quest. Some international associations of local authorities such as the International Union of Local Authorities (IULA), and later the United Cities and Local Governments (UCLG) formed in 2004, started exchanging ideas in close collaboration with UN-Habitat on a possible World Charter of Local Self-Government in the follow-up to the Habitat II Conference held in Istanbul in 1996 where local authorities made the case for the preparation of a worldwide charter on local autonomy. The World Charter met resistance among some Member States of the United Nations mainly because they considered that the Charter addressed issues in the realm of internal affairs of the Member States. Finally a step towards the goal was made in April 2007 when the Governing Council of the UN-Habitat approved the International Guidelines on Decentralisation and the Strengthening of Local Authorities. The Second Committee of the United Nations General Assembly has noted the approval of the guidelines by the UN-Habitat Governing Council in the following way at the sixty-second session of the General Assembly:

Notes the approval by the Governing Council of UN-Habitat of the guidelines on decentralization and strengthening of local authorities, and requests UN-Habitat to assist interested Governments in adapting the guidelines to their national contexts, where appropriate, and in further developing tools and indicators as part of its support for the application of the guidelines, bearing in mind

1 Council of Europe 1985.

2 UN-Habitat 2007.

that the guidelines do not constitute a uniform or rigid blueprint to be applicable to all States Members of the United Nations.³

As the principles in the European Charter of Local Self-Government and the UN-Habitat guidelines are numerous, the present study uses a selected set of principles as a flexible framework guiding the approach and the concentration of the study in its efforts to highlight some essential governance issues and relations of power that shape local self-government in Tanzania. The principles were formed using the European Charter of Local Self-Government and the UN-Habitat guidelines as a basis. The principles formed are listed in Annex 1. They are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities. For reference and comparison, the articles of the European Charter of Local Self-Government are listed in Annex 2, and the sections of the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities are listed in Annex 3.

The same principles are used as a framework also in the other country studies concentrating on the North-South Local Government Co-operation Programme countries, but the country studies do not attempt to compare the local self-government in the selected countries in a systematic way, or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

3 United Nations General Assembly 2007, Section II.6.6.

3 Overview on Local Government Authorities

In the beginning of the 1970s, Tanzania under the one-party rule of the Tanganyika African National Union (TANU) opted for a policy of deconcentration at district and regional levels, and abolished the elected local governments in 1972–1973. The power of the regions was substantially strengthened as senior level central government staff members were transferred to the regions and the directors of the regional administrations, the Regional Commissioners, were granted ministerial status. The elected local governments were reintroduced in 1976–1982. Two important legislations passed in 1982, the Local Government (District Authorities) Act No. 7 and Local Government (Urban Authorities) Act No. 8, introduced a comprehensive system of local government authorities in rural and urban areas.⁴

The reintroduced elected councils were empowered to pass by-laws, collect revenues, determine local budgets and plans. The councils were also given direct responsibility for service delivery in the areas of primary education, primary health, local water supply, local roads, and agriculture extension, although these functions are vaguely defined in the Local Government Acts of 1982. In urban areas, the Local Government (Urban Authorities) Act of 1982 made urban councils also responsible for urban services and amenities, such as solid waste removal, street lighting and maintaining public markets. However, strong regional administrations remained. The regional administrations undertook a large number of development activities directly. The regional administrations undertook the activities in collaboration with the local government authorities, but not necessarily through them. The regional administrations also controlled most of the local funding. Even though democratic local government authorities were introduced, they remained with no substantial resources or effective service mandates. Local administrations remained largely as deconcentrated structures at the regional level.⁵

Views that the local government system should be reformed started to be more and more recognised in the beginning of the 1990s. The reforms started to pick up pace in the mid-1990s. Other significant reforms of the political system were also taking place. The first multiparty elections at local government level were organised in 1994. The multiparty democracy is developing slowly. Especially on mainland Tanzania the clear majority of the seats in the parliament and at the local level councils are still controlled by the CCM party, the successor to TANU.

In 1996 the government announced a decision to restructure the intergovernmental system and local governments in order to make the local governments more effective. The power of the regions was to be downsized. Decentralising the intergovernmental and local government systems was hoped to lead to improvements in service delivery.⁶ The local government reform agenda and policy in Tanzania is based on the *Policy Paper on Local Government Reform* of 1998⁷. The policy paper sets a comprehensive and ambitious agenda for local government reform.

4 Steffensen et al. 2004, 9–10.

5 Steffensen et al. 2004, 10.

6 Steffensen et al. 2004, 11.

7 URT 1998.

According to the policy paper, “the *raison d’être* for the devolution of roles and authority by the central government, and the existence of the local government, will be the latter’s capacity and efficiency in delivering services to the people”⁸. The policy paper defines four main policy areas for decentralisation of government and reform of local government⁹:

A. Political decentralisation is devolution¹⁰ of powers and the setting of the rules for councils and committees, the council chairperson etc. Political decentralisation would include the integration of the previously centralised or deconcentrated service sectors into a holistic local government system installing councils as the most important local, political body within its jurisdiction. Political decentralisation implies the creation of real, multi-functional governments at the local level within the framework of the national legislation.

B. Financial decentralisation means that councils have financial discretionary powers and powers to levy local taxes. Central government, in turn, has the obligation to supply local governments with unconditional grants and other forms of grants. The principle also allows local councils to pass their own budgets reflecting their own priorities, as well as mandatory expenditures required by legislation setting national standards.

C. Administrative decentralisation: This principle involves de-linking local authority staff from their respective ministries and procedures for establishment of a local payroll. Local governments will thus have and recruit their own personnel, organised in a way decided by the respective councils in order to improve service delivery. Also the planning relation between rural districts, urban councils and lower local authorities will be defined. Administrative decentralisation makes local government staff accountable to local councils. As local governments have a body corporate status (they may sue and be sued) the management responsibility of the local administration shall reflect this status.

D. Changed central-local relations. The role of central government vis-à-vis local councils will be changed into a system of inter-governmental relations with central government having the over-riding powers within the framework of the Constitution. Line ministries will change their role and functions into becoming 1) policy making bodies, 2) supportive and capacity building bodies, 3) monitoring and quality assurance bodies within the local government legislation framework, and 4) control bodies (legal control and audits). The Minister responsible for local government will co-ordinate central-local relations and in particular all initiatives from ministries towards local government and will be enabled to issue regulations and guidelines, but only within the policy areas to be specified in the law reflecting the spirit and principles of the reform agenda. The law should specify the scope of the regulations issued by the Minister and how they should relate to sectoral legislation. These regulations would specify the details of political, financial and administrative decentralisation.

As Steffensen et al. summarise the overall framework for decentralisation in Tanzania, the Policy Paper on Local Government Reform of 1998, together with the legal framework of the Local Government Acts of 1982 and their amendments, as well as related legislations, has promoted decentralisation as a reference point for the reform

8 URT 1998, 3.

9 As stated in URT 1998, 4–5.

10 In the discussions on decentralisation there are different kinds of definitions on different types of decentralisation. Devolution is generally considered as a comprehensive type of decentralisation. In general terms it is often used to refer to the transfer of authority for decision making, finance and management from central government to local authorities with corporate status and considerable degree of autonomy from the central government. There are some features that are commonly present in devolution. For example, the local authorities have authority to raise their own revenues and to acquire resources to perform public functions, and have clearly recognised geographical boundaries over which they exercise authority.

process. The reform process is supported by the Ministry responsible for local government currently situated at the Prime Minister's Office – Regional Administration and Local Government (PMO-RALG)¹¹, and the Local Government Reform Programme (LGRP) implementing the policies set in the 1998 policy paper. However, this framework for decentralisation has not been sufficient to ensure full coordination with the sector policies, and a number of sector policies and administrative actions still contradict the overall decentralisation objectives.¹²

As will be discussed in the following chapters in this study, the framework for decentralisation is evolving. Some reforms in the four main policy areas defined in the local government reform policy of 1998 have advanced further than others, and there are also geographical discrepancies with the reforms. There are numerous amendments taking place with the local government legislations as well as sectoral legislation to reflect the local government reform policies. In addition, all reform policies have to take into consideration Tanzania's long-term development framework, which is laid down in Tanzania Development Vision 2025 published in 1998, and the medium-term development framework and policy, which is guided by Tanzania's poverty reduction strategy known as National Strategy for Growth and Reduction of Poverty (NSGRP) or as its Kiswahili acronyms MKUKUTA. The NSGRP is Tanzania's second poverty reduction strategy, and covers the years 2005–2010. Braathen describes the relationship between poverty reduction strategies and decentralisation efforts in Tanzania as follows:

Tanzania seems to present a novel type of decentralisation: not conservative, and not transformative. Still, its reforms have helped produce a significant progress over the past years in the competence and service-delivery role of local government, they have enhanced grass-roots democracy and participation of the poor, and they have led to improved local finances for poverty-reducing measures. At the policy level, Tanzania represents a new generation of central-local reformers where democratic decentralisation is synchronised with poverty reduction strategies. This synchronisation might be a result of the strong influence of the donor community on the Tanzanian government, mixed with changing policy conjunctures internationally. Tanzania has taken action against spatial inequality, perhaps as a result of its strong rural constituencies in the electoral system. If the poverty reduction efforts are orientated towards strengthened public services locally, towards mobilisation and political empowerment of the poor, and towards reduced spatial inequality, it is likely that decentralisation efforts will have a positive impact on poverty reduction.¹³

3.1 General Features of the Local Government System

This chapter illustrates the overall picture and summarises the main features of the local government system in Tanzania. The composition and powers of the local government authorities are discussed in more detail in Chapter 4.

The Local Government (District Authorities) Act No. 7 of 1982 established the local government district authorities in rural areas, and the Local Government (Urban Authorities) Act No. 8 of 1982 established the local government urban authorities. Based upon the powers conferred to the local government authorities by these acts, two layers of authority can be detected.

The district authorities include district councils, village councils, and township authorities, vitongoji, and Ward Development Committees. All of them except the

11 Formerly situated in the President's Office – Regional Administration and Local Government (PO-RALG).

12 Steffensen et al. 2004, ix.

13 Braathen 2008, 42.

vitongoji and Ward Development Committees have powers to make by-laws, pass annual budgets and tax according to regulations within their area of jurisdiction. The vitongoji (kitongoji in singular) are 'sub-villages', which have mainly administrative functions. The vitongoji participate in the village planning and budgeting by submitting inputs to the village planning procedures. The areas of jurisdiction of the district councils are divided into divisions, and the divisions are divided into wards. The Ward Development Committees are administrative units functioning between the villages and the district councils. One of their main tasks includes coordinating the planning and budgeting inputs of the village councils before they are submitted to the district council. The district councils possess more powers than the village and township councils. For example, the district council approves the by-laws made by the village and township councils, and formulates the district plans and budgets, which affect these lower layer councils.

The urban authorities consist of city, municipal and town councils (often referred to as urban councils), and mtaas. The urban councils have powers to make by-laws, pass annual budgets and tax according to regulations within their area of jurisdiction. The areas of jurisdiction of the urban councils are divided into divisions, and the divisions are divided into wards. The each ward consists of mtaas, which can be described as neighbourhood committees with elected members, but with only administrative functions. Some urban councils have also villages in their area of jurisdiction. The urban Ward Development Committees coordinate, facilitate and supervise the activities in the mtaas, and in some cases also the activities in the villages.

The Regional Secretariats (RS) comprise deconcentrated arms of the central government. The Regional Secretariats are headed by a Regional Administrative Secretaries (RAS), who work in the office of the Regional Commissioners (RC). The sector ministries linked to local service delivery (health, education etc.) are all represented in the Regional Secretariats, which are supposed to be the immediate point of referral for the local government authorities in their dealings with central government. Although the Regional Secretariats do not operate as superior organs of state in all respects, they have certain oversight (for example of local budgets) and monitoring responsibilities regarding local government authorities. Both the RAS and the RC are appointed by the President. The District Commissioner (DC), who is also appointed by the President, assists the RC at the district level. The DC heads the District Administrative Secretary (DAS).¹⁴

Local government elections on the mainland Tanzania and in Zanzibar are held every five years under the first-past-the-post system with universal adult suffrage at age 18.¹⁵

The figure in Annex 4 illustrates some of the main features of the local government system and its relations to the central government and the central government's deconcentrated representation in the regions.

3.2 Basic Functions of All Local Government Authorities

The Local Government Acts of 1982 prescribe to local government authorities basic functions which are common to all local government authorities. The Acts also assign different responsibilities to each local government authority, which are discussed in the following chapters. The existence and general functions of local government authorities are also recognised in the constitution of the United Republic of Tanzania of 1977.

Article 145 of the constitution provides that local government authorities shall be established in each region, district, urban area and village in the United Republic of

¹⁴ This section on regional and district secretariats was adapted from CLGF, 224 and Steffensen et al. 2004, 31–32.

¹⁵ CLGF, 223.

Tanzania. The subarticle (2) of the article provides that the Parliament or the House of Representatives shall enact a law providing for the establishment of local government authorities, their structure and composition, sources of revenue and procedure for the conduct of their business.

Article 146 (1) of the constitution defines the purpose of having local government authorities as “the transfer of authority to the people”. According to the article “Local government authorities shall have the right and power to participate, and to involve the people, in the planning and implementation of development programmes within their respective areas and generally throughout the country”.

Article 146 (2) of the constitution provides: “Without prejudice to the generality of subarticle (1) of this Article, a local government authority, in conformity with the provisions of the law establishing it, shall have the following functions:

- (a) to perform the functions of local government within its area;
- (b) to ensure the enforcement of law and public safety of the people; and
- (c) to consolidate democracy within its area and to apply it to accelerate the development of the people.”

The Local Government (District Authorities) Act No. 7 of 1982 established the local government district authorities in rural areas, and the Local Government (Urban Authorities) Act No. 8 of 1982 established the local government urban authorities. The basic functions and duties of each district and urban authority are prescribed in Section 111 of the Local Government (District Authorities) Act 1982 and in Section 54 of the Local Government (Urban Authorities) Act 1982. The responsibilities of each district and urban authority are:

- a) to maintain and facilitate the maintenance of peace, order and good government within its area of jurisdiction;
- b) to promote the social welfare and economic well-being of all persons within its area of jurisdiction;
- c) subject to national policy and plans for rural and urban development, to further the social and economic development of its area of jurisdiction;
- d) to take necessary measures to protect and enhance the environment in order to promote sustainable development.¹⁶

In addition, Subsections 111 (2) and 54 (2) of the local government district and urban authorities acts provide some powers to the district and urban authorities to exercise initiative: For the purpose of the better execution of its functions, whether done alone or in co-operation and conjunction with any other local government authority or other person or body of persons, and subject to this Act or any other relevant written law, a local government authority shall take all such measures *as in its opinion are necessary, desirable, conducive or expedient-* (italics by the author)

- a) for the suppression of crime, the maintenance of peace and good order and the protection of public and private property lawfully acquired;
- b) for the control and improvement of agriculture, trade, commerce and industry;
- c) for the furtherance and enhancement of the health, education, and the social, cultural and recreational life of the people;
- d) for the relief of poverty and distress, and for the assistance and amelioration of life for the young, the aged and the disabled or infirm; and
- e) for the development, mobilization and application of productive forces to the war on poverty, disease and ignorance.¹⁷

¹⁶ Category d) is specified only for the urban authorities.

¹⁷ Category e) is specified only for the district authorities.

In 1999 the Local Government Acts were amended to enable the implementation of the Government's policy of decentralisation by devolution (D by D). The amendments of Sections 17 and 52 of the Local Government Laws Miscellaneous Amendments No. 6 1999 introduced objectives for all local authorities in performing their basic functions. In summary, these objectives of the local authorities include:

- to give effect to meaningful decentralisation in political, financial and administrative matters relating to the functions, powers, responsibilities and services at all levels of local government authorities;
- to promote and ensure democratic participation and control of decision-making by the people concerned;
- to establish and maintain reliable sources of revenue and other resources in order to enable local government authorities to perform their functions effectively and to enhance financial accountability of local government authorities, their members and employees;
- to provide services in efficient and cost-effective manner;
- promote gender awareness;
- provide for the protection and proper utilisation of environment for sustainable development.

These provisions of the constitution and the Local Government Acts prescribe functions and responsibilities in very general terms. However, the Local Government Acts provide the Minister responsible for local government strong powers to alter the powers and responsibilities of the local government authorities, and assign a range of more specific responsibilities to the local government authorities. These aspects are discussed in the next chapter on the composition and functions of local government authorities.

4 Composition and Functions of Local Government Authorities

The provision of public services in Tanzania involves the central government, regional authorities, and the local government district and urban authorities. PMO-RALG summarises the system as follows:

The responsibility for delivering public services in Tanzania Mainland is divided between the central government and Local Government Authorities, where the regional level authority functions as an administrative and coordinating tier of the central government. In accordance with international best practices, the assignment of expenditure responsibilities between these levels of government is generally guided by the principle of subsidiarity, which suggests that functions and expenditure responsibilities should be assigned to the lowest government level that can perform each function efficiently. The Local Government Acts (1982) provides a detailed list of the specific functions and responsibilities assigned to the local government level.¹⁸

The specific functions assigned in the Local Government Acts of 1982 to the local government level include providing a range of local amenities and services such as markets, libraries, protecting and regulating the use of natural resources, and regulating the use of vehicles. Some of the prescribed functions are optional and some mandatory. The Local Government Acts prescribe that the local government authorities are responsible for the provision of basic services of primary education, health, agricultural extension services, local water supply and roads maintenance, but the Acts do not define clearly what are the precise functions of the local government authorities in providing these services (see e.g. Section 111 and 118 of the Local Government District Authorities Act No. 7). The Local Government Acts do not provide a clear framework setting the optional and mandatory responsibilities in the service provision in these areas, which are defined as national priorities in the Policy Paper on Local Government Reform of 1998, which sets the overall framework for the policies of local government reform in Tanzania. The policy paper defines that the local governments have the responsibility for social development and public service provision within their jurisdiction, facilitation of maintenance of law and order and issues of national importance such as education, health, water, roads and agriculture, but does not define the local government authorities' roles further¹⁹. Steffensen et al. point out that the clarity of the policy intentions is however yet to be fully reflected in legislation²⁰.

The five priority areas of basic services in primary education, health, agricultural extension services, local water supply and roads maintenance comprise local governments' concurrent expenditure responsibilities. For these services, local government authorities are responsible for delivering the service, but the central government remains responsible for policy-setting and financing the local delivery of the services through intergovernmental transfers.²¹

18 PMO-RALG 2007, 5.

19 URT 1998, 4.

20 Steffensen et al. 2004, 15.

21 Refer to e.g. PMO-RALG 2007.

It was recognised in the Policy on Local Government Reform of 1998 that substantial changes in the existing legislation on local government are needed to reflect the vision and objectives of the Government on local government reform. According to the policy paper:

The present legislation reflects an earlier and much more centralist vision of local government. It is also rather ambiguous about the features of central-local government relations, give wide powers to the Minister, and is based on the ultra vires approach to legislation. Subsequent amendments and subsidiary legislation has added to its complexity. The desired legal changes needed to provide a sound basis for the implementation of the government's visions for a new local government are so substantial that various amendments/repeals to existing legislation will not be satisfactory. Amendments or repeals of local government Acts made in the early 1980s is necessary.²¹

Numerous amendments have been made to the Local Government Acts of 1982. One of the most important has been the amendments made in 1999 to enable the implementation of the government's policy of decentralisation by devolution. Despite of the amendments the Minister responsible for local government still has wide powers to regulate the responsibilities of the local government authorities. The amendments of Section 17 of the Local Government Laws Miscellaneous Amendments No. 6 1999 introduced the objectives for the basic functions of each district authority already discussed in Chapter 3.2. Subsection 3 of Section 17 states that nothing in the Local Government (District Authorities) Act shall be construed as prohibiting local government authorities from performing any function which is not the exclusive responsibility of the central government or any other local government authority. However, subsection 4 of the same Section gives the minister responsible for local government powers to specify, by an order published in the *Gazette*, for local government authorities any matters which are the exclusive responsibility of the central government and which are the exclusive responsibility of various levels of local government authorities.

Section 112 of the Local Government (District Authorities) Act and Section 56 of the Local Government (Urban Authorities) Act give the Minister responsible for local government powers to make regulations that specify more particularly the powers and duties of any local government authority in performing their basic functions. The Minister may provide for or require any local government authority or authorities (district or urban) to exercise or discharge any of the powers and duties specified in the First Schedule of the Local Government (District Authorities) Act 1982 (see Annex 5). If the regulation to be made relates to any service or branch of government of which another Minister is responsible for, the regulation in question shall be made by that Minister after consultation with the Minister responsible for local government²².

Also one common factor restricting the local self-government in urban and rural areas is the fact that the local government authorities do not have effective control over local personnel decisions, as the approval of local government posts continues to be controlled centrally by President's Office – Public Service Management. The centralisation of human resource decisions is fundamentally a policy choice made by Tanzania's political leadership that will need to be resolved at the highest policy levels.²³ The Policy on local Government Reform of 1998 envisages a strategy in which the recruiting of the staff of the local government authorities is to be devolved from the central government to the district and urban councils, but this is not achieved by to date.

22 URT 1998, 9–10.

23 Local Government (District Authorities) Act 1982, Section 113; Local Government (Urban Authorities) Act 1982, Section 57.

24 PMO-RALG 2007, 5.

4.1 District Authorities

The Local Government (District Authorities) Act 1982 provides for, among other things, the establishment, composition, powers and duties, and legislative powers of district authorities, which are discussed in the following chapters.

4.1.1 District Councils

Section 5 of the Local Government (District Authorities) Act 1982 defines the establishment of district councils. The Minister responsible for local government may, after consultation with the President, establish such district councils as he may deem necessary for the purpose of local government.

The composition of district councils is provided in Section 35 of the Local Government (District Authorities) Act, amended by Local Government Laws (Miscellaneous Amendments) 2006, Sections 5 and 6. Every district council consists of:

- 1) members elected one from each ward in the area of the district council
- 2) members elected by the district council one each from among persons nominated two each by Party Organizations in the area of the district council (elected by members in categories 1, 4 and 5)
- 3) three members appointed by the Minister responsible for local government
- 4) the Member or Members of Parliament representing constituencies within the area of the district council in the Assembly
- 5) a Member of Parliament shall be a member of the council in which he ordinary resides, provided that where the Members of Parliament are more than three, the Minister responsible for local government shall order that the members in excess of three are to become members in the neighbouring councils within the region
- 6) not more than three members to be appointed by the Minister responsible for local government whose appointment shall have regard to specific groups including persons with specific expertise, marginalized and disadvantaged groups. The appointment made by the Minister shall have regard to the proportionality of the number of members of those parties elected to the Council.

According to Section 36 of the Local Government (District Authorities) Act, the district council is led by a Chairman elected by members from amongst the elected members of the district council.

In 2000 the Section 35 of the Local Government District Authorities Act 1982 was amended by amendment No. 4 of 2000. The amendment introduced affirmative action for women's representation in local government bodies: one third of the District Council members have to be women.²⁵

The district councils have three standing committees and other statutory committees. The role of the committees is to develop policies, formulate budgets and oversee the work of specific budgets.²⁶ The Local Government (District Authorities) Act 1982 Section 74 provides that every district council has to establish standing committees for:

1. Finance, administration and planning;
2. Education, health and water;
3. Economic affairs, works and environment.

²⁵ UN-Habitat 2002, 15.

²⁶ CLGF, 226.

The latest additions in recent years to the statutory committees of all district councils as well as township authorities and village councils are the HIV/AIDS committee and the council ethics committee²⁷.

In addition, a district council may establish maximum of three other standing committees for the proper execution of the functions of the district council. However, the Minister responsible for local government may prescribe the limit of committees that may be established by a district council and the annual cost of meetings of a council or of its committees and subcommittees by issuing regulations published in the *Gazette*. The district councils have the power to determine the number of members in the standing committees, but each standing committee other than the standing committee for finance administration and planning must consist of not more than one third of the members of the district council.²⁸

The basic powers and responsibilities of district councils common to all district authorities are listed in Section 111 of the Local Government (District Authorities) Act 1982 (see above Chapter 3.2). The functions which the district councils may perform are listed in the First Schedule of the Local Government (District Authorities) Act 1982 (see Annex 5). In addition, the local government legislation also defines other powers and duties specific to district councils. The Local Government (District Authorities) Act 1982 gives district councils some discretion in executing their duties conferred upon them by the Local Government Act or any other act by stating that district councils may do all such things and acts which are lawful and necessary for the performance of their duties²⁹.

Among the most significant general functions and duties of the district council in the area of its jurisdiction in addition to the functions discussed above, are to formulate, coordinate and supervise the implementation of economic, commercial industrial and social development plans, to ensure the collection and proper utilisation of the revenues of the council, to make by-laws applicable throughout the jurisdiction of the district council, to consider and approve by-laws made by the village councils within the area of its jurisdiction. The duties of the district councils include also regulating and monitoring the collection and utilisation of revenue of village councils and township authorities, and to consider, regulate and coordinate the development plans, projects, and programmes of village and township authorities³⁰.

The by-laws made by the district council have to be submitted to the Regional Commissioner in the region in which the district council is situated for comments. The Regional Commissioner then submits the by-laws to the Minister responsible for local government for his approval. If the by-laws concern responsibilities of other Ministers, the Minister may consult those Ministers before approving the by-laws.³¹

The Local Government (District Authorities) Act 1982 defines specific powers for district councils to perform their functions. These are listed in Annex 6.

The 1999 amendments to the Local Government (District Authorities) Act 1982 introduced a provision for guaranteeing sufficient resources for the district councils for exercising powers delegated to them by central or other local government authorities. In addition, the terms and conditions of the delegation of functions have to be agreed upon together with the district council.³²

A district council may delegate its functions specified in the Local Government (District Authorities) Act 1982 to another district authority, organisation or body with the approval of the authority to which the functions are being delegated. The local government body to which the delegation is made is obligated to perform those func-

27 (CLGF, 226; PMO-RALG 2008).

28 Local Government (District Authorities) Act No. 7 1982, Section 74.

29 Local Government (District Authorities) Act 1982, Sections 117:1, 118:1h.

30 Local Government (District Authorities) Act 1982, Section 118.

31 Local Government (District Authorities) Act 1982, Section 150.

32 Local Government Amendment Laws (Miscellaneous Amendments) No. 6 1999, Section 21.

tions as directed by the district council. A district council cannot delegate any of its executive or legislative functions in relation to its area of jurisdiction to another district authority.³³

4.1.2 Township Authorities

Sections 13 to 21 of the Local Government (District Authorities) Act 1982 define the establishment of township authorities. The Minister responsible for local government may establish township authorities in places or areas where he sees it desirable for the purposes of creating or developing an effective and efficient system of local government by issuing an order published in the *Gazette*. The Minister must obtain the approval of the district council in the area of jurisdiction in question before he can issue the order. The Minister may also vary the boundaries of any township authority after consultation with the district council in the area in question.

The composition of township authorities is provided in Section 45 of the Local Government (District Authorities) Act 1982. After several amendments to the legislation, every township authority has to consist of³⁴:

1. a Chairman;
2. the chairpersons of the vitongoji within its area;
3. up to three members appointed by the district council within whose area of jurisdiction the township authority is situated;
4. the Member of Parliament representing the constituency within which the township authority is established;
5. such number of women members who are qualified to be elected to the township authority being not less than one quarter of all the members referred to paragraphs (a), (b) and (c). These women members are elected by the political parties represented in the township authority. The number of elected women members has to be proportional to the number of members of the parties elected to the township authority.

According to Section 46 (1) the chairman and Vice-Chairman shall each be elected by the members of the township authority from amongst the elected members of that authority.

In 2000 Section 45 of the Local Government District Authorities Act 1982 was amended by amendment No. 4 of 2000. The amendment introduced affirmative action for women's representation in local government bodies: one-fourth of the Township Authority members have to be women.³⁵

Township authorities have the same standing committees as district council³⁶:

1. Finance, administration and planning
2. Education, health and water
3. Economic affairs, works and environment
4. HIV/AIDS
5. Ethics

33 Local Government (District Authorities) Act 1982, Section 120.

34 CLGF; Federation of Canadian Municipalities 2007. In 2008 there were 94 township authorities in Tanzania whereas there were more than 10,000 villages (PMO-RALG 2008). This is probably why detailed information on the composition and functions of township authorities is largely missing from studies on local government in Tanzania, and therefore the information should be treated with caution.

35 UN-Habitat 2002, 15.

36 Local Government (District Authorities) Act 1982, Section 96 as amended with Local Government Laws Miscellaneous Amendments) 1999, Section 16.

In addition to these standing committees, township authorities may establish two other standing committees.

The basic powers and responsibilities of township authorities, which are common to all district authorities, are listed in Section 111 of the Local Government (District Authorities) Act 1982 (see above Chapter 3.2). In addition, the local government legislation defines powers and duties specific to township authorities. The Local Government (District Authorities) Act 1982 gives township authorities some discretion in executing their duties conferred upon them by the Local Government Act or any other act by providing that township authorities may do all such things and acts which are lawful and necessary for the performance of their duties³⁷.

In addition to the general functions of all district authorities, township authorities may exercise all or any of the functions listed in the Second Schedule of the Local Government (District Authorities) Act 1982 (see Annex 7) with the approval of the district council whose area the township council is situated in. The Minister responsible for local government has the power to exclude or restrict any particular township authority's basic functions or the functions specified in the Second Schedule, and supplement, revoke, vary or amend the Second Schedule by an order published in the *Gazette*.³⁸

The township authorities have the power to make by-laws for conducting the functions of township authorities, but the by-laws have to be subjected to the approval of the district council whose area the township authority is located in (Local Government (District Authorities) Act 1982, Section 155).

4.1.3 Village Government Organs

The composition of village government organs is prescribed in sections 55 to 62 of the Local Government (District Authorities) Act 1982. A village assembly is responsible for general policy making in relation to the affairs of the village. The village assembly elects the village council, which is the executive organ in respect of all affairs in the village. The village assembly oversees the work of the village council, and deliberates proposals for example for by-laws made by the village council. Article 55 of the Local Government (District Authorities) Act 1982 states that every village assembly shall consist of every person who is ordinarily resident in the village and who has reached the age of 18 years. Section 56 provides that each village council shall consist of the number of members elected by the village assembly according to such procedures as shall be prescribed by the Minister responsible for local government.

At the moment the village council must consist of 15 to 25 members elected every five years by the village assembly. These members have to include a Chairperson elected by the village assembly and the chairmen of all vitongoji ('sub-villages' or neighbourhood committees whose residents elect their chairmen) within the village. The remaining members are elected by the village assembly. Affirmative action for women's representation was added to the legislation in 2000. At least one quarter of all council members must be women. All council members must be members of a household within the village and ordinary residents in the village.³⁹

At the moment the standing committees of village councils include⁴⁰:

1. Finance and planning
2. Social services
3. Defence and security
4. HIV/AIDS
5. Ethics

37 Local Government (District Authorities) Act 1982, Section 131.

38 Local Government (District Authorities) Act 1982, Section 132.

39 Federation of Canadian Municipalities 2007; Mmari 2005, 26–27; UN-Habitat, 2002, 105.

40 CLGF; PMO-RALG 2008.

The basic powers and responsibilities of village councils, which are common to all district authorities, are listed in Section 111 of the Local Government (District Authorities) Act 1982 (see above Chapter 3.2). The functions specific to village councils are defined in section 142 (2) of the Local Government (District Authorities) Act 1982 as follows:

- a) do all such acts and things as are necessary or expedient for the economic and social development of the village;
- b) initiate and undertake any task, venture or enterprise designed to ensure the welfare and well being of the residents of the village;
- c) plan and co-ordinate the activities of and render assistance and advice to the residents of the village engaged in agricultural, horticultural, forestry or other activity or industry of any kind;
- d) encourage the residents of the village in undertaking and participating in communal enterprises;
- e) to participate, by way of partnership or any other way, in economic enterprises with other village councils.

The duties of the village council include also to oversee security and peace activities in the village, and to receive and deliberate issues raised at the meetings of the vitongoji neighbourhood assemblies⁴¹.

Section 142 (3) of the Local Government (District Authorities) Act 1982 states that the village council has the power to do all such acts and things as appear to it to be necessary or advantageous for carrying out its functions or conducive for their proper discharge.

The village council has the power to make by-laws for the carrying into effect or for the purposes of any of the functions conferred to in by Local Government (District Authorities) Act 1982. The proposed by-laws have to be discussed at the village assembly meeting before the village council can pass them with or without amendments. After passing the by-laws the village council has to subject them to the approval of the village council before they can come into effect.⁴² Also the village development plans and budgets have to be approved by the district council or by the urban councils if the village is situated within the area of jurisdiction of a urban council⁴³.

In practice the autonomy of the village is constrained by the lack of personnel and finances. Village councils do not really have personnel of their own. The Village Executive Officer and extension workers are employees of the district and report upwards to them, and not towards the elected village council. The only regular local revenue is a small share of local district collections that should be retained at local level. In reality this has been adhered to only very partially. The retained local taxes have mainly been used for payment of local tax collectors and other administrative issues.⁴⁴

4.1.4 Vitongoji

A village is divided into a maximum of five vitongoji (kitongoji in singular) consisting of such a number of households in such geographical areas as may be determined by the village council with the approval of the district council. Every kitongoji has a chairperson who is elected by the electorate consisting of all adult residents in the kitongoji. The chairperson may appoint a committee of three persons from amongst the residents of the kitongoji to advice on issues relating to the kitongoji. The kitongoji

41 Mmari 2005, 27.

42 Local Government (District Authorities) Act 1982, Sections 163–164.

43 Steffensen et al. 2004, 61.

44 Tidemand 2005, 8–9.

has an administrative role. The kitongoji does not have legislative or executive powers. The average population of a kitongoji is approximately 500 persons.⁴⁵

The kitongoji was introduced to the local government legislation with the Eight Constitutional Amendment (Act No. 4 of 1992) which introduced the multiparty political system in Tanzania. The kitongoji chairman is often seen as a replacement of the CCM ten-cell leader system. Given the dominance of the ruling CCM party on Tanzania Mainland, it is often considered problematic that independent candidates are not allowed to run for the membership in the village council or for the kitongoji chairmanship, but party membership is required. Independent candidates might prove to be more sensitive to local issues.⁴⁶

According to Mmari the chairperson's functions and responsibilities are⁴⁷:

- to convene monthly meetings of all kitongoji residents to discuss and resolve on issues relating to peace, security and development of the kitongoji;
- to maintain a register of all kitongoji residents and other particulars relating to the general development of the kitongoji including a record of births and deaths;
- to ensure peace and security of residents and their property;
- to arbitrate on minor conflicts which need not be referred to the ward tribunal or to the courts;
- to mobilize residents to pay required taxes and dues as determined by the district and village councils;
- to deal with health and environmental issues in the kitongoji and ensure proper implementation of national, regional and district campaigns against communicable diseases;
- to ensure proper protection of the environment and water sources;
- to follow up and ensure that all school going children secure a place and attend school as required;
- to sensitise residents to participate in adult literacy classes;
- to sensitise residents to participate in development activities through self help, and
- to represent the kitongoji in the village council.

4.1.5 Rural and Urban Ward Development Committees

According to Section 29 of the Local Government (District Authorities) Act 1982, every district is to be divided into divisions. A division shall consist of such number and size of wards, which consist of villages and townships, as the district council may determine. The Minister responsible for local government may provide for general principles to guide and to be complied with by all district councils in determining the number and size of the divisions. Also, according to Section 30, the Minister can, with the prior approval of the president, issue an order to divide the area of all or any district council into such number of wards as he may specify in the order.

Section 14 of the Local Government (Urban Authorities) Act 1982 states that the Minister responsible for local government may, after consultation with the President, divide the area of jurisdiction of an urban authority into such number of wards as is considered necessary for the purposes of the Act. The Minister may, after consultation with the urban authority in question, vary the boundaries of any ward or increase or reduce the number of wards within the area of the authority.

⁴⁵ Federation of Canadian Municipalities 2007; Mmari 2005, 28; Tidemand 2005, 9.

⁴⁶ Shivji 2003 ref. Tidemand 2005, 9.

⁴⁷ Mmari 2005, 28–29.

There is no elected council at the ward level. The ward is an administrative area for supervising implementation of council development projects, programmes and service delivery and for coordinating activities of villages, townships and neighbourhoods within the ward. The Local Government (District Authorities) Act 1982 and the Local Government (Rural Authorities) Act 1982 provide for the establishment of a ward development committee for every ward established in the area of every district council and urban authority. There have been many amendments to the composition and functions of the urban and rural ward development committees. Today the ward development committees consist of:

- the councillor representing the ward who is chairman of the ward development committee;
- the ward executive officer (salaried official with no voting rights);
- the chairpersons of all village councils within the ward;
- all village executive officers;
- chairpersons of mtaa in case of urban wards;
- women councillors who occupy special seats reserved for women in the relevant district or urban authority who are resident in the ward;
- invited members who must include persons from non-governmental organisations and other civic groups involved in the promotion of development in the ward (without voting rights).

The urban and rural ward development committees are headed by Chairmen who are councillors representing the ward in the urban or district council. The functions of the ward development committees include functions such as formulating and submitting proposals for making of by-laws for the district, village and urban councils, discussing initiatives received from the sub-ward levels and the principal local authorities with councils, promoting enterprise activities and industry within the ward, monitoring revenue collection and promoting gender issues.⁴⁸

4.2 Urban Authorities

Urban authorities on Mainland Tanzania consist of town councils, municipal councils and city councils. They are established in the urban areas of towns, municipalities and cities respectively. In addition, the mtaas, which could be described as neighbourhood development committees, form units with administrative and consultative functions in the local government system of the urban authorities. Some very few urban authorities have within their area of jurisdiction villages with village government organs.

Sections 5 to 13 of the Local Government (Urban Authorities) Act 1982 provide for and define the powers of the Minister responsible for local government to establish urban authorities. The Minister may establish urban authorities by publishing an order in the *Gazette*. The Minister must comply with the national policy on the development of urban areas and aim at promoting effective and effective system of local government when he establishes urban authorities. Only the President may make an order in which a municipality is to be granted the status of a city. The size, area of jurisdiction, functions, or other characteristics of the urban area of a city council known as city shall be of such characteristics as may be specified in the order establishing it. The Dar es Salaam City Council is established above the three Municipal Councils of Ilala, Temeke and Kinondoni in the geographical area of Dar es Salaam. The Minister may also vary the boundaries of the area of any urban authority after consultation with the

⁴⁸ CLGF; Mmari 2005, 25–26; Local Government District Authorities Act 1982, Sections 31–32; Local Government (Urban Authorities) Act 1982, Sections 15–16.)

urban authority and other local government authorities concerned. There is a procedure for complaints for both the orders of creating an urban authority and altering the boundaries of urban authorities. Any interested authority or person can use to lodge an objection to the orders.

General duties and powers of urban authorities

The duties mandatory to every urban authority, and the powers assigned to urban authorities for the purposes of the better performance of the functions and any other functions that are conferred to urban authorities by any other law are defined in Sections 55 and 59 of the Local Government (Urban Authorities) Act 1982. These functions and powers are listed in Annex 8. The mandatory duties consist of a range of functions such as conserving natural resources, providing and maintaining public markets and providing lighting to the streets. The urban authorities may also perform any of the functions specified in the Schedule to the Local Government Urban Authorities Act. The functions in the Schedule are exactly the same as the ones in the First Schedule to the Local Government (District Authorities) Act 1982 (see Annex 5).

Legislative power of urban authorities

Every urban authority except the mtaas can make by-laws for the purposes of performing the functions conferred on the urban authorities by the Local Government (Urban Authorities) Act 1982 or any other law. The by-laws have to be submitted to the Minister responsible for local government for his approval before they can come into force.⁴⁹

Committees of urban authorities

Each urban authority except the city councils have to establish the following standing committees:

- Finance and administration
- Economic affairs, health and education
- urban planning and environment
- Ethics
- HIV/AIDS

Each standing committee except the standing committee for finance and administration has to consist of not more than one third of the members of the urban council. The urban councils can establish three other standing committees. The city councils may establish such committees as is determined in the order made by the minister establishing the city council.⁵⁰

4.2.1 City Councils

The definition of the composition of city councils in the Local Government (Urban Authorities) Act No. 1982 has been amended several times since the 1990s. Currently the city councils containing an area or areas of other urban authorities (in this connection referring to municipal councils, as currently this applies only to Dar es Salaam City Council with three municipal councils within its area) consist of:

- a mayor elected by councillors of the urban authorities within the area of the city council from amongst the elected councillors;

⁴⁹ Local Government (Urban Authorities) Act 1982, Sections 80–81.

⁵⁰ Local Government (Urban Authorities) Act 1982, Section 42; PMO-RALG 2008.

- a deputy mayor elected by councillors of the city council from amongst the elected councillors except that where the mayor is from one urban authority, the deputy mayor has to be from a different urban authority;
- the mayor of each urban authority within the city council;
- Members of Parliament (elected, nominated by party and appointed by the President) representing constituencies within the city area;
- at least two women Members of Parliament resident in the city and elected from the women in parliament;
- three councillors from each of the urban authorities, one of whom must be a woman.

City councils that were formed without municipal councils within their area consist of:

- members elected one each from the wards within the city;
- Members of Parliament representing constituencies within the city;
- if he is resident in the area of the council, the national Member of Parliament elected from the region in which the council is situated;
- Members of Parliament nominated by organs of political parties within the area of jurisdiction of the council;
- Member of Parliament nominated by the President is a member of the city council in whose area he/she ordinarily resides;
- not more than three members appointed by the Minister responsible for the local government. The appointment by the Minister has to take into account the proportionality of the number of the members of the parties elected to the council;
- a mayor and a deputy mayor elected by members from amongst the elected members of the council.

The functions of the city councils with other urban authorities in their area of jurisdictions include⁵¹:

- to coordinate the powers and functions of urban authorities regarding infrastructure and planning;
- to prepare a coherent city-wide framework for enhancing sustainable development;
- to promote co-operation between the city council and/or amongst local government authorities within the city area;
- to perform major functions relating to protocol and ceremonies.

4.2.2 Municipal Councils and Town Councils

The definition of the composition of municipal and town councils in the Local Government (Urban Authorities) Act No. 1982 has been amended several times since the 1990s. Currently the councils consist of (Local Government (Urban Authorities) Act 1982, Section 20; CLGF 2006):

- members elected one each from the wards in the town or municipality
- Members of Parliament (appointed, nominated and elected) representing the constituencies within which the town or municipality is situated

⁵¹ Local Government (Urban Authorities) Act 1982, Section 69A.

- not more than three members appointed by the Minister responsible for local government; the appointment has to have regard to specific groups including persons with specific expertise, marginalised and disadvantaged groups
- at least one-third of the number of council members have to be women.

The town council is led by a Chairman and the municipal council by a Mayor. They are elected by the council members from amongst the elected members of the council.⁵²

4.2.3 Mtaas

The mtaa committees are neighbourhood or block development committees established in each mtaa (a neighbourhood within a town or municipality). The members of the mtaa development committees, or mtaas as they are generally referred to, are elected by the residents of the mtaas. The mtaa committee consists of a maximum of six members who are residents in the mtaa. Two of the members must be women. The mtaas have an advisory and administrative role. The mtaa committees implement policies of the council, advise the council on matters relating to development plans and activities of the mtaa, advise the Ward Development Committee on matters relating to peace and security in the mtaa, keep records of residents of the mtaa, and do such other things as may be conferred upon them by the Ward Development Committee. The mtaa committees do not have powers to make by-laws.⁵³

The mtaas also have a chairperson who convenes the mtaa assembly comprising of all adult residents of the mtaa at least once in two months, and chairs the mtaa committee meetings⁵⁴.

Each mtaa has an Executive Office, which is headed by a mtaa Executive Officer who is appointed by the urban authority in question. The mtaa Executive Officer performs functions as the Secretary to the mtaa committee and such other functions as may be specified in his letter of appointment or other government directives.⁵⁵

4.2.4 Ward Development Committees

The composition and role of the urban Ward Development Committees is discussed above in Chapter 4.1.5.

52 Local Government (Urban Authorities) Act 1982, Section 20.

53 Federation of Canadian Municipalities 2007, 8; Local Government (Urban Authorities) Act 1982, Section 14A:1–2.

54 CLGF 2006, 225; Mmari 2005, 29.

55 Local Government (Urban Authorities) Act No. 8 1982, Sections 14A:3–4.

5 Remuneration of Political Office-Holders

The councillors are entitled to daily subsistence allowances whose levels are set in Establishment Circulars issued by the President's Office – Public Service Management. Each type of local government authority has the same rates of allowances (for example, all city councils have the same rates). Receiving other allowances such as remuneration of travel costs is subject to conditions provided in the Establishment Circulars. The councillors are not paid sitting allowances for participation in meetings and workshops.⁵⁶

⁵⁶ President's Office – Public Service Management 2005. The rates provided in the Establishment Circular No. 1 of 2005 were raised in 2008.

6 Financial Resources of Local Government Authorities

The Government of Tanzania has pursued fiscal decentralisation within the general policy of decentralisation by devolution. The Local Government Finances Act of 1982 entitles the higher level local government authorities of district and urban councils as well as the lower level local government authorities of villages and townships to financial resources of their own.

The 1999 amendments to the Local Government District Authorities and Urban Authorities Acts of 1982 introduced provisions that recognised the duty of the central government to provide sufficient resources for the district councils to exercise powers delegated to them by central or other local government authorities.⁵⁷ The amendments also obligated the Minister responsible for local government to endeavour to ensure that there are available adequate financial and other resources for various sectors or aspects of local government so as to ensure the effective and efficient development of the local government system.⁵⁸

The decentralisation by devolution policy and the 1999 amendments to the local government legislation aim at a more autonomous local government and realisation of the subsidiarity principle. The realisation of the subsidiarity principle and the adequateness of the financial and other resources of the local government authorities, which in principle is now guaranteed by law, is subject to many debates and studies. Summarising them would go beyond the scope of this paper.⁵⁹ Rather, in the following chapters this paper tries to point out some aspects of the fiscal administration and financial resources available to the local government authorities, which have implications for the local self-government in Tanzania.

6.1 Legislation and Revenue Sources

The Local Government Finance Act No. 9, 1982 defines the revenue sources of local government authorities. The Local Government Finance Act provides that the revenue sources consist of the main categories of local government authorities' own revenue sources, shared taxes, central government grants, and donor funding. The Local Government Finance Act 1982 has been amended several times, and for example some of the own revenue sources that used be provided by the Act, such as the development levy, have been abolished during years 2003–2004. In addition to the amendments to the Act, the revenue sources of the local government authorities are also regulated by regulations made by the Minister responsible for local government. For example, the Minister can, after consultations with stakeholders, make a regulation specifying the distribution of resources of revenue among various levels of local government authorities⁶⁰. Reforms initiated within reform programmes such as the Local Government Reform Programme (LGRP) play an important part in defining the revenue sources base of the local authorities.

57 Local Government Amendment Laws (Miscellaneous Amendments) No. 6 1999, Section 21.

58 Local Government Laws (Miscellaneous Amendments) Act 1999 Section 40:d.

59 For a review of literature on decentralisation and poverty reduction and the experiences in Tanzania see for example Braathen 2008: Decentralisation and Poverty Reduction: A review of the linkages in Tanzania and the international literature. Braathen et al. 2005 gives an excellent summary of findings of a research project on governance, finances and financial management, and service delivery and poverty alleviation in six Tanzanian councils during years 2000-2003.

60 Local Government Finances Act 1982, Section 9A:2.

The revenue sources defined in the Local Government Finance Act 1982 differ for urban authorities, district councils, township authorities and village councils (see Sections 6–8 of the Local Government Finances Act). The own source revenues of local government authorities consist of various licences and fees, and different kinds of taxes. Some of the tax revenues the local government authorities are allowed to use themselves in full, but some tax revenues that the local authorities collect have to be shared with the central government. For example, the municipal councils and district councils are entitled to 20 per cent of the revenues collected by the central government as land rent under the Land Act⁶¹. The revenues from the land rent (leases on commercial, industrial and residential land in areas occupied under non-traditional forms of tenure) are collected by the local government authorities, deposited in the bank account of the central Treasury, and finally returned in the ratio of 20 per cent to those areas where they were collected from⁶². However, the system is unreliable. Steffensen et al. point out that the three municipal councils within Dar es Salaam did not receive any payments of land rent in the beginning of 2000s⁶³.

The local government authorities have powers to tax and set rates for levies, fees and charges by making by-laws prescribing them⁶⁴. The contents of the by-laws have to be set within the limits set by the Minister responsible for local government. The Minister can, after consultations with the Minister for Finance, make rules called rating rules, which prescribe the limitations and impose conditions upon which any local authority or category of local authorities may make legislation imposing rates. In these rules the Minister may also provide for procedures that the local authorities have to follow in imposing and collecting rates in their respective areas.⁶⁵

According to PMO-RALG the rating rules prescribed in the Local Government Finances Act 1982 have not been developed or put in place. Instead, PMO-RALG and Ministry of Finance have periodically issued circulars or guidelines to direct the local government authorities in revenue practices. The lack of standardised rating rules and the irregularity of the instructions fail to provide a transparent and consistent local revenue administration process. For example, the village councils are accountable to the district councils (and in some cases to urban councils) and the mtaas to urban councils of all their revenue collections. Some revenues collected by the local governments are subject to sharing with these lower level local governments (village councils and mtaas). In 1997 PMO-RALG directed local government authorities to share 20 per cent of local revenues with the village and mtaa level. However, it appears that the consultants commissioned by the PMO-RALG to assist in developing the local government revenue system were not able to locate any written record of this directive.⁶⁶

6.2 Local Self-Government and Budget Approval

The budgets of the district councils are drafted with inputs originating from the vi-tongoji, mtaa and village levels, which are submitted to the Ward Development Committee. The Ward Development Committee submits the inputs to the district council, which takes them into consideration in preparing the budget. The draft budget is then submitted to the Regional Secretariat for comments, which are usually incorporated

61 Local Government Finances Act 1982, Sections 6:1s and 7:1z.

62 Steffensen et al. 2004, 70.

63 Steffensen et al. 2004, 71.

64 Local Government Finances Act 1982, Sections 13:1, 14-15. As discussed in Chapter 4 on the powers of the district and urban councils, the Local Government (District Authorities) Act 1982 provides that the Minister responsible for local government approves the by-laws made by the district and urban councils, and the district councils approve the by-laws made by the village councils.

65 Local Government Finances Act 1982, Section 13:2-3.

66 PMO-RALG 2006c, 5. For the results of the consultants' work see PO-RALG/UNCDF/DFID 2003: Local and Lower Local Government Revenue Sharing and Management of Finances at the Village, Ward and Mtaa Levels. Some of the results, such as the amount of revenues and shared revenues, are also quoted in Steffensen et al. 2004, 67–70.

into the budget. Finally the revised draft budget is submitted to the PMO-RALG for approval.⁶⁷

PMO-RALG guides the district authorities in preparing their plans and budgets by issuing guidelines for the preparation of local government authorities' medium term plans and budgets for each fiscal year.⁶⁸

There have been problems with the capacities of the Regional Secretariats to perform their duties. Also district and urban councils have complained about the slow procedures in approving the by-laws made by them. The by-laws affecting the budget have to be approved before the budget approval process, but the delays in PMO-RALG can take several months.⁶⁹ Also the village councils have had problems having their village plans approved in the budget preparation process. The village plans are reviewed by the Ward Development Committee and consolidated into ward plans. The ward plans are then submitted to the district or urban council for approval and decisions for example on projects that require financial support from the district. The planning at the village level has faced many challenges such as lack of information on budgeting systems with well-known revenues and expenditure ceilings, which has led to highly unrealistic planning and budget inputs from the villages.⁷⁰

6.3 Fiscal Decentralisation and Revenue Sources

The general objectives of the Government of Tanzania on fiscal decentralisation are described in the Policy Paper on Local Government Reform, 1998⁷¹. The Government's objectives include to increase the local government authorities' own revenue collection, to reform the intergovernmental grant systems to achieve a fairer and more transparent system with enhanced efficiency and equal access to services, and to reform the financial administration to improve accountability, budgeting and administrative capacities of the local government authorities, and coordination between central and local government budget cycles.

There was limited progress made with these objectives until 2004, when the Government of Tanzania started to implement a formula-based recurrent sector block grants system gradually for the five sectors (education, health, water, roads and agriculture) defined as national priority sectors, as well as for a General Purpose Grant which includes funding for local administration expenses. This reform aims to change the way in which the central government has supported local government authorities in financing their recurrent expenses: person emoluments (PEs) and other charges (OCs).

In practice the service provision in the five national priority sectors does not belong to the exclusive authority of the local government authorities. Rather, within these sectors local government authorities have concurrent expenditure responsibilities in primary education, basic health services, agriculture extension and livestock services, local water supply, and local public works (e.g. road maintenance). For these services, local government authorities are responsible for delivering the service, but the central government remains responsible for policy-setting and financing the local delivery of the services through intergovernmental transfers.⁷² Local government authorities' exclusive expenditure responsibilities are discussed above in chapters on the composition and the general functions and responsibilities of local government authorities. As discussed above, the local government authorities' exclusive expenditure responsibilities include for example local land use planning, sanitation, public markets, and other local services. Local governments are also responsible for local administration.

67 Federation of Canadian Municipalities 2007, 5; Steffensen et al. 2004, 60.

68 Available for example at <http://www.logintanzania.net>.

69 Steffensen et al. 2004, 60.

70 Steffensen et al. 2004, 61.

71 URT 1998.

72 PMO-RALG 2007, 5.

The Local Government Capital Development Grant (LGCDG) system is the other major reform initiative in fiscal decentralisation. It was introduced on a nationwide basis in 2005. The LGCDG is used for funding local government authorities' development expenditures. The LGCDG reform initiative tries to introduce the same principles to the way that the government and the donors provide funding for the government authorities' development expenditures.⁷³ The idea behind both the LGCDG and the formula-based recurrent sector block grants system reforms is to increase the extent of the discretion of the local government authorities in deciding on the expenditure of the revenues.

The Government of Tanzania maintains two budgets. The Recurrent Funds Budget is funded mainly from the Government of Tanzania's own revenue. The formula-based recurrent sector block grants system is funded from this budget. The Development Funds Budget is funded mainly by the donors, and partly by the Government of Tanzania. The LGCDG, among other transfers for development expenditures, is funded from this budget.⁷⁴

The local government authorities' sources of revenue, which are captured in the budget of the Government of Tanzania, consist of⁷⁵:

- Local government authorities' own source resource collections
- Intergovernmental transfers including:
 - Formula-based recurrent sector block grants
 - Subventions and funds (e.g. sector basket funds)
 - Development grants (e.g. LGCDG)
- Local borrowing

In addition to the sources of revenue of the local government authorities listed above, it has to be remembered that many development activities at the local level are still being funded by projects and programmes that are administered separately from the budgets of the Government of Tanzania.

Fiscal decentralisation measures have concentrated on urban and district councils. Although the Government of Tanzania envisages to devolve fiscal powers also to the village level, the progress has been quite slow. Direct budget allocations or transfers to village governments for example within the LGCDG system do not exist yet. The funding modalities, which are captured in the budget of the Government and directed directly to the village councils (such as the Tanzania Social Action Fund, TASAF) form only a small share of intergovernmental fiscal transfers.⁷⁶

The Government of Tanzania, the Parliament, the donors and civil society organisations are all actors in developing the modalities of the local government financing. The Government of Tanzania is aiming to increase the share of public expenditures spent at the local government level reflecting the decentralisation by devolution policy even though there are many obstacles on the way. However, there are also some new initiatives that might have adverse effects to the decentralisation by devolution policy and the principles in national development strategies. According to Mulisa, the Constituency Development Fund (CDF) can weaken the established accountability mechanisms and standards. The CDF was introduced in the financial year 2007-2008 budget for the first time ever despite of the objections of Development Partners (group of development donors in Tanzania) and civil society organisations. Within the CDF each Member of Parliament will have access to development funds that can be spent in his/her constituency with his/her discretion, but in a way that takes into account the district development plans.⁷⁷

73 Tidemand et al. 2008, 14.

74 See e.g. PMO-RALG 2007, Table 4.1.

75 PMO-RALG 2007.

76 Tidemand 2005, 13–15; PMO-RALG 2007, Table 4.1.

77 Mulisa 2007.

The planned total budget of CDF for financial year was 50 billion Tshs, almost the same as the 65 billion Tshs budgeted for LGCDG, of which the Government had only managed to fund five per cent. The idea of the CDF is to bring funds more directly to the citizens and to avoid leakages in the governmental administration system, but as Mulisa points out, there is a risk that double accountability standards will be established as the CDF risks to strengthen further the direct accountability mechanisms between citizens and Members of Parliament (Members of Parliament trying to secure their re-election by 'bringing the good home'), and thus undermining the accountability mechanisms in line with the national development and good governance strategies. There are also concerns that the CDF will distort local prioritization as Members of Parliament hold significant power and resources in the district councils.⁷⁸

The general trends and modalities of local government finance, and their implications for local self-governance are discussed in further detail in the following sections.

6.4 General Trends in Local Government Finances

Table 1 from the PMO-RALG's Local Government Fiscal Review summarizes local government finances in fiscal year 2006–2007. In the table one can see that the revenue collection of the local government authorities from their own sources is relatively small, totaling at 6.7 per cent of all revenues of the local government authorities. This curtails the local self-government of the local government authorities. Even though the sector block grants form a large share of the total revenues, 65.2 per cent, it does not indicate strong local self-governance. The utilisation of these sector block grants directed to the five priority sectors (education, health, water, roads, and agriculture, and a General Purpose Grant) is largely determined by the central government (discussed in further detail in the section on the formula-based recurrent sector block grants below). The data in the table also shows that only 15.7 per cent of the recurrent expenditures was used for functions that belong exclusively to the authority of the local government authorities.

Table 1. Summary of Local Government Finances Fiscal Year 2006/2007 (in TSH Million)

	Budget Plan	Actual Out-come	Actual (As % of Total)	Perform. Ratio (%)
Own Source Revenues	63385.2	61,411.3	6.7	96.9
Intergov. transfers	1,100,870.6	859,467.9	93.3	78.1
o/w Block Grants	695,191.8	600,270.6	65.2	86.3
o/w Subventions and funds	142,314.4	77,980.1	8.5	54.8
o/w Development Grants	263,364.4	181,217.2	19.7	68.8
Local Borrowing	126.1	100.0	0.0	79.3
Total Revenues	1,164,381.9	920,979.1	100.0	79.1
Recurrent Expenditures	765,067.8	673,726.2	78.5	88.1
o/w Concurrent functions	601,661.7	539,379.3	62.8	89.6
o/w Exclusive local functions	163,406.1	134,346.9	15.7	82.2
Development Expenditures	353,940.9	184,574.3	21.5	52.1
Total Expenditures	1,119,008.7	858,300.6	100.0	76.7
Surplus / (Deficit)	45,373.2	62,678.6	--	138.1
Expenditure Ratio (%)	96.1	93.2	--	--

Source: PMO-RALG 2007: Local Government Fiscal Review 2007, Table 1.1.

78 Mulisa 2007.

According to Tidemand et al. the most important trend in the features of local government authorities' revenues in recent years has been the expansion of fiscal transfers from the central government to the local government authorities, and the significant proportional decline of local government authorities own source of revenue. This was partly due to the abolition of some important local sources of revenue such as the Development Levy.⁷⁹ Table 2 from the PMO-RALG's *Local Government Fiscal Review 2007* (PMO-RALG 2007) shows the Local Government Authorities financing from the recurrent financial resources, which exclude the development aid funds.

Table 2. Local Government Recurrent Financial Resources FY 2002/2003–2006/2007

	2002/2003	2003/2004	2004/2005	2005/2006	2006/2007
TSH Million					
Local grants (incl. GPG)	247,027.3	313,872.7	386,767.8	452,831.2	600,270.6
Own source revenues	57,740.2	48,343.6	42,871.4	49,291.0	61,411.3
Local borrow-ing	225.0	442.5	250.5	1,495.9	100.0
Total	304,992.5	362,658.8	429,889.7	503,618.1	661,781.8
Percent of LG resources					
Local grants (incl. GPG)	81.0	86.5	89.9	90.4	90.7
Own source revenues	18.9	13.3	10.0	9.3	9.3
Local borrow-ing	0.1	0.1	0.1	0.3	0.0
Total	100.0	100.0	100.0	100.0	100.0

GPG: General Purpose Grant

Notes: Starting FY 2005/06, data reflect actual amounts as reported by LGAs. See LGFR 2006b (Table 1.1) for data sources for earlier years.

Source: PMO-RALG 2007: Local Government Fiscal Review 2007, Table 3.1.

The data in Table 2 shows that the financial resources available at the local government level have doubled during fiscal years 2002/2003 to 2006/2007. However, Tidemand et al. (2008, 14) point out that the expansion of public expenditures in Tanzania generally has led to a situation in which the local government authorities' share of the total public expenditure has remained relatively unchanged at around 20 per cent. Table 3 from the Local Government Fiscal Review 2007 illustrates the expenditure decentralisation in the recurrent public expenditures by central and local governments.

Table 3. Expenditure Decentralisation in Tanzania: Recurrent public Expenditures by Central and Local Governments, Fiscal Years 2001/2002–2006/2007

	Central TSH billion	Local	Total	Central Percent of total	Local	Total
2001/2002	1,018.5	234.5	1,253.1	81.3 %	18.7 %	100.0 %
2002/2003	1,237.8	290.0	1,527.8	81.0 %	19.0 %	100.0 %
2003/2004	1,509.8	324.3	1,843.1	82.3 %	17.7 %	100.0 %
2004/2005	1,869.2	383.1	2,252.3	83.0 %	17.0 %	100.0 %
2005/2006	2,341.1	534.4	2,875.6	81.4 %	18.6 %	100.0 %
2006/2007	2,377.3	765.1	3,142.3	75.7 %	24.3 %	100.0 %

Notes: Central expenditures include spending by regional level. Prior to 2005/06, the local expenditure budget is approximated by budgeted transfers plus actual own source revenues (and thus excludes local spending from ministerial subventions).

Source: PMO-RALG 2007: Local Government Fiscal Review 2007, Table 2.2.

79 Tidemand et al. 2008, 14.

The table shows that local government's share of recurrent spending rose to over 24 per cent in fiscal year 2006–2007. This is partly explained by the relatively high public sector wage increases in recent years, which drove up local spending disproportionately. Two-thirds of public servants work at local level in Tanzania. Also the ministries, departments and agencies of the central government had to reduce their Other Charges (OCs) in recent years, while the local governments largely did not have to cut back their OC budgets.⁸⁰

6.4.1 Local Government Authorities' Own Revenue Sources

Local government authorities' own revenue collections have declined in recent years primarily because the Government of Tanzania rationalised the local government revenue system in 2003 and 2004. In this process various taxes, including the development levy which constituted the main tax in rural districts, were abolished. The Government also restricted local rate-setting discretion over the remaining local revenue sources. Before these reformations the approach to local taxation was permissive, which resulted in a local revenue system that virtually lacked any sense of uniformity. The reform policies were set within the framework of the Local Government Reform Programme (LGRP) because of concerns about the efficiency and equity effects of the mixed local government revenue system.⁸¹

As the data in Table 1 in Chapter 6.4 shows, the revenue collection of the local government authorities from their own sources forms only a small share, 6.7 per cent, of all revenues of the local government authorities. This is one of the factors restricting the strengthening of local self-government in Tanzania. As noted in the *Local Government Fiscal Review 2007*, the low degree of local revenue autonomy in Tanzania reveals a weak link between the benefits from local expenditures and the costs of these to local residents⁸². As Tidemand points out, trust in the local government system, and in particular the proper use of locally collected tax rates is low. Local residents do not associate tax collection with service delivery. Instead several purpose specific collections are undertaken for example for the local school and water supply system.⁸³ The government's reforms are aimed at uniforming these patchy practices. The Government of Tanzania is trying to create a more viable local revenue system, which is recognised as being an important factor in enhancing the self-government and accountability of local government authorities (see e.g. PMO-RALG 2006b and PMO-RALG 2007). Table 4 from Local Government Fiscal Review 2006 illustrates the own sources of revenue of local government authorities.

Table 4. Total Local Government Revenue by Source

Actual collections in TSH million	2002	2003	2004/2005	2005/2006
Development levy	11,368.7	3,205.4	0.0	0.0
Property tax	3,547.9	3,134.7	4,208.1	4,857.2
Agricultural ces-ses	9,251.3	9,017.5	11,375.5	10,862.3
Service levy	9,260.7	7,786.6	10,681.8	11,733.7
Land rent	567.1	654.6	571.9	770.7
Licences and fees	11,648.2	12,134.1	5,462.7	1,008.9
Charges	5,525.9	5,179.2	6,338.0	12,611.6
Other revenues	6,570.3	7,231.6	4,233.6	7,446.6
Total revenues	57,740.2	48,343.6	42,871.4	49,291.0

Notes: Prior to 2004, revenue collections are reported based on calendar years; revenue collections for January–June 2004 are reported in the Local Government Fiscal Review 2005. Source: PMO-RALG 2006b: Local Government Fiscal Review 2006, Table 3.1.

80 PMO-RALG 2007, 8–9.

81 PMO-TALG 2006b, 25; PMO-RALG 2007, 11.

82 PMO-RALG 2007, 12.

83 Tidemand 2005, 9.

The table shows how the own source revenue collections declined from 2003 through fiscal year 2004–2005. However, this declining trend was reversed in FY 2005/06 as local government revenue collections rebounded to TSHS 49.3 billion, which represents an increase in revenue collections of 15 percent⁸⁴.

Table 5 shows the total local government revenue collections in fiscal year 2006–2007 grouped in the way that the government proposed for the re-organisation of the permitted local government own revenue sources.⁸⁵

Table 5. Total Local Government Revenue Collections, Fiscal Year 2006-2007

Collections in TSHS million	Annual Budget Plan	Actual Out-come	Actual (as % of Total)	Perform. Ratio (%)
I. Local Rates				
A. Local Rates on immovable property and land				
i. Local property rates	8,159.2	5,476.3	8.9	66.8
ii. Land rent	2,062.4	1,332.7	2.2	64.6
B. Local Rates on income, business, or activity				
i. Service Levy	13,180.8	15,138.8	24.7	114.9
ii. Produce Cess	12,154.3	13,118.5	21.4	107.9
iii. Guest House Levy	1,323.7	1,127.9	1.8	85.2
Subtotal	36,916.4	36,194.3	58.9	98.0
II. Local Licences / Per-mits	1,817.4	1,470.5	2.4	80.9
III. Local Fees and Charges	15,901.1	14,631.3	23.8	92.0
IV. Other Revenue Sources	8,750.2	9,115.2	14.8	104.2
Total Own Revenues	63,385.2	61,411.3	100.0	96.9

Source: PMO-RALG 2007: Local Government Fiscal Review 2007, Table 3.2.

According to Steffensen et al., most of the local government authorities' own revenue sources are spent on local administration and non-development oriented purposes. This can be established even though there are only limited aggregate statistics available.⁸⁶

6.4.2 Formula-Based Recurrent Sector Block Grants

Until 2004 the fiscal transfer system from central government to local government (district and urban councils) could be described as six local government allocation schemes: one each for five national policy priority areas, which included education, health, water, roads and agriculture. In addition, there was an allocation scheme for local administration. Each sector allocation scheme was divided into personal emoluments (PEs) and other charges (OCs). This system was widely seen as non-transparent and favouring those local government authorities that for historical reasons had managed to establish facilities and employ a high number of staff (mainly urban local authorities).⁸⁷

The system was reformed to attain more alignment to the expenditure needs of the local government authorities, to ensure higher discretionary power for the local government authorities, and to enhance predictability and transparency, among other things. The implementation of a system of formula-based recurrent sector block grants was started with formula-based grants for primary education and local health services in July 2004. Formula-based recurrent grants for the rest of the five national priority sectors (water, roads and agriculture) were introduced as part of the fiscal year

84 PMO-RALG 2006b, 27.

85 For more information on the revenue categories see PMO-RALG 2006, Box 3.1.

86 Tidemand et al. 2004, 56–57, 59.

87 Tidemand et al. 2008, 17.

2005/2006 budget. In addition, a formula-based allocation of the General Purpose Grant (includes e.g. local administration) was initiated in the same fiscal year.⁸⁸ The formula-based recurrent sector block grants are funded from the central government's recurrent budget, which consists mainly of the central government's own revenue. The central government continues to provide also many other additional transfers to local government authorities for other local expenditures that are the responsibility of the local government authorities.⁸⁹

In principle the formula-based recurrent sector block grants will no longer differentiate between personal emoluments (PEs) and other charges (OCs), but the supposed autonomy at the local government authorities' level in the employment of staff and balancing the PE and OC costs is not realised in practice. This is mainly because of the tight budget constraint used in the formula-based recurrent sector block grants, and the dominance of central government in the recruitment of the staff of the local government authorities. The bulk of the financing of the formula-based recurrent sector block grants is directed for salaries, and the number of staff in each local government authority is largely centrally determined. There are also significant differences between the agreed formula-based allocations in the beginning of the fiscal year and the later actual releases. Many sector ministries still expect to approve the plans and budgets of the local government authorities and enforce work plans locally. Many sector ministries are unfamiliar with the opportunities and tools available for decentralised fiscal framework, such as guiding the local government authorities with policies, standards and other guidance.⁹⁰

In recent years the education grant has been the largest of the formula-based recurrent sector block grants. In fiscal year 2006–2007 the transferred grant was approximately TSHS 386,705 million, which formed approximately 65 per cent of the total formula-based recurrent sector block grants funding. The second largest grant was the health grant with funding of TSHS 96,811 million, forming approximately 16 per cent of the total formula-based recurrent sector block grants funding.⁹¹

The formula-based recurrent sector block grants represent a reform aimed at realising the Government's vision to move away from a system with multiple sector-specific grants with various modalities to a more streamlined system based on a gradual expansion of the unconditional grant element.⁹² In this vision local government authorities' discretion within sector allocations is of particular importance in the recurrent grant transfer. Discretion across sectors is of particular relevance for development grant transfers, which has been pursued with the introduction of the formula-based Local Government Capital Development Grant System (LGCDG).

There has been mixed progress with the development of the intergovernmental transfer system in Tanzania. The introduction of formula-based system in the recurrent sector block grants, which are funded from the recurrent funds budget, and the LGCDG system also based on a formula and funded from the development funds budget, represent major positive achievements. However, the Government of Tanzania has not been strongly committed to the principle of formula-based allocations. The formula-based recurrent sector block grants deviate substantially from the formula-based pattern because of the clause to hold those local government authorities harmless, who would otherwise receive substantially less funds than previously. Also, the Government of Tanzania has not allocated funds to the LGCDG for fiscal year 2007–2008 consistent with the LGCDG formula-basis.⁹³

88 For the composition of formula of the formula-based sector block grant see Tidemand et al. 2008, Table 2-6. For the breakdown of the recurrent block grants by sector see Tidemand et al. 2008, Table 2-7, which shows that the largest shares of the fiscal transfers are made for the education sector (approximately 60 % annually) and health sector (approximately 16 % annually).

89 Tidemand et al. 2008, 17–18.

90 Tidemand et al. 2008, 18–19.

91 PMO-RALG 2007, Table 4.1.

92 For more on the details of the Government's vision on fiscal decentralisation see Tidemand et al. 2008, 48–51.

93 PMO-RALG 2007, 4.

6.4.3 Local Government Capital Development Grant System (LGCDG)

Only the Local Government Capital Development Grant System (LGCDG) grants allow the local government authorities to use discretion and prioritise the use of the grants fully in line with local priorities for development expenditures. The LGCDG grants are funded from the central government's development budget, which consists primarily of donor funding. The system has been implemented nationwide from fiscal year 2005/2006. The central government prefers the LGCDG as a modality for development funding in the future, and it is expected that the share of the LGCDG of the total development budget will increase in the future. Before the LGCDG most of the development budget was delivered at the local level through various kinds of projects rather than through government transfers or from local government authorities' own source of revenue.⁹⁴

The intergovernmental grants system in general is being developed in Tanzania. Sector windows are emerging under LGCDG. For example, for fiscal year 2006–2007 the funding of the District Agriculture Development Plans (PADPs) was introduced into the LGCDG system as a sector window, and funding of the Rural Water Programme and the Urban Development and Environmental Management (UDEM) grants in fiscal year 2007–2008. Even though the disbursement of the sector windows takes place under the LGCDG, each window continues to have a somewhat separate management structure.⁹⁵ The LGCDG system was designed to incorporate all sector specific grants into the LGCDG system first with this kind of ring-fenced funding. According to PMO-RALG's LGCDG assessment manual, it is anticipated that all sectors will come into this process, and that the need for sector specific grants will fall away over time as the sector programmes are increasingly institutionalised into one discretionary grant system⁹⁶.

The LGCDG grants are only allocated to district and urban councils, which fulfil a range of defined basic minimum conditions in financial management, transparency and accountability.⁹⁷ In fiscal year 2006/2007 about 30 per cent of local government authorities were disqualified for LGCDG funding. There are concerns that the LGCDG system might favour the already richer local government authorities, and lead to allocation of funding that does not target the poorer areas. The evidence is mixed, but there is a need to monitor closely the development effects of the LGCDG to avoid poverty bias.⁹⁸

Table 6 from PMO-RALG's *Local Government Fiscal Review* illustrates all intergovernmental fiscal transfers in Tanzania in fiscal year 2006–2007, and gives an overall picture of the role of the LGCDG among other development transfers as well as recurrent transfers from the recurrent funds budget.

94 Tidemand et al. 2008, 20.

95 PMO-RALG 2007, 18.

96 PMO-RALG 2006a, 9.

97 For a detailed description of the minimum conditions and LGCDG allocation formula see Tidemand et al. 2008, Annex 1.

98 Tidemand et al. 2008, 21.

Table 6. Intergovernmental Fiscal Transfers, Fiscal Year 2006-2007 (TSHS Million)

Budget item	Annual budget plan	Actual outcome	Performance ratio (%)
Recurrent Sector Block Grants			
Education Grant	418,016.6	386,705.4	92.5
Health Grant	114,778.5	96,811.2	84.3
Agriculture Grant	22,172.4	12,455.0	56.2
Roads Grant	8,063.2	6,889.7	85.4
Water Grant	14,482.6	14,485.7	100.0
GPG (incl. local admin)	117,678.4	82,923.6	70.5
Total Grants	695,191.8	600,270.6	86.3
Sector Basket Funds and Subventions			
Education Subven-tions	73,124.4	20,881.9	28.6
Health Subventions	22,737.6	24,980.9	109.9
Roads Subventions	13,273.6	14,223.6	107.2
HIV/AIDS Subven-tions	12,915.2	7,251.6	56.1
Other subventions	20,263.6	10,642.0	52.5
Total Subventions	142,314.4	77,980.1	54.8
Development Grants and Funds			
LGCDG	59,937.9	50,363.6	84.0
Education	74,642.8	22,820.9	30.6
Health	6,021.2	5,915.3	98.2
Roads	12,054.0	10,797.9	89.6
Water	15,662.0	12,835.4	82.0
Agriculture	11,935.8	17,920.2	150.1
Local Admin.	5,768.8	6,578.8	114.0
TASAF	36,165.5	24,748.4	68.4
Other Capital Funds	41,176.5	29,236.6	71.0
Total Capital Funds	263,364.4	181,217.2	68.8
Total (Recurrent plus Development) Transfers			
Recurrent Transfers	837,506.2	678,250.7	81.0
Capital Transfers	263,364.4	181,217.2	68.8
Total Transfers	1,100,870.6	859,467.9	78.1

Source: PMO-RALG 2007, Table 4.1.

7 Service Provision in Education, Health and Agriculture

In addition to local councils' exclusive expenditure responsibilities such as local land use planning, sanitation, public markets, and local administration, local government authorities have also concurrent expenditure responsibilities. The concurrent expenditure responsibilities consist of primary education, basic health services, agriculture extension and livestock services, local water supply, and local public works (for example road maintenance). For these services, local government authorities are responsible for delivering the service, but the central government remains responsible for policy-setting and financing the local delivery of the services through intergovernmental transfers.⁹⁹

These five areas of concurrent expenditures were defined as national priorities in the Policy on Local Government Reform of 1998, which set the framework for the local government reform agenda in Tanzania. The Policy Paper on Local Government Reform defines amendments to and rewriting the legislation as one of the central components in the local government reform in order to define the central-local government relations and responsibilities more clearly. As Steffensen et al. note, many amendments to the local government legislations and to the legislations for the key service sectors have already been made especially in the health and education sectors, but their implementation is lagging behind. Therefore the legislations still remain largely ambiguous instrument to define the local government responsibilities in the five national priority sectors. Also, even though the legislations are being harmonised to fit to the local government reform, many sector Ministries still prefer implementation strategies in which the Ministry is the implementer rather than the local government authorities. The main argument for this approach within the sector ministries is the weak capacity of the local government authorities to provide services.¹⁰⁰ The local government authorities are to a large extent guided by sector policies and sector development programmes as well as the constraints posed by the intergovernmental fiscal transfers.

The following chapters describe some aspects of the responsibilities and authority of the local government authorities in providing basic education, health, and agricultural extension services.

7.1 Basic Education

Local government authorities are responsible for the provision of primary education. This is provided in the local government district and urban authorities laws of 1982, and in the Education Act No. 25, 1978. These Acts also give the Ministers responsible for local government and education powers to issue orders and regulations to alter the powers and duties of the local government authorities in providing primary education. The Education Act also prescribes that the local government authorities have to perform their functions in accordance with national policies and development plans.

The delivery of all levels education from primary to higher education involves many different institutions: the central government, local government authorities, the

99 PMO-RALG 2007, 5.

100 Steffensen et al. 2004, 18–19; cf. also PMO-RALG 2007, 5.

private sector and non-governmental organisations. The main responsibilities of the Ministry of Education and Vocational Training (MoE) include to supervise and manage the pre-primary, primary, and secondary education, special education, national vocational training, teacher education, school inspection and planning, and coordination of all educational plans. In addition to the Local Government Acts of 1982 and the Education Act No. 25 of 1978, MoE is guided by the Tanzania Vision for Development and the National Strategy for Growth and Reduction of Poverty (NSGRP).¹⁰¹

PMO-RALG is responsible for the establishment, management and administration of primary schools. The secondary schools and teachers colleges are included in the responsibilities of the MoE, and the public universities, institutes of technology and technical colleges operate under the Ministry of Science, Technology and Higher Education.¹⁰²

While the provision of primary education is the responsibility of the local government, the local governments have to implement their service delivery within the constraints of planning, policy setting, and funding which are heavily centralised. Most of the funding for primary education is directed to the Primary Education Development Programme (PEDP), which is funded mainly by joint funding of the Government of Tanzania with a recurrent education sector block grant (approximately 60–70 % of the block grant was allocated to basic education in fiscal year 1994/1995–2004/2005), the donors through a pooled fund, and a joint World Bank loan and donor grant. The councils participate in the primary education funding with limited own source revenues. The communities co-finance primary education for example by contributing labour and money to school construction.¹⁰³ PEDP is a sector-wide programme based on the Education Sector Development Programme (ESDP) of Tanzania. Among other things, the aims of the ESDP for primary education are to provide enough and qualified teachers, construct adequate number of classrooms, provide incentive packages to teachers, and to increase the enrolment of children in school age. PEDP consists of four components: enrolment expansion, quality improvement, capacity building, and strengthening institutional arrangements.¹⁰⁴

The School Committees, in collaboration with mtaa committees, village councils and ward development committees, are mainly responsible for the planning, budgeting and implementation of primary education. The School Committees prepare and submit school plans, budgets and quarterly progress reports to the urban or district council and the Regional Secretariat for consolidation and submission to PMO-RALG. Funds are transferred from the treasury to the district and urban councils, and the council transfers the funds to the schools according to a set capitation grant limit and for school construction programmes. Each school committee consists of members from the village or mtaa government, teachers, pupils and members of the community. One of the members is elected as a chairperson. The chairperson of the village or mtaa government and the Village Executive Officer are not members of the School Committee.¹⁰⁵

The council education officer (CEO) is posted by the MoE and reports to the Council Executive Director, who is appointed by the Minister responsible for local government. All teachers and education staff report to the CEO, who is responsible for their posting within the council. The CEO is also responsible for preparing the council education plan, which should be based on a participatory school mapping exercise and a school micro-plan. The CEO has limited discretion in providing education services because the central government sets the budgetary allocations through the local gov-

101 Tidemand et al., 2008, 34.

102 Tidemand et al., 2008, 34.

103 Tidemand et al. 2008, 36–38.

104 Tidemand et al. 2008, 32–33.

105 Tidemand et al. 2008, 35.

ernment budget guidelines and the PEDP budget guidelines.¹⁰⁶ For example, bulk of the recurrent education sector block grants is directed to salaries. Also, even though the local government authorities are the employers of the teachers, the local government authorities do not have powers to recruit and fire teachers. According to the Public Service Regulations of 2003 implementing the general provision of the Public service Act No. 8 of 2002 these powers belong to the Teacher Service Commission, which is a semi-autonomous body reporting to the central government and not responsible to the local level.¹⁰⁷

The service provision in secondary education has expanded substantially in Tanzania in recent years. Even though PMO-RALG has noted that there are sound arguments to decentralise the secondary education service provision to the local level, the Government has chosen to manage the service provision centrally under the MoE. The Government has made a decision to start decentralising secondary education to local governments from fiscal year 2008/2009.¹⁰⁸

7.2 Health Services

The health services provision, including the district health services, in Tanzania is guided by the Health Service Strategic Plan (HSSP) for years 2003–2008, which the Government formulated together with the development partners (group of donors). The current activities within the health sector are directed by the Medium Term Expenditure Framework (MTEF), which operationalises the strategies of HSSP and National Strategy for Growth and Reduction of Poverty (NSGRP). Tanzania has applied a decentralised and participatory approach to planning and delivering health services within the general framework of local government reforms since 2000. The health services at the district level have been devolved to the local government authorities to increase their authority in health service provision.¹⁰⁹ The National Health Service Bill (2004) states that all health facilities up to district hospitals are assigned to the responsibility of the local government authorities¹¹⁰.

Health policy and implementation of service provision are organised according to three levels of government. At the central government level, the Ministry of Health and Social Welfare (MoHSW) is responsible for the development of sectoral policy and the regulatory framework, monitoring and evaluation of policy implementation and sectoral impact, and the overall management of the reform process. However, because of the processes of devolution, the responsibility for service delivery has been assigned to PMO-RALG, and the two ministries work closely together. The basket financing committee for health services and the annual health sector joint review are co-chaired by the permanent secretaries of MoHSW and PMORALG.¹¹¹

At the regional level the Regional Secretariat's regional medical officer provides supervisory and technical support to the councils. The duties of the regional medical officer include also ensuring that the national policies and guidelines are adhered to. In addition, the regional medical officer is responsible for the management of the regional hospital. The regional authorities functions under PMO-RALG, and is tying to adjust to its new roles and functions as supervising the district level health services, as their implementation has been devolved from the regional level to the local government authorities.¹¹²

106 Tidemand et al. 2008, 35.

107 Tidemand et al. 2008, 27, 43.

108 PMO-RALG 2007, 5.

109 Tidemand et al. 2008, 50, 53.

110 Steffensen et al. 2004, Table 2.1.

111 Tidemand et al. 2008, 50–51.

112 Tidemand et al. 2008, 51.

The district and urban councils are responsible for the planning, management and delivery of services up to and including district hospital services. The role of the councils consists of¹¹³:

- Health service provision of the district hospital, other hospitals at district level, health centres and dispensaries
- Preparation of a Comprehensive Council Health Plan, which is the basis for the decentralised management and the council basket funding mechanism, and regular reporting on implementation
- Coordination, supportive supervision, monitoring and inspection of all health facilities and activities in the council
- Management of resources
- Ensuring communities are responsible in taking care of their own health and also the safety of medicine and equipment in their health facilities

Voluntary agencies, faith-based organisation, private sector organisation and parastatal organisations provide health care services through contractual arrangements with the district or urban councils.¹¹⁴

For the health service provision, the district and urban councils receive a recurrent sector block grant from the Government and a district basket grant, which is funded through sector budget support. The basic health care is also funded with small contributions for example from user fees and district's own contributions.¹¹⁵ Funds for council level activities are disbursed based on approved health plans and cash flows. Implementation is being monitored on quarterly basis using the quarterly progress implementation and financial reports.¹¹⁶

In many aspects the health sector in Tanzania is in the forefront in terms of decentralisation in the local government reform processes taking place in Tanzania as decentralisation reforms were started early on. Despite of this there are some areas in the health sector where decentralisation is still weak. Planning and service delivery are still relatively centralistic. The health allocations to primary and secondary care services at the councils level have increased, but the allocations to the central level have increased much faster (for example by 51 per cent compared to the local government level increase by 28 per cent in 2005). The central level allocation is also the largest in absolute terms. Therefore despite of many years of decentralisation the health sector is still very centralistic in terms of funding allocation to health services.¹¹⁷

Decentralisation is still lacking also in personnel recruitment. Because there are continued problems relating to recruitment of health care staff in the districts – especially in the remote and poorer districts - the MoHSW has proposed to address the staff shortage problem by introducing central recruitment of health workers from fiscal year 2006/2007 onwards. The Ministries responsible for health care can transfer the recruited health workers to selected councils as per need.¹¹⁸ Transferring public servants from one local government authority to another where necessary and in public interest is enabled by the Public Service Regulations of 2003, Section 107.¹¹⁹

113 Tidemand et al. 2008, Table 4-1.

114 Tidemand et al. 2008, 53.

115 Tidemand et al. 2008, 51, 57, 60.

116 Tidemand et al. 2008, 56.

117 Tidemand et al. 2008, 68.

118 Tidemand et al. 2008, 61.

119 Tidemand et al. 2008, Table 2-12.

7.3 Agriculture

According to the Local Government Acts of 1982, the urban and district councils may provide services to the improvement of agriculture. The actual service provision is guided by the Agricultural Sector Development Strategy (ASDS), which the Government approved in 2001. The Agricultural Sector Development Programme (ASDP) was formulated jointly by the four lead agriculture sector lead ministries in 2003 – after which the Ministries were rearranged to include the Ministry of Agriculture, Food and Cooperatives, the Ministry of Livestock Development and Fisheries and PMO-RALG. ASDP provides the framework and processes for implementing ASDS. The local government authorities implement the ASDP development activities at the district level based on district agricultural development plans, which form part of the overall district development plans.¹²⁰ The Regional Secretariat provides technical backstopping to the districts in the formulation of the district development plans and budgets, which finally have to be approved by PMO-RALG before the Parliament approves the national budget¹²¹.

ASDS and ASDP aim to modernise the agricultural sector in Tanzania, and seek to clarify the roles of public and private sectors in improving agricultural support services in agricultural research, extension, training, regulation, technical services and finance. The role of the private sector is envisaged to be increased, while the public sector would gradually limit its role to financing the provision of public goods and services, and target poverty reduction interventions. The ASDP has three pillars: support at local level, support at national level and support for cross-cutting and cross-sector issues. The ASDP policy strives strongly to focus on decentralisation: indicatively 75 per cent of all the ASDP financial resources are expected to be allocated to the urban and district councils and the lower level local government authorities.¹²²

The urban and district councils are responsible for implementing the following categories of ASDP activities through their district development plans and district agricultural development plans, which are part of the district development plans¹²³:

- Investments supportive of enhanced agricultural production (e.g. irrigation and water management, crop production and protection)
- Local level policy and regulatory framework (policies and information supporting enabling environment for farmers)
- Local level research and advisory services (e.g. client-oriented research, training of producers)
- Private sector development, marketing and rural finance
- cross cutting and cross-sector issues (e.g. rural infrastructure and energy, HIV/AIDS)

The ASDP is funded through a government recurrent sector block grant, other government grants for development investments funding based on different kinds of criteria. The local government authorities may also use the LGCDG funding for ASDP development expenditures. The donors have joined to fund the program only recently. Before this, the donors used to fund district level development interventions through donor funded area programmes. The government transfers to local government authorities are small and cover mainly salaries. In recent years the spending on agriculture has constituted only about three per cent of all local government authorities' expenditures.¹²⁴ In fiscal year 2006-2007 the share of the recurrent agriculture sector

120 Tidemand et al. 2008, 70.

121 Hakikazi Catalyst et al. 2007, 26.

122 Tidemand et al. 2008, 70–71.

123 Tidemand et al. 2008, 71, Table 5-1.

124 Tidemand et al. 2008, 74–76.

grant constituted roughly two per cent of all recurrent sector block grant transfers to the local government authorities¹²⁵.

In addition to the tightly controlled financial resources originating mainly from the central government and the donors, the local self-government is also curtailed by the fact that the powers of recruitment of the staff of the local government authorities are centralised in Tanzania, and the local government authorities do not have effective control of their staff in terms of hiring and firing. The accountability of agricultural extension staff to the local level is low, which has led to several problems in the field, for example in situations where corrupt practices are detected.¹²⁶ Also, even though there are no systematic data available, Tidemand et al. estimate that the funding for salaries and employment of agricultural extension staff has favoured urban local governments compared to rural districts, which is problematic when agriculture is in question: the allocations are to a large extent unrelated to the real needs.¹²⁷

125 PMO-RALG 2007, Table 4.1.

126 Tidemand et al. 2008, 23–27, 78–79.

127 Tidemand et al. 2008, 78.

8 Conclusion

This chapter summarises some of the most central issues identified in the present study relating to the principles of local self-government that formed a guiding framework in the study.

Constitutional and legal foundation for local self-government

The constitution of the Republic of Tanzania provides that local government authorities shall be established in each region, district, urban area and village in the United Republic of Tanzania. The constitution defines the purpose of having local government authorities as “the transfer of authority to the people”. The constitution provides that the local government authorities shall perform the functions of local government within their area.

The Local Government (District Authorities) Act No. 7 of 1982 established the local government district authorities in rural areas, and the Local Government (Urban Authorities) Act No. 8 of 1982 established the urban local government authorities.

Concept of local self-government

The district authorities that may be established according to the Local Government (District Authorities) Act No. 7 of 1982 include district councils, village councils, township authorities, and vitongoji. The urban authorities that may be established according to the established by Local Government (Urban Authorities) Act No. 8 of 1982 consist of city, municipal and town councils (often referred to as urban councils), and mtaas. The Local Government Acts also provide for the establishment of Ward Development Committees, which are administrative units with no elected members. The composition of the councils differs, ranging from only elected members (both directly and indirectly) to councils consisting of elected and appointed members and Members of Parliament.

The extent of the executive authority prescribed to the local government authorities varies between different rural and urban local government authorities. The higher level authorities of district, city, municipal and town councils have more authority to manage public affairs in their area of jurisdiction than the lower level local authorities. The lower level local government authorities consisting of village councils, township authorities, vitongoji and mtaas have to submit many of their decisions to the approval of the higher level local government authorities.

The local government authorities regulate and manage many public affairs within their area of jurisdiction, but they execute many essential aspects of their authority in the supervision or with the approval of the Minister responsible for local government. For example, the by-laws and the budgets prepared by the higher level local government authorities have to be submitted to the Minister responsible for local government for his/her approval. The Local Government Acts provide the Minister responsible for local government substantial powers to regulate the powers and functions of the local government authorities. In addition, in the five national priority sectors of primary education, basic health, agriculture extension and livestock services, and local public works, the local government authorities are responsible for delivering the services, but the central government remains responsible for the policy-setting and financing the local delivery of the services through intergovernmental transfers, which clearly limits the extent of local self-government in Tanzania.

Scope of local self-government

The Constitution provides some basic functions to the local government authorities. The basic functions and duties of each district and urban authority are further prescribed in the Local Government (District Authorities) Act 1982 and in the Local Government (Urban Authorities) Act 1982. The legislations provide for some discretion to the local government authorities to use their initiative in respect to executing their duties or performing any function which is not the exclusive responsibility of the central government or any other local government authority.

Tanzania has adopted a policy of decentralisation by devolution, which is based on the principle of subsidiarity. The extent of the implementation of the policy has varied in the main policy areas.

The Local Government Acts of 1982 provide the Minister responsible for local government substantial powers to issue regulations that specify the powers and duties of any local government authority in performing their basic functions. The Minister has the power to require any local government authority to exercise or discharge many of the powers and duties which the district councils or urban authorities may perform under the Local Government Acts of 1982, and may assign to the local government authorities any matters which belong to the exclusive authority of the central government.

Conditions under which responsibilities at local level are exercised

The councillors are entitled to daily subsistence allowances whose levels are set in Establishment Circulars issued by the President's Office – Public Service Management. Receiving other allowances such as remuneration of travel costs is subject to conditions provided in the Establishment Circulars. The councillors are not paid sitting allowances for participation in meetings and workshops.

Financial resources of local authorities

The local government authorities have powers to tax and set rates for levies, fees and charges by making by-laws prescribing them. The contents of the by-laws have to be set within the limits defined by the Minister responsible for local government in consultation with the Minister for Finance. The budgets prepared by the local government authorities have to be submitted the Prime Minister's Office – Regional Administration and Local Government for approval.

The share of the local government authorities' own source revenues of the total revenues of the local government authorities is very small, only 6.7 per cent in fiscal year 2006-2007. The local government authorities rely to a large extent on formula-based recurrent sector block grants in their service provision in the national priority sectors. In principle the formula-based sector block grants are no longer divided into personal emoluments and other charges, but the supposed autonomy at the local level in the employment of staff and balancing the personal emoluments and other costs is not realised in practice. Only the Local Government Capital Development Grants initiated in fiscal year 2005-2006 allow the local government authorities to use discretion and prioritise the use of the grants in line with local priorities for development expenditures.

The 1999 amendments to the Local Government District Authorities and Urban Authorities Acts of 1982 introduced provisions that recognised the duty of the central government to provide sufficient resources for the district councils to exercise powers delegated to them by central or other local government authorities. The amendments also obligated the Minister responsible for local government to endeavour to ensure that there are available adequate financial and other resources for various sectors or aspects of local government so as to ensure the effective and efficient development of the local government system.

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Annex 1. Selected Principles of Local Self-Government

The principles selected and defined for a flexible guiding framework of the study:

CE = Council of Europe: European Charter of Local Self-Government

UN-Habitat = UN-Habitat: International Guidelines on Decentralisation and the Strengthening of Local Authorities

2. Constitutional and legal foundation for local self-government:

The principle of local self-government is recognised in domestic legislation, and where practicable in the constitution. (Based on CE Art. 2 & UN-Habitat Part C 1.1.)

3. Concept of local self-government:

1. The concept of a council or an assembly is recognised in domestic legislation.
 - Description of the composition of councils and assemblies: elected and appointed members etc.
2. Local authorities have authority to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
 - Description of the extent of the authority

The above is based on CE Art. 3.1, Art. 3.2. and UN-Habitat Part C1.1. Remarks: The CE Art. 3.1 notion of “substantial share of public affairs” varies even in Europe. UN-Habitat Part C1.1 speaks only of a legally autonomous sub-national entity without defining the concept (the extent of authority and composition of council membership) explicitly.

4. Scope of local self-government:

1. The basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, this provision does not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. (Based on CE Art. 4.1 & cf. UN-Habitat Part C1.2, Part B1.6.)
2. Local authorities have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. (Based on CE Art 4.2 & cf. UN-Habitat Part C1.5, C2.6.)
3. The principle of subsidiarity: Public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. (Based on CE Art. 4.3 & UN-Habitat Part B1.1, B1.5.)
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. (Based on CE Art. 4.4 & cf. UN-Habitat C2.6.)
5. Where powers are delegated to them by a central or regional authority, local authorities are guaranteed discretion in adapting their exercise to local conditions. (Based on CE Art. 4.5 & UN-Habitat Part D2.9.)

5. Conditions under which responsibilities at local level are exercised

1. The conditions of office (material and remunerative) of local political office holders should provide for free exercise of their functions. (Based on CE Art. 7.1, 7.2 & UN-Habitat A2.11.)

6. Financial resources of local authorities:

1. Local authorities are entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. (Based on CE Art. 9.1 & UN-Habitat D2.10.)
2. It is recognised in legislation that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. Local authorities should be guaranteed the resources necessary to exercise powers delegated to them by central or regional governments. (Based on CE Art. 9.2 & UN-Habitat D2.8.)
3. At least part of the financial resources of local authorities derive from local taxes and charges of which, within the limits of the statute, they have the power to determine the rate. (Based on CE Art. 9.3 & cf. UN-Habitat D2.11.)

Annex 2. European Charter of Local Self-Government

European Charter of Local Self-Government
Strasbourg, 15.10.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribu-

- tion to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
 3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
 4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
 5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
 6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:

- Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
 3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex 3. International Guidelines on Decentralisation and the Strengthening of Local Authorities

Sections of the UN-Habitat 2007 International Guidelines on Decentralisation and the Strengthening of Local Authorities

A. Governance and democracy at the local level

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.

12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.

13. Mechanisms should be put in place to allow citizens to reinforce the code.

14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.
4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C Administrative relations between local authorities and other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.
11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions - if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

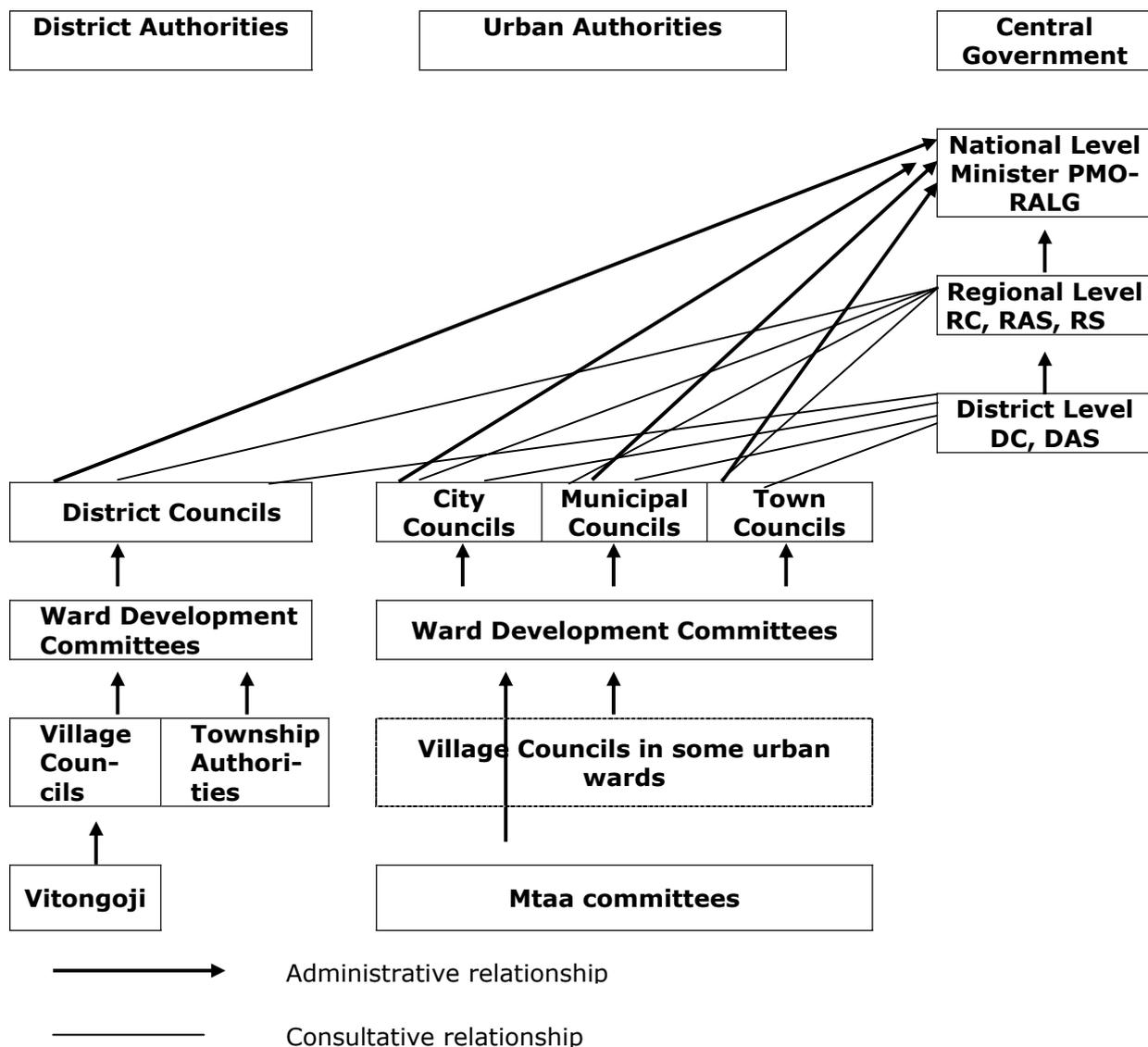
2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.

14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.

Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.

Annex 4. Local Government Structure



Sources: Figure adapted from Federation of Canadian Municipalities 2007, 4 and Steffen-
sen et al. 2004, Figure 3.3.

Annex 5. First Schedule to the Local Government (District Authorities) Act 1982 and Schedule to the Local Government (Urban Authorities) Act 1982

Local Government (District Authorities) Act 1982: FIRST SCHEDULE - (Section 118 (4))

Functions Which District Councils May Perform

Any district council may-

Local Government (Urban Authorities) Act 1982: SCHEDULE (Section 55 (2))
function which Urban Authorities may Perform

- (1) provide services for the improvement of agriculture;
- (2) control or prescribe the methods of husbandry respect of any agricultural land
- (3) require the taking of such measure as may be necessary for the preservation of harvested, crops;
- (4) suppress or control animal or insect pests or plant pests, noxious weeds or plant diseases;
- (5) declare any area of land to be reserved for the purpose of reconditioning, whether by artificial measures or natural regeneration planting with fodder plants and prohibit, control or regulate the use of such area;
- (6) provide services for the improvement of livestock;
- (7) build, equip and let shops and dwelling houses;
- (8) prohibit, restrict or regulate the construction, alteration, alignment and elevation of all buildings and other structures and of parts thereof, and compel the demolition, removal, repair or rendering safe of any building, structure or part thereof which, in the opinion of the authority is dangerous or unfit for occupation for structural or sanitary reasons or which otherwise constitutes a nuisance and for the, doing of any such work as aforesaid at the cost of the owner or occupier and for recovering such costs;
- (9) provide for building lines and the lay-out of buildings;
- (10) regulate the amount of space to be allowed in and about buildings for securing the proper ventilation thereof and the free circulation air;
- (11) regulate the closing of buildings or parts of buildings unfit for human habitation;
- (12) erect and maintain houses for occupation by such persons as the authority shall decide;
- (13) make advances upon such conditions as shall be thought fit for the purpose of enabling the inhabitants of the area to build or to buy dwelling houses;
- (14) prescribe the conditions to be satisfied by a site for any building or for any class of buildings;
- (15) prohibit the construction of any new building unless and until the plans thereof have been submitted to and approved by the authority;
- (16) prohibit or regulate the use in any defined area of any inflammable material in the construction or repair of any building;
- (17) establish, erect, equip and maintain social or welfare centers, public libraries and cinemas;
- (18) establish, erect, equip and maintain communal feeding centres and canteens for the supply of food and drink, including intoxicating liquors;
- (19) make grants of money towards the establishment and maintenance of libraries and museums;
- (20) acquire, hire, erect and maintain such offices and buildings as may be required for the purposes of the authority;
- (21) prohibit or regulate the making of burrow pits or other excavations;

- (22) require the proper conveyance, burial or cremation of deceased persons in cemeteries or otherwise;
- (23) conduct funerals;
- (24) establish, maintain and control burial and cremation grounds;
- (25) grant sums of money towards the establishment, equipment or-maintenance of schools and educational institutions;
- (26) grant and maintain scholarships or bursaries to suitable inhabitants of the area to attend any school or other educational institution in Tanganyika or elsewhere;
- (27) provide services and prescribe steps to be taken for the prevention, control or relief of famine, including relief works, the provision of seed, the acquisition, whether by purchase or compulsory deposit, of foodstuffs for storage, the storage of such foodstuffs and the control of movement of persons, whether or the purposes of feeding them or otherwise, and any other measure necessary for the purpose;
- (28) establish, maintain and control fire brigades;
- (29) establish, erect, maintain and control premises for the inspection, treatment, storage, sale and distribution of articles of food;
- (30) regulate or control the production and sale of milk and milk products;
- (31) provide services for the purchase, processing and sale of milk and milk products;
- (32) establish, maintain and regulate premises for the drying, cleaning and storing of hides and skins;
- (33) regulate or control the drying, cleaning and storage of hides and skins;
- (34) establish, regulate and control markets, regulate and control trade therein, construct market buildings, and let stands or plots in such markets;
- (35) prohibit, regulate or control trade otherwise than at established markets;
- (36) regulate and control the fixing of and collection of stall ages, rent and tolls in markets;
- (37) take measures for the prevention and abatement, of nuisances, including such as arising outside the area cause annoyance, danger or injury to health within the area;
- (38) secure the destruction of locusts in any stage of development;
- (39) exterminate and prevent the spread of tsetse fly, mosquitoes, bugs and other insects;
- (40) establish, erect, maintain and control centres for the inspection and storage of produce;
- (41) regulate or control the inspection, movement and storage of produce;
- (42) safeguard and promote public health including the prevention of and the dealing with any outbreak or the prevalence of any disease;
- (43) control the residence and movement of persons in order to prevent or check the spread of sleeping sickness or other communicable disease;
- (44) build, equip and maintain, or grant sums of money towards the establishment, equipment or maintenance of hospitals, health centres, maternity clinics, dispensaries, asylums for the aged, destitute or infirm or for orphans, or institutions for lepers;
- (45) establish and operate ambulance services;
- (46) establish, install, build , maintain and control drains, latrines, public lavatories, baths and wash places;
- (47) establish, maintain, operate and control drainage and sewerage works;
- (48) regulate the washing of clothes in public places within the area;
- (49) establish, maintain and carry out service for the removal and destruction of and otherwise dealing with night soil and all kinds of refuse;
- (50) establish, erect, maintain and control disinfecting stations;
- (51) prohibit the possession, conveyance, handling, sale or offering for sale, and provide for the destruction when deemed necessary of diseased animals or carcasses

- article of food or drink which is diseased or unfit for human consumption; or of any
- (52) control the movement of beggars in streets and public places;
 - (53) require persons to carry lights during certain hours in certain areas;
 - (54) suppress brothels and disorderly houses and take measures to prevent prostitution;
 - (55) provide for the return of 'destitute persons to their homes;
 - (56) prohibit, regulate and control meetings, processions, dances, beer parties and other assemblies;
 - (57) regulate and control public collection of money in streets and other public places within the area';
 - (58) prohibit, regulate and control the use of firearms;
 - (59) prohibit any actor conduct which in the opinion of the authority is likely to cause a riot or any disturbance or breach of the peace;
 - (60) prohibit, restrict, regulate or license tribal dances;
 - (61) establish, control and manage recreation grounds, open spaces and parks
 - (62) erect, supply and maintain buildings and equipment for recreational purposes;
 - (63) establish, maintain and control camping grounds and out pans;
 - (64) regulate the upkeep of parks, gardens, recreation grounds and other public places;
 - (65) establish, erect, maintain and control dipping tanks;
 - (66) purchase and operate for hire agricultural tractors machinery;
 - (67) operate and maintain crop processing or drying plants;
 - (68) establish and maintain seed farms, plant nurseries, apiaries, fish ponds and animals at stud;
 - (69) establish, maintain and operate aerodromes and landing grounds;
 - (70) establish, erect, maintain and control public weighing machines;
 - (71) establish, erect, maintain and control slaughter houses;
 - (72) establish, erect, maintain and control laundries;
 - (73) establish, erect, maintain and control cold storage works;
 - (74) establish, maintain and control systems of lighting in public places;
 - (75) establish, acquire and maintain omnibus or transport services;
 - (76) establish, acquire and maintain ferry or boating;
 - (77) provide for the registration of births, deaths and marriages within the area which is not provided for by any other law;
 - (78) require the notification and registration of any marriage, birth or death within the area, the notification or registration of which is not required by any other law, and appoint registration offices and registrars for such purposes;
 - (79) regulate and require the registration of the making of testamentary dispositions;
 - (80) regulate and require the registration of transactions in immovable property;
 - (81) make, maintain, alter, divert and close roads, streets and roads of any specified class or classes, paths, Culverts, street drains and water courses;
 - (82) make, maintain, alter and close bridges, squares and open spaces;
 - (83) name and number, and alter the names and numbers of, roads, streets and houses;
 - (84) prohibit or regulate the use of streets in the area;
 - (85) provide that the owner or occupier of any land or tenements maintain, clear and keep free from vegetation the roads or paths adjoining his land or tenements;
 - (86) regulate the use and lighting of bicycles and other vehicles;
 - (87) engage in local trading or industry;
 - (88) carry on any works or undertaking authorized by the Minister;
 - (89) sell or buy products resulting from the carrying on, by or on behalf of the authority of any works or undertaking which the authority is authorized to carry on;
 - (90) establish, provide maintain and control public water supplies and impose water rates;

- (91) prevent the pollution of water in any river, stream, water course, well or other water supply in the area, and for this purpose prohibit, regulate or control the use of such water supply;
- (92) regulate or prohibit the sinking of wells and provide for the closing of wells;
- (93) regulate or prohibit the construction and use of furrows;
- (94) grant sums of money to any association existing for the promotion of arts and crafts or of recreation and sports or of the welfare of the inhabitants of the area;
- (95) regulate or control the use of swamp or marshland;
- (96) establish, erect, maintain and control public monuments;
- (97) control, and regulate the sitting of advertisements and hoarding;
- (98) regulate the use and prevent the misuse or waste of or any interference with water, gas, oil or electric power;
- (99) do all things necessary for carrying Out any of the Purposes of this Acts Which the authority is authorized to carry out or for any purpose not specifically provided for in this Ordinance which the Minister may determine to be a purpose incidental to the, exercise by the authority of its powers and duties under the; provisions of this Act;
- (100) incur all expenditure necessary for the carrying out of any of the purposes of this. Act or any purpose not specialty provided for in this Act which the Minister may determine to be a purpose incidental to the exercise by the authority of its powers and duties under the provisions of this Act;
- (101) provide funds for meeting the expenses of courts, including the provision of court houses and other buildings and personal emoluments for the staff of such courts;
- (102) engage paid labour for essential public works;
- (103) require the performance of unpaid communal labour or the payment of a composition in lieu thereof within the area of the authority for purposes section And not barred by the Convention respecting the use of force labour and that;
- (104) subject as aforesaid an authority may perform or shall perform any other functions whether similar to those enumerated in this section or not, specifically assigned to an authority by the Instrument.

Annex 6. Powers of district councils to perform their functions

Local Government (District Authorities) Act 1982, Section 118 (2):

- (2) In particular, but without prejudice to the generality of subsection (1), and for the better performance of its functions, every district council shall, in relation to its area of jurisdiction, have power to-
 - (a) take all necessary measures for the prevention of soil erosion and the protection of crops;
 - (b) prohibit or regulate the cultivation of crops or a category of crops;
 - (c) prohibit or regulate the cultivation or possession of poisonous or noxious plants, drugs or poisons;
 - (d) prohibit or regulate the use of any agricultural land;
 - (e) prescribe steps to be taken by the occupier of any agricultural land for the purposes of maintaining and improving its productivity and preserving the fertility of the soil;
 - (f) make provision for the prohibition or regulation of livestock husbandry, and may in that behalf-
 - (i) prohibit or regulate the movement of any livestock in or through any area;
 - (ii) prescribe methods of husbandry in relation to the keeping or grazing of any livestock;
 - (iii) restrict the kinds or numbers of livestock which may be kept on any agricultural land;
 - (iv) require male stock to be castrated and provide for or restrict the cross-fertilization or breeding of livestock; or
 - (v) provide for the licensing, control and destruction of dogs;
 - (g) prepare, undertake, regulate and control schemes for improved housing layout and settlement;
 - (h) prepare planning schemes and undertake measures required by any law for the time being in force relating to development in the area;
 - (i) control the gaining of building minerals such as stone, sand, clay and lime;
 - (j) in exercise of its functions as a local education authority under Part III of the National Education Act, 1978-
 - (i) build or facilitate the building, equipping, maintenance and management of regional schools and other educational institutions;
 - (ii) provide for the grant and maintenance of scholarships or bursaries to suitable inhabitants of the area to attend any school or other educational or training institution within or outside the United Republic;
 - (iii) provide for the primary education of children; and
 - (iv) provide for the compulsory attendance at schools of pupils enrolled there;
 - (k) require adult residents of the area who occupy agricultural land in accordance with customary law to cultivate that land, and other residents to take measures to acquire and cultivate land subject to the by-laws of the council;
 - (l) establish, maintain and control fire brigades, and provide for the control of fires;
 - (m) provide for or facilitate the licensing or regulation of the activities of persons engaged in, or the premises used for, the manufacture, preparation, handling or sale of articles for use or consumption by man;
 - (n) subject to the provisions of this Act or any other written law, establish, preserve, maintain, improve and regulate the use of forests and forest produce;
 - (o) prohibit or regulate the hunting, capture, killing or sale of animals or birds or of any specified animal or bird;
 - (p) impose requirements as to the sanitation of buildings and the cleanliness of yards or compounds and as to the construction and maintenance of latrines and other sanitary structures;

- (q) prohibit or control the manufacture, possession, sale, transport and consumption of intoxicating liquors;
 - (r) fix days and hours during each day of the week on which markets may be held and prohibit the sale and purchase of goods in markets on any day or at any hour except those fixed;
 - (s) take all measures for the extermination or control of rats, mice and other vermin;
 - (t) regulate and compel the provision, construction, use and repair of privies and receptacles for solid and liquid refuse;
 - (u) prohibit or regulate gambling;
 - (v) prohibit or regulate the carrying of weapons by which bodily hurt can be inflicted;
 - (w) provide for the control, regulation, inspection, supervision and licensing of-
 - (i) social halls, dance halls and other places of entertainment;
 - (ii) lodging and eating houses;
 - (iii) any premises in which any trade or business is carried on;
 - (x) take measures for the prevention or removal of damage to and for the prevention, removal and disposal of obstruction to roads, streets, thoroughfares and open spaces;
 - (y) prohibit or control noxious or offensive trades;
 - (z) license, regulate or supervise in any other way such trades and occupations as the Minister may, from time to time, by notice in the Gazette, prescribe;
 - (aa) prohibit or regulate the removal or protect in any other way against the removal or destruction, of works of art of local origin;
 - (bb) regulate the housing of persons by their employers;
 - (cc) charge fees for any service or facility provided by the council, under this Act;
 - (dd) prescribe the duties of any person employed by the council or acting as its agents in connection with any of its functions.
- (3) The function specified in paragraph (x) of subsection (2) shall, in relation to the removal and disposal of obstructions
- (a) include the power to-
 - (i) recover from the owner of the thing causing the obstructions any expense incurred by the authority in such removal;
 - (ii) sell or otherwise dispose of the thing causing the obstruction and thereby to extinguish any right or title to it which previously vested in any person; and
 - (b) be exercised in accordance with the provisions of regulations made under section 7.
 - (b) be exercised in accordance with the provisions of regulations made under section 112.
- (4) Any district council may perform any of the functions specified in the First Schedule to this Act.

Annex 7. Local Government (District Authorities) Act 1982, Second Schedule

Functions to be Performed by Township Authority

A Township Authority may, subject to the approval of the District Council in whose area it is situated and to the availability of financial resources, perform any or all of the following functions namely, to take measures designed to-

- (1) deal with the construction, drainage and maintenance in sanitary, condition of buildings, dwellings, conveniences and other premises;
- (2) establish and maintain sanitary services for the removal and destruction of, or dealing in any other manner with, all kinds, of refuse and affluent and to compel those
- (3) establish and maintain drains, sewers and works for the disposal of sewerage and refuse;
- (4) establish and maintain offices and buildings for the purpose of transacting the business of the authority and for public meetings and, assemblies;
- (5) establish and maintain allotment gardens;
- (6) require the taking of Measures for the conservation of natural resources and the prevention of soil erosion, including the prohibition and control of cultivation;
- (7) control the erection and display of advertisement and adverting devices in a or in view of, streets and other public Places;
- (8) control the keeping and movement of livestock;
- (9) establish and maintain pounds;
- (10) control the slaughtering of animals, the meat of which is intended for human consumption; to control the sale of such meat; and to require the deposit of diseased animals and carcasses and of meat which is unfit for human consumption;
- (11) establish and maintain abettors, cold storage facilities and plants for the processing of by-products from abettors;
- (12) establish, maintain, control and close streets, bridges, ferries and water-courses and to remove obstructions there from.
- (13) prohibit and control the erection and laying in, under or over and the removal from, streets and other public places of-
 - (a) Posts, wires, pipes, conduits, cables and other apparatus;
 - (b) temporary platforms seats and other structures; street decorations;
- (14) control traffic and the parking of vehicles and, for that purpose, to establish and maintain parking meters and premises for the parking of vehicles;
- (15) take measures for the promotion of road safety,
- (16) control the conduct of funerals and to establish and maintain cemeteries, mortuaries and crematoria;
- (17) safeguard and promote the public health, and to take all necessary and reasonable practicable measures for preventing the occurrence of, or for dealing with any outbreak or prevalence of any infectious, communicable or preventable disease, for maintaining the area of the authority in clean and sanitary condition, and for preventing the occurrence of or for remedying or causing to be remedied any nuisance or condition likely to be injurious or dangerous to health-
- (18) establish and maintain a school health service and to make provisions for matters ancillary to such service;
- (19) establish and operate ambulance services;
- (20) control the manufacture, storage, sale and use of petroleum, fireworks, gas and other combustible or dangerous substances.
- (21) control persons and premises engaged in or used for the manufacture, preparation, storage, handling, sale or distribution of articles of food or drink;

- (22) establish and maintain premises for the sale of, and to sell there from, articles of food and drink for consumption on or off the premises;
- (23) erect, purchase and maintain buildings for use as dwellings or clubs and, where it is in the public interest, for use for business or professional purposes;
- (24) prohibit and control the development and use of land and buildings, and the erection of buildings, in the interests of public health, public safety and the proper and orderly development of the area of the council;
- (25) control the demolition and removal of buildings and to require the alteration, demolition and removal of buildings which
 - (a) do not conform to plans and specifications in respect thereof approved by the council; or
 - (b) are danger to public health or public safety;
- (26) prohibit, control and require the fencing of land and to control the use of barbed wire and other dangerous materials for fencing;
- (27) require the trimming and removal of trees and shrubs growing on any land where such trees and shrubs which obstruct or endanger the use of streets and other public places;
- (28) establish and maintain parks, gardens, pleasure grounds, camping grounds, and open spaces;
- (29) plant, trim and remove trees, shrubs and plants in streets and other public places and to prohibit and control the planting, damaging, destruction and removal of trees, shrubs and plants in streets and other public places;
- (30) establish and maintain day nurseries;
- (31) establish and erect markets and market buildings on land allocated to the council for the purpose and to maintain and control such markets and market buildings, and to let portions of such buildings and stalls therein;
- (32) prohibit and control the carrying on of offensive, unhealthy or dangerous trades;
- (33) prohibit the sale of any specified produce within the area of the jurisdiction of the council otherwise than in a market;
- (34) establish and maintain weighing machines;
- (35) sell all products and by-products resulting from the carrying on of any of the undertakings or services of the authority;
- (36) control the days on which, and the hours during which, shops may be open for the transaction of business
- (37) arrange for the lighting of public places and for the erection and maintenance of lamps for that purpose;
- (38) prepare and administer schemes for the encouragement of community development;
- (39) establish and maintain fire-fighting and fire prevention services and take and require the taking of measures for the protection of life, property and natural resources from damage by fire;
- (40) establish and maintain public information services; and advertise and give publicity to the advantage and amenities of the area of the authority;
- (41) provide for and require-
 - (a) the enumeration and registration of persons or property for any purpose connected with the administration of the area of the authority;
 - (b) the registration of births, marriages and deaths the registration of which is not required by any other law;
 - (c) the registration of such transactions in connection with land charges as may be prescribed in any written law relating to land charges;
- (42) provide and maintain supplies of water and, for that purpose, to establish and maintain water works and water mains;
- (43) take and require the taking of measures for the conservation and the prevention of the pollution of supplies of water;

- (44) control persons, premises and land engaged in or used for the holding of any fair, circus, fete or other entertainment, recreation or assembly to which the public are entitled or permitted to have access whether on payment or otherwise;
- (45) prohibit and control the collection of money from door to door and in streets and other public places;
- (46) preserve public decency; and
- (47) prevent damage and trespass to property, whether public or private.

Annex 8. Duties and powers of urban authorities

Local Government (Urban Authorities) Act 1982, Sections 55 and 59:

- 55.-** (1) Subject to this Act, it shall be the duty of every urban authority within its area of jurisdiction:-
- (a) to establish and maintain offices and buildings for the purpose of transacting the business of the authority and for public meetings and assemblies;
 - (b) to take and require the taking of measures for the conservation of natural resources, the prevention of soil erosion and the prohibition and control of cultivation;
 - (c) to prevent or control the keeping, movement, control, destruction and sale of livestock, animals and birds, so that their keeping or use does not become a public nuisance or injurious to health;
 - (d) to provide for the treatment of congested area, for the closure and demolition of buildings or parts of buildings unfit for human or other habitation, either from structural or sanitary causes or from the narrowness, closeness or bad arrangement of those buildings or of the streets; and for the prohibition of the use of such buildings for such habitation; and to pay compensation if it shall so think fit;
 - (e) to provide for the inspection of all meat, fish, vegetables and all other foodstuffs of whatever kind or nature, and of liquids intended for human consumption, whether exposed for sale or not; and to seize and destroy all such foodstuffs or liquids as are unfit for human consumption (or to seize and otherwise deal with any foodstuffs or liquids intended for human consumption when and in such manner as may by by-laws be directed or allowed), and to supervise and control all bakeries;
 - (f) to provide, maintain, supervise and control public markets and pounds, and cold-storage depots, mineral water factories and public or private slaughter-houses, and all such matters and things as may be necessary for the convenient use of such markets, pounds, cold storage depots, mineral water factories and public or private slaughterhouses, and to impose fees, rents, and tolls in respect of the use of public markets, pounds or slaughterhouses by any person;
 - (g) to keep and maintain in good order and repair all public latrines, urinals, cesspits, dustbins and other receptacles for the temporary deposit and collection of rubbish, and public bathing and washing places, and to provide for the removal of all refuse and filth from any public or private place, and provide for the removal of night soil and the disposal of sewage from all premises and houses in its area, so as to prevent injury to health;
 - (h) to provide for and maintain a supply of electric lighting or other means of lighting the streets and trunk roads (including bridges carrying trunk roads) and to provide such lamps, lamp posts, and other materials and apparatus be deemed necessary for lighting its area;
 - (i) to provide for the prevention and abatement of public nuisances or of nuisances which may be injurious to the public health or to the good order of the area of the authority;
 - (j) to name or re-name where necessary, all streets (such names to be affixed in conspicuous places therein), and to cause the buildings in such streets to be numbered;
 - (k) to make, keep and maintain clean and in-good order and repair all streets and sewers together with all buildings, machinery, works and things belonging thereto which have or shall become vested in the authority, and to provide for the drainage of surface water. The authority shall have power to divert or alter the course of any of the said streets or sewers and to keep the same clear of obstructions so as not to be a nuisance or injurious to health;

- (i) to keep clean all trunk roads within the area of the authority (m) to regulate any trade or business which may be noxious, injurious to the public health or a source of public danger, or which otherwise it is in the public interest expedient to regulate, and to provide for the issue of licences or permits to facilitate the regulation of any such trade or business, and for the imposition of fees in respect of such licences or
 - (n) to regulate the use and conduct of public vehicles for hire and their fares, to regulate the routes and parking places to be used by such vehicles, to appropriate particular routes, roads, streets and parking places to specified classes of traffic, and when necessary to provide for the identification of all licensed vehicles,
 - (o) to undertake all other works, matters and services necessary for or conducive to the public safety, health or convenience, as it shall think fit, or which the Minister may from time to time declare to be the functions of the urban authority.
- (2) In addition to the duties specified in subsection (1), an urban authority may perform any of the functions specified in the Schedule to this Act.
- 59.** For the purposes of the better performance of the functions conferred upon it by this Act or any other written law an urban authority shall have power-
- (a) to construct any new and necessary works in connection with any of the functions under this Act;
 - (b) provide for the establishment, management, layout, planting, improvement, maintenance and regulation of parks, gardens, swimming baths, public libraries, museums and other places of public resort, recreation or entertainment for the use of the public, and to contribute to the cost of maintenance of any parks, gardens, swimming baths, public libraries, museums and other places of public resort, recreation or entertainment provided by persons for the use of the public;
 - (c) to provide and maintain appliances for extinguishing fires, and water-buckets, pipes, fire escapes and other implements for safety or use in case of fire;
 - (d) to undertake the abatement of fire and the prevention of the spread thereof and for such purposes to enter any premises; (e) to design the layout of streets, building areas and other areas, and to provide for and authorise the adoption of such measures with respect to expropriation or limitation of user, and with respect to the assessment and time of payment of compensation, as the authority may consider necessary or desirable for the purpose of the convenient design and construction of such layouts; save that before any layout is made, the plan or plans of such layout or alteration shall be submitted for the approval of the Minister;
 - (f) to plant trees in any street and to erect tree guards to protect such trees; save that the streets shall not thereby be unduly obstructed;
 - (g) with the approval of the Minister to engage in any form of municipal trading or industry;
 - (h) with the approval of the Ministers to provide any form of transport service;
 - (i) to provide for the imposition and fixing of charges to be paid in respect of services rendered by the authority;
 - (j) to provide for the licensing of building surveyors and for the examination of candidates for licences or otherwise for ensuring their technical ability, for the professional conduct of such building surveyors, for the cancellation of licences in cases of misconduct and for the scale of fees chargeable by licensed building surveyors for services rendered;
 - (k) to provide for the establishment and management of a provident fund for the benefit of the servants or any class of servant of the authority;
 - (l) to appropriate particular routes, roads and streets to the use of public vehicles employed in the transport services undertaken and conducted by the authority, to the exclusion of the use of such routes, roads and streets by other public vehicles plying for passenger hire; save always however that no such appropriation shall substantially affect to its detriment traffic proceeding to or from places outside the limits of the area of the authority;

- (m) to provide for the control, management and treatment of domestic animals;
- (n) to prohibit or regulate the establishment and conduct of markets other than public markets establishment the authority;
- (o) to prohibit or regulate the hawking of wares or the erection of stalls on or near any street;
- (p) to provide for the control and management of cinemas theatres, circuses, dance-halls and places of public entertainment generally;
- (q) to provide for the care and welfare of the aged and destitute;
- (r) to provide for the control, use and licensing of vehicles other than motor vehicles.
- (s) to provide for the establishment and maintenance of regional schools;
- (t) to open and operate banking accounts with any authorized bankers;
- (u) to provide for the construction, leasing, sale and control of houses;
- (v) to undertake works and measures for or in connection with any local government purposes.

Kenya

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Summary

This study examines aspects of local self-government (so called legally autonomous sub-national entity/autonomous local authority) in the Republic of Kenya. The object of the study is to provide basic information on local self-government in Kenya by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework.

The principles applied as a framework in the study were formed using the European Charter of Local Self-Government and the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities as a basis. The principles are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities.

The constitution does not provide for the local government system in Kenya. This is one reason why the local self-government in Kenya is not strong. The local authorities are established by the Local Government Act (Cap. 265) of 1977. The local authorities do not have authority to regulate and manage a substantial share of public affairs under their own responsibility. According to the Local Government Act (Cap. 265) of 1977, most of the functions that the local authorities may undertake depend on the approval of the Minister of Local Government, and the local authorities execute their powers and functions under the direct supervision of the Ministry of Local Government.

Kenya has not adopted a policy of decentralisation by devolution. The local authorities have a minor role in service provision as at present most of the service delivery and development activities are undertaken by line ministries, non-governmental organisations or through the Constituency Development Fund system.

The remuneration of the councillors is determined by the central government through the Ministry of Local Government. The councillors are paid allowances from council revenues. The level of the allowances has been subject to many debates over the recent years. Many councils lack the capacity to pay the set allowances to councillors.

The local authorities collect revenue from different taxes, fees and charges. The local authorities also receive resources from the central government through the Local Authorities Transfer Fund (LATF) grants and the Road Maintenance Levy Fund (RMLF). The sources and proportions of local authorities' own source revenues vary between the different types of local authorities. The county councils in the rural areas are more dependent on LATF transfers than urban councils.

Abbreviations

CDC	Constituency Development Committee
CDF	Constituency Development Fund
CLGF	Commonwealth Local Government Forum
DFRD	District Focus for Rural Development
LATF	Local Authorities Transfer Fund
KLGRP	Kenya Local Government Reform Programme
LASDAP	Local Authority Service Delivery Action Plan
Local Government Act	Local Government Act (Cap. 265) of 1977
NGO	Non-governmental organisation
RMLF	Road Maintenance Levy Fund
UN-Habitat	United Nations Human Settlements Programme

1 Introduction

The present study examines aspects of local self-government in the Republic of Kenya. The object of the study is to provide basic information on some selected aspects of local self-government in Kenya by using some of the internationally recognised principles of local self-government as a guideline and framework. The study is part of a larger study concentrating on providing information on issues shaping local self-government in the African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study.

The study uses a selected set of internationally recognised principles of local self-governance as a starting point to the study. The questions concerning the application of the principles in different countries and contexts as well as the criteria for the selection of and defining the principles used as a framework in the study are discussed in further detail in Chapter 2. To summarise the application of the principles, the selected principles are used as a relatively flexible framework guiding the approach and concentration of the study. These guiding principles are listed in Annex 1 of the present study. The study does not try to compare the local self-government in the selected countries in a systematic way or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

The present study aims to provide an overview on the scope of local self-government in Kenya by presenting an overall picture of the local authorities' basic powers and responsibilities to regulate and manage public affairs, possibilities to exercise initiative within their powers and functions, and the exclusiveness of their authority. The study also discusses briefly the financial resources of the local authorities, and highlights some of the effects that the composition of the financial resources has on local self-government in Kenya.

The study was conducted as a desk study. The material of the study comprises mainly of legislations, studies, and reports of government institutions.

The study first produces an overview on the local authorities in Kenya. Then the study discusses the composition of local authorities and remuneration of political office-holders before turning to examining the functions and powers of the local authorities. After that the study describes some aspects of the financial resources available to the local authorities. Finally the study summarises some of the central issues identified in the study relating to the principles of local self-government that were used as a framework in the study.

2 Principles of Local Self-Government

There are some internationally recognised principles shaping the conception of local self-government, such as the *European Charter of Local Self-Government*¹ and the *International Guidelines on Decentralisation and the Strengthening of Local Authorities* published by the United Nations Human Settlements Programme (UN-Habitat)². However, there are no global standards or charter on local self-government, which would be applicable to countries worldwide, even though the guidelines of the UN-Habitat represent a product of efforts to create a global charter on the principles of local-self-government comparable to the European Charter of Local Self-Government.

The European Charter of Local Self-Government was adopted by the Council of Europe and opened for signature by the member states of the Council of Europe on 15 October 1985. The European Charter of Local Self-Government is not an attempt to create common local government legislation in Europe, but the Charter sets a framework for local self-government at the local level, which the states member to the Charter must uphold. The Charter allows flexibility for the member states in determining their framework. The Charter provides that the member states ratifying, accepting or approving the Charter must consider themselves bound by at least twenty paragraphs of Part I of the Charter, ten of which from among specified paragraphs. The principles in the Charter form a flexible framework and a set of goals which the member states parties to the Charter should aspire to achieve.

After the European Charter of Local Self-Government was opened for signature, the national associations of local authorities which participated in the drafting of the Charter sought to create a world-wide charter on local self-government. Some national spheres of government also supported the quest. Some international associations of local authorities such as the International Union of Local Authorities (IULA), and later the United Cities and Local Governments (UCLG) formed in 2004, started exchanging ideas in close collaboration with UN-Habitat on a possible World Charter of Local Self-Government in the follow-up to the Habitat II Conference held in Istanbul in 1996 where local authorities made the case for the preparation of a worldwide charter on local autonomy. The World Charter met resistance among some Member States of the United Nations mainly because they considered that the Charter addressed issues in the realm of internal affairs of the Member States. Finally a step towards the goal was made in April 2007 when the Governing Council of the UN-Habitat approved the International Guidelines on Decentralisation and the Strengthening of Local Authorities. The Second Committee of the United Nations General Assembly has noted the approval of the guidelines by the UN-Habitat Governing Council in the following way at the sixty-second session of the General Assembly:

Notes the approval by the Governing Council of UN-Habitat of the guidelines on decentralization and strengthening of local authorities, and requests UN-Habitat to assist interested Governments in adapting the guidelines to their national contexts, where appropriate, and in further developing tools and indicators as part of its support for the application of the guidelines, bearing in mind that the guidelines do not constitute a uniform or rigid blueprint to be applicable to all States Members of the United Nations.³

1 Council of Europe 1985.

2 UN-Habitat 2007.

3 United Nations General Assembly 2007, Section II.6.6.3

As the principles in the European Charter of Local Self-Government and the UN-Habitat guidelines are numerous, the present study uses a selected set of principles as a flexible framework guiding the approach and the concentration of the study in its efforts to highlight some essential governance issues and relations of power that shape local self-government in Kenya. The principles were formed using the European Charter of Local Self-Government and the UN-Habitat guidelines as a basis. The principles formed are listed in Annex 1. They are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities. For reference and comparison, the articles of the European Charter of Local Self-Government are listed in Annex 2, and the sections of the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities are listed in Annex 3.

The same principles are used as a framework also in the other country studies concentrating on the North-South Local Government Co-operation Programme countries, but the country studies do not attempt to compare the local self-government in the selected countries in a systematic way, or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

3 Overview on the Local Government System

Kenya attained independence from British colonial rule in 1963. The Republic of Kenya is a unitary state. After the uncontested elections during the rule of President Daniel arap Moi, democratic multi-party elections were held in 1992 and 1997. Daniel arap Moi was re-elected in those elections, but was constitutionally barred from running in the 2002 elections. In Kenya the President is both the head of state and head of government. The President is elected for a five-year term.⁴

Kenya has a unicameral National Assembly of 222 members. Of the 222 members 210 are directly elected from single-member constituencies. The President appoints the 12 remaining members from nominations of the political parties and coalitions in proportion to their share of the national vote. The term of the National Assembly is five years. The results of the elections for the National Assembly organised in December 2007 were widely challenged, and resulted in widespread violence and unrest in Kenya. As a result, a power sharing agreement was reached. According to the power sharing agreement Mwai Kibaki of the Party of National Unity remained President, and Raila Odinga of the Orange Democratic Movement filled the new post of Prime Minister, which was created for the power sharing agreement. The Prime Minister has authority to co-ordinate and supervise the execution of government functions.⁵

Kenya is divided into eight administrative areas of deconcentrated administration of the central government: seven provinces and the area of Nairobi. The Provincial Commissioners are appointed by the President and head the provincial administrations. The provinces are divided into 69 districts. The District Commissioner is also appointed by the President, and heads the district administration. The districts are divided into divisions, the divisions into locations, and the locations into sub-locations, which have divisional officers, chiefs and sub-chiefs as heads their administration assisting the District Commissioner.⁶

The local government in the Republic of Kenya consists of 175 local authorities including 67 county councils, which are the rural local government authorities in Kenya, and the urban local authorities of 43 municipal councils, 62 town councils, and three city councils. The geographical borders of the county councils in almost all cases coincide with the borders of Kenya's administrative districts. The county councils cover all the geographical area that is not assigned to the jurisdiction of the urban authorities.⁷

Under the Local Government Act (Cap 265) of 1977, the cities of Nairobi, Mombasa and Kisumu are treated as municipalities as their status, duties and functions are not defined in legislation, although the City of Nairobi was established by Charter⁸.

The local government elections are held at the same time as the presidential and National Assembly elections as prescribed in Section 58 of the Local Government Act (Cap. 265) of 1977. The local councils are dissolved after the dissolution of the National Assembly.⁹

4 CLGE, 96.

5 CLGE, 96.

6 CLGE, 96–97.

7 CLGE, 98.

8 Lumumba 2004.

9 CLGE, 98.

Kenya has not adopted a policy of decentralisation by devolution, in which local governments would be responsible for many services at the local level¹⁰. The local authorities' executive authority is to a large extent regulated by the central government, and the central government provides a much larger share of services at the local level through its deconcentrated administration structures and line ministries' field offices than the local authorities do.¹¹

In the discussions on decentralisation there are different kinds of definitions on different types of decentralisation. Deconcentration is generally considered as the weakest form of decentralisation. In general terms it refers to redistribution of decision making authority and financial and administrative responsibilities among different levels of central government. This can involve distributing responsibilities from the central government officials based in the capital to ones based in regions, districts etc., creating field administrations staffed with central government officials with authority for planning and making routine decisions in line with central government directions and under the supervision and control of central government, or creating local administration under the supervision of the central government.

In general terms delegation refers to the transfer of responsibility for decision making and administration of public functions from central government to semi-autonomous organisations, which are accountable on these functions to the central government.

Devolution is a more comprehensive type of decentralisation, and generally refers to the transfer of authority for decision making, finance and management from central government to local authorities with corporate status and considerable degree of autonomy from the central government. There are some features that are commonly present in devolution. For example, the local authorities have authority to raise their own revenues and to acquire resources to perform public functions, and have clearly recognised geographical boundaries over which they exercise authority.

After the independence in 1960s, the local authorities had much stronger authority and resources than they currently do, and were able to deliver a broad range of relatively high quality services. Soon after the independence, a process of centralisation of powers was driven by the civil servants and later by politicians. Major functions such as responsibility for primary education and health was transferred away from the local authorities, although excluding some urban local authorities, to the central line ministries, and major sources of local government revenue were abolished. This was followed by, largely as a result of political manoeuvres, a sub-division of local authorities into smaller authorities, making many of them unviable entities in the 1980s and 1990s. In addition, the central government, especially the Ministry of Local Government, obtained a tight control over local authorities through appointment of all senior staff and approval of budgets of the local authorities.¹²

The line ministries and the structure of Provincial Administration (running from the office of the President down to the sub-locations) became stronger during the 1970s and 1980s. The line ministries obtained a major role in service provision by functioning through the offices at the province, district and location level and directly managing the delivery of services. The Provincial Administration adopted a role of a coordinator of development. In the 1980s the role of the District Development Committees (DDCs), which consist of, inter alia, representatives of the central and local government as well as Members of Parliament, became more important as they were assigned the task to coordinate the planning, implementation and monitoring of development activities in the districts. The responsibilities of the DDCs included coordinating the projects under the District Focus for Rural Development (DFRD) strategy,

10 Land et al. 2008, 5.

11 Land et al. 2008, 9.

12 Land et al. 2008, 9.

which the central government introduced in 1983. DFRD is the governments' main strategy to decentralise the planning, financing and managing rural development initiatives. These functions were delegated to the line ministries' authorities at the local level, but not to the local authorities. DFRD has been described as the formalisation of a system of service delivery through line ministries. As the DFRD project funds dried up in the early 1990s, the DDCs gradually became defunct, which has characterised their state until today.¹³

The Kenya Local Government Reform Programme (KLGRP) has been implemented since the end of 1990s, and the programme has contributed to re-building credibility into local authorities in terms of better planning, and greater transparency and accountability. However, KLGRP has not significantly increased the amount of services actually delivered by the local authorities, and the amount remains fairly limited especially among the rural local authorities.¹⁴

The Constitution of the Republic of Kenya does not define the local government system. Revision processes of the Constitution were initiated in 1997, when a Constitutional Review Committee was first set up.¹⁵ The revision of the Constitution might strengthen local self-governance in Kenya, as the subsequent committees have proposed a stronger role and more autonomy for the local government with powers and functions devolved to the local authorities from the central government, but the proposed draft constitution was rejected in a referendum in 2005. The rejection was mainly a result of a protest vote against the way the final draft versions were prepared and some parts of the draft constitution not related to the envisaged Chapter 14 on 'devolved government'. The revision processes are still ongoing, but it is unclear when the revised constitution might be adopted. Revisions in the local government legislation are expected to follow if a revised constitution is adopted.¹⁶

13 Land 2008, 9–10.

14 CLGF, 96–97; Land et al. 2008, 19.

15 CLGF, 97.

16 Land et al. 2008, 21–23.

4 Composition of Local Authorities

The Constitution of the Republic of Kenya is silent on the local government system. The Constitution prescribes that a local authority means a municipal, county, town or urban council, or a council for any other area, established by or under an Act of Parliament¹⁷. The local authorities – municipal, county, town and city councils – are established by the Local Government Act (Cap. 265) of 1977¹⁸.

The Local Government Act (Cap. 265) of 1977 assigns to the Minister of Local Government the power to establish local authorities, and substantial powers to regulate the composition and a large share of the functions of the local authorities. It can be said that the local authorities operate under the direct supervision of the Ministry of Local Government.

Section 5 (1) provides that the Minister, acting in consultation with the Electoral Commission may, either on receiving proposals under section 6 (Section 6 prescribes that a municipal council, county council or town council may make a proposal to the Minister) or without any such proposals, by order exercise all or any of the following powers:

- (a) establish any area to be or to cease to be a municipality, county or township;
- (b) assign a name to a municipality, county or township;
- (c) define the boundaries of a municipality, county or township;
- (d) alter the boundaries of a municipality, county or township, whether by adding or subtracting from its area or otherwise;
- (e) alter the name of a municipality, county or township;
- (f) amalgamate two or more counties into one county;
- (g) transfer a part of a county to another county or to a municipality;
- (h) transfer a part of a municipality to a county or township.

The Local Government Act prescribes that each local authority must have a council. The local Government Act also provides that each council is a body corporate, and shall be capable in law of suing and being sued, and of acquiring, holding and alienating land.¹⁹

The Local Government Act provides the Minister of Local Government powers to determine the number of councillors in the councils of the local authorities²⁰. In practice two thirds of the councillors are directly elected in single-member wards for a five-year term. The Minister of Local Government appoints the remaining third from the nominations made by the political parties or coalitions on the basis of their representation in the councils. The district commissioner (or his/her representative) heading the district administration is also a council member.²¹ Members of the National Assembly are not to be elected, nominated or appointed as councillors²².

17 Constitution of Kenya, 1963, Section 123.

18 The Local Government Act was first published by the Governor of Kenya as the Local Government Regulations in 1963 under Legal Notice No. 256 of 30th April 1963. The Regulations underwent several amendments, and the regulations were enacted as an Act in 1977 becoming the Local Government Act, Cap. 265 of the laws of Kenya. Several amendments have been made to the Act since its adoption.

19 Local Government Act (Cap. 265) of 1977, Sections 12, 28.

20 Local Government Act (Cap. 265) of 1977, Sections 26, 39, 46.

21 CLGF, 98.

22 Local Government Act (Cap. 265) of 1977, Section 62A.

The Minister of Local Government has power to dissolve the council of any local authority subject to certain conditions, for example if the local authority is in the opinion of the Minister failing to exercise its functions. The Minister has the power to replace the council with a commission exercising the powers and duties of the council for a maximum of two years.²³

The local authorities do not have executive committees or cabinets. The city and municipal councils are headed by a mayor, and the county and town councils by a chairman. The mayors are elected by the councillors from among themselves. The chairpersons of the county and town councils are also elected by the councils from among the councillors, or they are appointed by the Minister of Local Government: the Minister of Local Government has power to appoint a chairman from amongst the members of the council or persons qualified to be members of the council.²⁴

The local authorities operate through committees, which consist of councillors. Local authorities have full discretion to establish committees. According to Section 91(1) of the Local Government Act, a local authority may appoint a committee for any such general or special purpose as in its opinion would be better regulated and managed by means of a committee, and may delegate to a committee so appointed, with or without restrictions or conditions, as the local authority thinks fit, any function exercisable by the local authority either with respect to the whole or any part of the area under the jurisdiction of the local authority, except the power of levying a rate, or borrowing money or of making by-laws. In addition to the discretionary committees, the Local Government Act prescribes that each council shall appoint a finance committee²⁵.

23 Local Government Act (Cap. 265) of 1977, Section 252.

24 Local Government Act (Cap. 265) of 1977, Sections 14, 29, 42.

25 Local Government Act (Cap. 265) of 1977, Section 92 (1).

5 Remuneration of Political Office-Holders

The remuneration of the councillors is determined by the central government through the Ministry of Local Government²⁶. Section 150 of the Local Government Act (Cap. 265) of 1977 prescribes the framework for the remuneration of the councillors, which is dependent on the decisions of the Minister of Local Government:

- (1) A local authority may with the approval of the Minister, pay to a councillor, at such rates as the Minister may specify, or where the Minister has specified maximum rates, at such rates as it may determine not exceeding those maximum rates -
 - (a) such terminal benefits as may be determined by the Minister;
 - (b) allowances in respect of –
 - (i) expenditure on subsistence or travelling necessarily incurred by him for the purposes of enabling him to perform his duties as councillor;
 - (ii) loss of earnings, which he would otherwise have made, necessarily suffered by him for purpose specified in the paragraph (i); and
 - (iii) additional expenses, other than expense on account of subsistence or travelling, to which he would not otherwise have been subject, necessarily incurred by him for the purpose aforesaid.
- (2) A municipal council may, with the approval of the Minister, in lieu of the foregoing allowances, pay to a councillor a flat rate allowance, of such amount as the Minister may approve, in respect of all expenditure, loss and additional expense aforesaid.
- (3) A local authority may, with the approval of the Minister, pay any allowance it is empowered to pay to councillors under subsections (1) and (2), to any person co-opted as a member of any committee thereof as if such person were a councillor.

The Local Government Act provides that councils may pay personal allowance to the mayor or chairman from the councils' revenue, but the sum may not exceed the maximum amount that the Minister of Local Government determines²⁷.

The allowances of the councillors are paid from council revenues. There have been many debates about the appropriate level of the councillors' allowances and how they should be set. Significant increases to the allowances were made in 2003. After that the councillors have made demands for higher allowances, for example in 2008 when their demands met resistance from the central government. The Ministry of Local Government recognises that many local authorities lack the capacity to pay allowances to councillors, and different proposals on how the allowances should be funded have been made by the Local Government Authorities of Kenya (ALGAK) and the Ministry of Local Government.²⁸

26 CLGF, 99.

27 Local Government Act (Cap. 265) of 1977, Sections 19, 34.

28 CLGF, 99; National Assembly of the Republic of Kenya 2008; Ongiri 2008.

6 Functions and Powers of Local Authorities

As discussed above in Chapter 3, the local authorities in Kenya used to have a wider scope of authority in service provision, which was reduced quite soon after the independence from the 1970s onwards. Before the scope of their authority was reduced, the local authorities were able to use their authority, and delivered a many services, even though the Local Government Act actually obligated them to provide only very few services.²⁹

The Local Government Act provides for strong central government regulation and oversight on the local authorities. Land et al. describe the administrative and legal powers, functions and responsibilities provided by the Local Government Act to the local authorities as being based on decentralised and delegated authority³⁰.

The Local Government Act of 1977 prescribes many functions to the municipalities, but mostly on the basis of the approval of the Minister of Local Government or other ministers as prescribed by other Acts regulating the functions in question. The Local Government Act obliges the local authorities to undertake only few functions in service provision, such as the burial of destitute persons who die within the area of the local authority³¹. With most functions the Local Government Act requires the approval of the Minister before a local authority may undertake the task, or prescribes that the local authorities shall have power to undertake a task or function without clearly obligating them to do so. As Land et al. summarise the situation, the Local Government Act provides that the local authorities, may or shall with the approval of the minister or subject to any other written law, undertake a variety of functions and have power to control a variety of activities in their areas of jurisdiction³². Within this framework, the functions and activities, which the local authorities (sometimes with slightly differing powers depending on the function) may but are not obliged to undertake, include, among other things³³:

- Establish and maintain schools and educational institutions, including boarding blocks and school hostels, and make grants to any school or educational institution;
- Establish and maintain game parks, including accommodation for visitors thereto;
- Establish and maintain forests;
- Control certain trades and occupations;
- Establish, maintain and regulate sewerage and drainage works;
- Provide housing services;
- Undertake water supply;
- Maintain roads and streets;
- Carry out public health schemes;
- Provide social welfare.

29 Land et al. 2008, 9.

30 Land et al. 2008, 13, 19.

31 Local Government Act (Cap. 265) of 1977, Section 167.

32 Land et al. 2008, 19.

33 Prescribed from Section 152 onwards in the Local Government Act (Cap. 265) of 1977.

In practice the extent to which the local authorities undertake these functions depends to a large extent on the approval of the relevant line ministries, the legislations governing the functions in the sectors, and the capacity of the local authorities. For example the provision of health and education services is usually only the task of the larger municipalities.³⁴ The services provided by the rural local authorities mainly include, and are often at best limited to, the maintenance of rural access roads, establishment and maintenance of public markets, bus parks and slaughter houses, housing and implementation of social welfare programmes, including support to and burial of destitute people³⁵. The Local Government Act provides that the local authorities have power to make by-laws to regulate the functions prescribed to them in the Local Government Act, but that the by-laws have to be submitted to the Minister of Local Government for his approval. The Minister of Local Government may also make adoptive by-laws that regulate the functions of the local authorities under the Local Government Act.³⁶

Some of the problems facing local authorities in service provision are the unclear mandates of local authorities resulting from the legislative framework, and parallel systems of administration and planning as well as lack of effective coordination between local authorities and civil society (civil society organisations, non-governmental organisations participation and community level planning)³⁷. One of the major challenges often cited is also the lack of resources for effective service delivery in addition to the inefficiencies in the local authority systems of planning and resource allocation. For example, small portions of grants transferred to the local authorities under the Local Authorities Transfer Fund (LATF) have been allocated to development activities under the Local Authority Service Delivery Action Plan (LASDAP)³⁸ process, to be apportioned equally to the ward councillors to support development activities in their respective wards. This has led to fragmentation and therefore wastage of very limited resources.³⁹ Sometimes the question is not so much the lack of resources and funding, but that the local authorities lack information on how to access available funds, as is often the case with HIV/AIDS prevention and treatment services⁴⁰.

The central government's influence in the day-to-day decisions of the local authorities reduces the scope for citizen participation in setting priorities regarding planning, budgeting and expenditure monitoring. Because of this and the low level of service provided despite of the reform processes such as the Kenya Local Government Reform Programme (KLGRP) and LASDAP, local rural residents often feel that the local governments are distant institutions, which are not very relevant to their daily lives.⁴¹

There are multiple service delivery channels working in parallel in Kenya. In addition to the local government system, in which services are funded mainly through local revenues and LATF, Land et al. distinguish three other service delivery systems⁴²:

- The central government systems consisting of the district administrative system with the various administrative units (district, division, location, sub-location), and the sector system with sector ministries (such as health, education

34 Land et al. 2008, 13, 19; Schuler 2004, 8.

35 Land et al. 2008, 13.

36 Local Government Act (Cap. 265) of 1977, Sections 201–211.

37 Schuler 2004, 8.

38 The LASDAP process was designed under the KLGRP to promote community involvement in the planning, implementing and evaluating of local development and service delivery programmes, which would promote ownership and the sustainability of the projects. There are debates on the performance of LASDAP. For example, LASDAP's objectives have been considered too ambitious in view of the resources available and local authorities' limited service delivery mandate or obligations. Some functions not assigned to local authorities such as agriculture have been included in LASDAP programmes, which has led to inefficiencies in using the already scarce funding. (Land et al. 2008, 27–28.)

39 Land et al. 2008, 13.

40 Schuler 2004, 8.

41 Land et al. 2008, 21.

42 Land et al. 2008, 10–15.

and agriculture) allocating and disbursing funds received through the central government's budget to their deconcentrated sector ministry field offices to finance annual work plans or projects and programmes.

- The non-governmental organisation (NGO) type system under which public resources, usually from development partners, are channelled directly to local communities in an NGO-type mode, applying separate planning and approval mechanisms outside any of the formal government systems.
- The constituency system in which central government revenue is allocated to a Constituency Development Fund (CDF) mechanism established in 2003 so that the Ministry of Finance (Treasury) disburses funds directly to communities through Constituency Development Committees (CDC), of which the local Members of Parliament are either the chairpersons or patrons. The fund targets community level development projects with particular emphasis on projects targeting poverty reduction. The projects should be identified by the community, but in practice the identification is done by the CDC members. The Member of Parliament usually has overwhelming influence in the final decisions on the projects.

At present, most development activities are undertaken by either sector ministries, through the sectoral budgets, or through projects supported by either the development partners, NGOs or the CDF. Because CDF has overtaken LATF in size, and as most of LATF funds are allocated to operational expenditures, the visibility and appreciation of CDF among the local communities is a lot larger than the visibility and appreciation of LATF.⁴³

There are also other developments taking place that threaten to overshadow the local authorities even further. Land et al. describe the developments as follows:

While KLGRP continues with reforms intended to revamp LAs [local authorities] as key local service delivery institutions, sector ministries are actively promoting alternative frameworks for promoting community participation and enhancing local accountability in parallel to these reforms. There is evidence to suggest (...) that these efforts are beginning to cause positive improvements on service delivery and a greater awareness at the community level. The implication of this is that LAs (risk to) become increasingly marginalised. This scenario is likely to prevail in the short and medium term, i.e. until a legal framework is put in place (e.g. through means of a new constitution) that clearly specifies mandates and means of LAs.⁴⁴

⁴³ Land et al. 2008, 12-15.

⁴⁴ Land et al. 2008, 24.

7 Financial Resources of Local Authorities

The local authorities collect revenue from different taxes, fees and charges. The local authorities also receive resources from the central government through the Local Authorities Transfer Fund (LATF) grants and the Road Maintenance Levy Fund (RMLF).

The Local Government Act (Cap. 265) of 1977 provides that the local authorities may charge fees for any licence or permit issued under the local government act or any other written law or in respect of any person or matter, premises or trade, whom or which the local authority is empowered to control or license. The local authorities may also impose fees or charges for any service or facility provided or goods or documents supplied by the local authority or any of its officers in pursuance of, or in connexion with, the discharge of any duty or power of the local authority. All fees or charges imposed by a local authority shall be regulated by by-law, or if not regulated by by-law, may be imposed by resolution of the local authority with the consent of the Minister of Local Government. Such consent may be given either in respect of specified fees or charges, or may be given so as to allow a specified local authority to impose fees or charges by resolution in respect of a specified power or a particular matter.⁴⁵ Therefore the local authorities do not have significant power to determine the rates, because the Minister of Local Government also has to approve the by-laws made by the municipalities before they can be adopted.

The local authorities have power and duty to impose taxes on land and buildings in the area of their jurisdiction under the Rating Act (Cap. 267) of 1963 and the Valuation of Rating Act (Cap. 266) of 1956 to meet liabilities falling to be discharged out of the general rate fund, the county fund or the township rate fund, as the case may be. Before a local authority adopts any form of rating, it has to obtain the approval of the Minister of Local Government on the form of rating and the rating area in question⁴⁶.

The Local Government Act and Rating Act also provide that the Minister of Local Government may issue different kinds of directions and rules on various aspects of the regulation and administration of the financial resources of local authorities.

The Local Government Act, the Acts on rating and the Local Authorities Transfer fund do not clearly state that the local authorities' financial resources should be commensurate with their responsibilities provided for by legislation. Even though this requirement is not clearly defined in the legislation, the LATF grants represent a measure to assist the local authorities to meet the expenditures required to execute their duties and functions.

The Local Authorities Transfer Fund (LATF) was established with the Local Authorities Transfer Fund Act No. 8 of 1998 as a result of the KLGRP. LATF became operational in 1999. LATF is a central-local revenue transfer mechanism to facilitate the disbursement of funds to local authorities with the object and purpose to supplement the financing of the services and facilities they are required to provide under the Local Government Act⁴⁷. The LATF Act and related regulations provide the framework for

⁴⁵ Local Government Act (Cap. 265) of 1977, Section 148.

⁴⁶ Rating Act (Cap. 267) of 1963, Section 4 (1) (iii).

⁴⁷ Local Authorities Transfer Fund Act No. 8 of 1998, Section 4.

the operation of the Local Authorities Transfer Fund. The Fund falls under the responsibility of the Minister for Finance and is administered by the Permanent Secretary of the Ministry of Local Government. The LATF operations are monitored and guided by the LATF Advisory Committee.⁴⁸

As prescribed by Section 5 of the Local Authorities Fund Act, the central government transfers 5 per cent of all personal income tax collected to the local authorities through the LATF. LATF is a formula-based block grant, which is not earmarked to any specific expenditures. The disbursement of LATF funds depends on strict conditions relating to financial management performance of the local authorities.⁴⁹

Table 1 shows the composition of the local authority revenue structure in fiscal year 2006-2007.

Table 1. Local Authority Revenue Structure: Actuals FY 2006-2007 (KSH).

Revenue Sources	Actual FY 2006/2007
LATF	7,460,715,651
RMLF	868,601,295
Subtotal Revenues from Central Government	8,329,316,946
CILOR*	326,564,939
Property Rates	2,895,640,512
Single Business Permit	1,963,210,191
Vehicle Parking	1,300,149,990
Market Fees	950,176,843
Plot Rents	202,210,235
Water & Sewerage Fees	517,696,998
Cess Receipts	568,555,448
Game Park Fees	1,010,803,474
House Rents	307,896,808
Others	2,156,418,256
Subtotal Local Revenues	12,289,323,694
TOTAL CENTRAL & LO-CAL	20,618,640,640

Source: Republic of Kenya: Local Authorities Transfer Fund (LATF): Annual Report Fiscal Year 2006-2007, Table 2.

*Contribution in Lieu of Rates: amount which each local authority is to receive from the central government on central government owned land within the local authority. CILOR is an own source revenue but is collected by the central government and remitted to the local authority. Local authorities cannot therefore directly influence the amount of CILOR remitted to the local authorities but rely on central government for the remittance.

Table 1 indicates that the portion of local authorities' own revenue formed approximately 60 per cent of the total revenues of local authorities. In recent years the size of the central government grants has increased proportionally more than the local authorities' own revenues. The central government transfers have increased from approximately 3,000,000,000 Kenyan shillings in fiscal year 2002–2003 to approximately 8,300,000,000 Kenyan shillings in fiscal year 2006–2007, while the own source revenues of the local authorities increased from approximately 9,100,000,000 Kenyan shillings to 12,300,000,000 Kenyan shillings respectively.⁵⁰

It is also important to note that the sources and portions of local authorities' own source revenues vary between the different types of local authorities. City and municipal councils get their major sources of income from property rates, vehicle parking and single business permit. The Nairobi City Council and municipal councils, which represent 27 per cent of all local authorities, collected 61 per cent of all local authorities'

48 Republic of Kenya: Local Authorities Transfer Fund (LATF): Annual Report FY 2006-2007, 28.

49 Republic of Kenya: Local Authorities Transfer Fund (LATF): Annual Report FY 2006-2007, 31–33.

50 Republic of Kenya: Local Authorities Transfer Fund (LATF): Annual Report FY 2006-2007, Table 4.

own source revenues in fiscal year 2006-2007. While town councils represent 35 per cent of all local authorities, they collected only 6 per cent of all local authorities' own source revenues, which indicates that they face considerable challenges in their viability as service delivering entities. County councils represent 38 per cent of all local authorities, and they collected 24 per cent of all local authorities' own source revenues. County councils are more dependent on LATF transfers than urban councils. The county councils' revenue sources differ significantly among different county councils. For example, 34 per cent of county councils' total own source revenues originated from Game Park Fees, but the fees were a significant revenue source only for four county councils.⁵¹

Most of the local authorities' expenditure is used for recurrent expenditure. For example in fiscal year 2006-2007 the recurrent expenditure (personnel, operations and maintenance) formed 68.2 per cent of the total expenditure of all local authorities, while the share of the capital expenditures was 15.2 per cent, debt resolution's 16.2 per cent and loan repayments' 0.1 per cent.⁵²

The Local Government Act prescribes that local authorities are required to prepare a budget for a financial year, which has to be submitted to the Minister of Local Government for the Minister's approval. The Minister may from time to time exempt any local authority or class of local authorities from the requirement to obtain the Minister's approval for the budget.⁵³

51 Republic of Kenya: Local Authorities Transfer Fund (LATF): Annual Report FY 2006-2007, 17-18.

52 Republic of Kenya: Local Authorities Transfer Fund (LATF): Annual Report FY 2006-2007, Table 6.

53 Local Government Act (Cap. 265) of 1977, Sections 212-213.

8 Conclusion

This chapter summarises some of the most central issues identified in the present study which relate to the principles of local self-government used as a guiding framework in the study.

Constitutional and legal foundation for local self-government

The Constitution of Kenya does not provide for a local government system. The local authorities – municipal, county, town and city councils – are established by the Local Government Act (Cap. 265) of 1977.

Concept of local self-government

The Local Government Act prescribes that each local authority must have a council. The local Government Act also provides that each council is a body corporate, and shall be capable in law of suing and being sued, and of acquiring, holding and alienating land.

Two thirds of the council members are elected one each from each ward, and the Minister of Local Government appoints the remaining third from the nominations made by the political parties or coalitions on the basis of their representation in the councils. The district commissioner (or his/her representative) heading the district administration is also a council member.

The local authorities in Kenya do not manage a substantial share of public affairs under their own responsibility. The local authorities operate under the direct supervision of the Ministry of Local Government, and the execution of the local authorities' core functions and powers is dependent on the approval of the Minister of Local Government.

Scope of local self-government

The Local Government Act (Cap. 265) of 1977 prescribes many functions to the local authorities, but with most of the functions the Act requires that undertaking them has to be approved by the Minister of Local Government or other ministers as prescribed by other Acts regulating the functions in question. With most functions the Local Government Act requires the approval of the Minister before a local authority may undertake the task, or prescribes that the local authorities shall have power to undertake a task or function without clearly obligating them to do so.

The Local Government Act does not provide for significant powers to the local authorities to use discretion to exercise their initiative with regard to any matter which is not excluded from their competence.

Kenya has not adopted a policy of decentralisation by devolution. The Kenya Local Government Programme (KLGRP) and Local Authority Service Delivery Action Plan (LASDAP) have not significantly increased the number of public responsibilities and services provided by local authorities, but have concentrated on other governance issues such as accountability and participation in service delivery in stead.

The Local Government Act provides considerable powers to the Minister of Local Government to establish and dissolve local authorities, and regulate the composition as well as a large share of the functions of the local authorities.

Conditions under which responsibilities at local level are exercised

The remuneration of the councillors is determined by the central government through the Ministry of Local Government. The councillors are paid allowances from council revenues. The level of the allowances has been subject to many debates over the recent years. Many councils lack the capacity to pay the set allowances to councillors.

Financial resources of local authorities

The local authorities collect revenue from different taxes, fees and charges. The portion of local authorities' own source revenues formed approximately 60 per cent of the total revenues of local authorities in fiscal year 2006-2007. The local authorities also receive resources from the central government through the Local Authorities Transfer Fund (LATF) grants and the Road Maintenance Levy Fund (RMLF). The sources and proportions of local authorities' own source revenues vary between the different types of local authorities. County councils are more dependent on LATF transfers than urban councils. The annual budgets prepared by the local authorities have to be submitted to the Minister of Local Government for approval. The Minister may from time to time exempt any local authority or class of local authorities from the requirement to obtain the Minister's approval for the budget.

Neither the Local Government Act, the Rating Act (Cap. 267) of 1963 nor the Valuation of Rating Act (Cap. 266) of 1956 provide assurances or recognition that the local authorities are entitled to adequate financial resources of their own or that their financial resources shall be commensurate with the responsibilities provided for by law. Despite of the lack of guarantees for adequate financial resources in the legislations, the LATF transfers established by Local Authorities Transfer Fund Act No. 8 of 1998 represent an initiative to assist the local authorities to meet the expenditures required to execute their duties and functions.

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Annex 1. Selected Principles of Local Self-Government

The principles selected and defined for a flexible guiding framework of the study:

CE = Council of Europe: European Charter of Local Self-Government

UN-Habitat = UN-Habitat: International Guidelines on Decentralisation and the Strengthening of Local Authorities

1. Constitutional and legal foundation for local self-government:

The principle of local self-government is recognised in domestic legislation, and where practicable in the constitution. (Based on CE Art. 2 & UN-Habitat Part C 1.1.)

2. Concept of local self-government:

1. The concept of a council or an assembly is recognised in domestic legislation.
 - Description of the composition of councils and assemblies: elected and appointed members etc.
2. Local authorities have authority to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
 - Description of the extent of the authority

The above is based on CE Art. 3.1, Art. 3.2. and UN-Habitat Part C1.1. Remarks: The CE Art. 3.1 notion of “substantial share of public affairs” varies even in Europe. UN-Habitat Part C1.1 speaks only of a legally autonomous sub-national entity without defining the concept (the extent of authority and composition of council membership) explicitly.

3. Scope of local self-government:

1. The basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, this provision does not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. (Based on CE Art. 4.1 & cf. UN-Habitat Part C1.2, Part B1.6.)
2. Local authorities have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. (Based on CE Art 4.2 & cf. UN-Habitat Part C1.5, C2.6.)
3. The principle of subsidiarity: Public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. (Based on CE Art. 4.3 & UN-Habitat Part B1.1, B1.5.)
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. (Based on CE Art. 4.4 & cf. UN-Habitat C2.6.)
5. Where powers are delegated to them by a central or regional authority, local authorities are guaranteed discretion in adapting their exercise to local conditions. (Based on CE Art. 4.5 & UN-Habitat Part D2.9.)

4. Conditions under which responsibilities at local level are exercised

1. The conditions of office (material and remunerative) of local political office holders should provide for free exercise of their functions. (Based on CE Art. 7.1, 7.2 & UN-Habitat A2.11.)

5. Financial resources of local authorities:

1. Local authorities are entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. (Based on CE Art. 9.1 & UN-Habitat D2.10.)
2. It is recognised in legislation that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. Local authorities should be guaranteed the resources necessary to exercise powers delegated to them by central or regional governments. (Based on CE Art. 9.2 & UN-Habitat D2.8.)
3. At least part of the financial resources of local authorities derive from local taxes and charges of which, within the limits of the statute, they have the power to determine the rate. (Based on CE Art. 9.3 & cf. UN-Habitat D2.11.)

Annex 2. European Charter of Local Self-Government

European Charter of Local Self-Government
Strasbourg, 15.10.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribu-

- tion to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
 3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
 4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
 5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
 6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:

- o Article 2,
 - o Article 3, paragraphs 1 and 2,
 - o Article 4, paragraphs 1, 2 and 4,
 - o Article 5,
 - o Article 7, paragraph 1,
 - o Article 8, paragraph 2,
 - o Article 9, paragraphs 1, 2 and 3,
 - o Article 10, paragraph 1,
 - o Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
 3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex 3. International Guidelines on Decentralisation and the Strengthening of Local Authorities

Sections of the UN-Habitat 2007 International Guidelines on Decentralisation and the Strengthening of Local Authorities

A. Governance and democracy at the local level

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.

12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.
13. Mechanisms should be put in place to allow citizens to reinforce the code.
14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.
4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C Administrative relations between local authorities and other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.
11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions - if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.

14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.
19. Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.

Namibia

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Summary

This study examines aspects of local self-government (so called legally autonomous sub-national entity/autonomous local authority) in the Republic of Namibia. The object of the study is to provide basic information on local self-government in Namibia by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework.

The principles applied as a framework in the study were formed using the European Charter of Local Self-Government and the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities as a basis. The principles are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities.

The concept of local authority councils and the authority of the local authority councils are recognised in the Constitution of the Republic of Namibia and in national legislation. The type of a local authority depends on its ability to pay costs related to the execution of its powers and functions out of its own funds.

The Local Authorities Act No. 23 of 1992 prescribes the basic functions and powers of the local authorities. The local authorities are responsible for providing a number of municipal services and infrastructure. The Minister responsible for regional and local government may withdraw some or all of the functions and powers of a local authority, except the functions and powers of a Part I municipality, if the local authority fails to exercise its powers and perform its duties and functions imposed on it by law, or if the local authority fails to meet its financial commitments. The Minister may also remove or suspend the members of the local authority council in question from office if all or some of the powers, duties and functions of the local authority council are vested in the Minister.

Namibia has adopted a decentralisation policy, which ultimately aims to devolve key functions from the line ministries to the local authorities, but the implementation of the decentralisation policy has been slower than initially planned.

The local authorities collect revenue from different kinds of taxes, charges and fees of which they may determine the rate subject to certain restrictions. Part I municipalities generally have a solid financial basis and considerable financial autonomy. The other types of local authorities depend on intergovernmental transfers, which are allocated on ad hoc basis and limit their autonomy.

Abbreviations

CLGF	Commonwealth Local Government Forum
Local Authorities Act	Local Authorities Act No. 23 of 1992
MRLGHRD	Ministry of Regional and Local Government, Housing and Rural Development
Regional Councils Act	Regional Councils Act No. 22 of 1992
UN-Habitat	United Nations Human Settlements Programme

1 Introduction

The present study examines aspects of local self-government in the Republic of Namibia. The object of the study is to provide basic information on some selected aspects of local self-government in Namibia by using some of the internationally recognised principles of local self-government as a guideline and framework. The study is part of a larger study concentrating on providing information on issues shaping local self-government in the African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study.

The study uses a selected set of internationally recognised principles of local self-governance as a starting point to the study. The questions concerning the application of the principles in different countries and contexts as well as the criteria for the selection of and defining the principles used as a framework in the study are discussed in further detail in Chapter 2. To summarise the application of the principles, the selected principles are used as a relatively flexible framework guiding the approach and concentration of the study. These guiding principles are listed in Annex 1 of the present study. The study does not try to compare the local self-government in the selected countries in a systematic way or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

The present study aims to provide an overview on the scope of local self-government in Namibia by presenting an overall picture of the local authorities' basic powers and responsibilities to regulate and manage public affairs, possibilities to exercise initiative within their powers and functions, and the exclusiveness of their authority. The study also discusses briefly the financial resources of the local authorities, and highlights some of the effects that the composition of the financial resources has on local self-government in Namibia.

The study was conducted as a desk study. The material of the study comprises mainly of legislations, studies, and reports of government institutions.

The study first produces an overview on the local authorities in Namibia. Then the study discusses the composition of local authorities and remuneration of political office-holders before turning to examining the functions and powers of the local authorities. After that the study describes some aspects of the financial resources available to the local authorities. Finally the study summarises some of the central issues identified in the study relating to the principles of local self-government that were used as a framework in the study.

2 Principles of Local Self-Government

There are some internationally recognised principles shaping the conception of local self-government, such as the *European Charter of Local Self-Government*¹ and the *International Guidelines on Decentralisation and the Strengthening of Local Authorities* published by the United Nations Human Settlements Programme (UN-Habitat)². However, there are no global standards or charter on local self-government, which would be applicable to countries worldwide, even though the guidelines of the UN-Habitat represent a product of efforts to create a global charter on the principles of local-self-government comparable to the European Charter of Local Self-Government.

The European Charter of Local Self-Government was adopted by the Council of Europe and opened for signature by the member states of the Council of Europe on 15 October 1985. The European Charter of Local Self-Government is not an attempt to create common local government legislation in Europe, but the Charter sets a framework for local self-government at the local level, which the states member to the Charter must uphold. The Charter allows flexibility for the member states in determining their framework. The Charter provides that the member states ratifying, accepting or approving the Charter must consider themselves bound by at least twenty paragraphs of Part I of the Charter, ten of which from among specified paragraphs. The principles in the Charter form a flexible framework and a set of goals which the member states parties to the Charter should aspire to achieve.

After the European Charter of Local Self-Government was opened for signature, the national associations of local authorities which participated in the drafting of the Charter sought to create a world-wide charter on local self-government. Some national spheres of government also supported the quest. Some international associations of local authorities such as the International Union of Local Authorities (IULA), and later the United Cities and Local Governments (UCLG) formed in 2004, started exchanging ideas in close collaboration with UN-Habitat on a possible World Charter of Local Self-Government in the follow-up to the Habitat II Conference held in Istanbul in 1996 where local authorities made the case for the preparation of a worldwide charter on local autonomy. The World Charter met resistance among some Member States of the United Nations mainly because they considered that the Charter addressed issues in the realm of internal affairs of the Member States. Finally a step towards the goal was made in April 2007 when the Governing Council of the UN-Habitat approved the International Guidelines on Decentralisation and the Strengthening of Local Authorities. The Second Committee of the United Nations General Assembly has noted the approval of the guidelines by the UN-Habitat Governing Council in the following way at the sixty-second session of the General Assembly:

Notes the approval by the Governing Council of UN-Habitat of the guidelines on decentralization and strengthening of local authorities, and requests UN-Habitat to assist interested Governments in adapting the guidelines to their national contexts, where appropriate, and in further developing tools and indicators as part of its support for the application of the guidelines, bearing in mind

1 Council of Europe 1985.

2 UN-Habitat 2007.

that the guidelines do not constitute a uniform or rigid blueprint to be applicable to all States Members of the United Nations.³

As the principles in the European Charter of Local Self-Government and the UN-Habitat guidelines are numerous, the present study uses a selected set of principles as a flexible framework guiding the approach and the concentration of the study in its efforts to highlight some essential governance issues and relations of power that shape local self-government in Namibia. The principles were formed using the European Charter of Local Self-Government and the UN-Habitat guidelines as a basis. The principles formed are listed in Annex 1. They are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities. For reference and comparison, the articles of the European Charter of Local Self-Government are listed in Annex 2, and the sections of the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities are listed in Annex 3.

The same principles are used as a framework also in the other country studies concentrating on the North-South Local Government Co-operation Programme countries, but the country studies do not attempt to compare the local self-government in the selected countries in a systematic way, or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

3 United Nations General Assembly 2007, Section II.6.6.

3 Overview on the Local Government System

Namibia gained independence from the apartheid rule of South Africa in 1990. The new Constitution of the Republic of Namibia of 1990 established a three-tier system of governance in Namibia comprising of the central government, regional councils and local authorities.

The parliament of Namibia consists of two houses: the National Assembly and the National Council, which is the second chamber of the parliament. The National Assembly has 72 elected seats, which are filled by the competing parties in proportion to the votes they receive. The President of Namibia has the constitutional power to appoint up to six additional members without voting rights to the National Assembly. The term of office for the members of the National Assembly is five years.⁴

The National Council consists of 26 members, who comprise of two members from each regional council. The term of office for the members of the National Council is six years.⁵ The National Council has the power to consider in terms of Article 75 of the Constitution all bills passes by the National Assembly, investigate and report to the National Assembly on any subordinate legislation, reports and documents which under law must be tabled in the National Assembly and which are referred to it by the National Assembly for advice, recommend legislation on matters of regional concern for submission to and consideration by the National Assembly, and perform any other functions assigned to it by the National Assembly or by an Act of Parliament⁶.

The President of Namibia is both the head of state and government. The President is elected by a direct national election for a term of five years. The Cabinet consists of the President, the Prime Minister and Ministers appointed by the President.⁷

The Constitution of the Republic of Namibia provides that Namibia shall be divided into regional and local units for the purposes of regional and local government⁸. Namibia was divided into 13 regions, and the Regional Councils Act No. 22 of 1992 established a regional council in each region. The regional councils are responsible for governing the affairs of the regional government. The regions are divided into constituencies for electoral purposes. Each constituency elects one member to the regional council using a first-past-the-post electoral system⁹. The term of office of the regional council members is six years¹⁰. The regional councils elect from amongst their members two persons as members of the National Council.¹¹

The local authorities of municipal councils, town councils and village councils were established by the Local Authorities Act No. 23 of 1992. These local authority councils are responsible for governing the affairs of the local authorities. There are currently in total 48 local authorities in Namibia¹². The Minister responsible for regional and local government is currently situated at the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD)¹³.

4 CLGF, 140.

5 CLGF, 140.

6 Republic of Namibia.

7 Republic of Namibia.

8 Constitution of the Republic of Namibia, 1990, Article 102 (1).

9 Constitution of the Republic of Namibia, 1990, Article 106 (1–3).

10 Regional Authorities Act No. 22 of 1992, Section 7 (1).

11 Regional Authorities Act No. 22 of 1992, Section 26.

12 Association for Local Authorities in Namibia; CLGF, 140.

13 Formerly situated at the Ministry of Regional and Local Government and Housing. In 2005 the Ministry was allocated the responsibility for rural development, thus forming the Ministry of Regional and Local Government, Housing and Rural Development.

The local authorities are established in urban areas, and the regions cover the rural areas. The regional councils are presently responsible for specified service delivery in rural areas, while the local authorities are responsible for service delivery in urban areas¹⁴. Currently the only service provision responsibility of the regional councils specified in the Regional Councils Act is the provision of basic services in areas where settlements are proclaimed but no local authorities are established. This responsibility applied to only four regions in 2006.¹⁵ The regional councils have many consultative and advisory powers and functions. The Regional Councils Act provides that the regional councils may for example make recommendations to the Minister responsible for regional and local government relating to the Minister's powers on local authorities affairs provided in the Local Authorities Act, and to assist any local authority council in the exercise of its powers, duties and functions¹⁶.

For the purposes of the present study, the study concentrates on the local authorities established in accordance with the Local Authorities Act. In order to provide an overview on the decentralisation processes in Namibia, the role of the regional councils is discussed to some extent in relation to the decentralisation policy, which the Government of Namibia adopted in 1997. Traditional authorities are not discussed in the present study because they do not have an important role in the provision of public services in urban areas.

Before the independence of Namibia in 1990 and the establishment of the local authorities of municipal, town and village councils, larger urban areas south of the so called Red Cordon Fence, which separated northern Namibia from the rest of the country, were run by local governments in the form of municipalities. Their boundaries dated back to the German colonial period before 1918. All the larger urban areas were divided first according to racial lines (i.e. so called Blacks, Coloureds and Whites), then according to income status within the racial divides, and lastly according to formal or informal status. Only Whites had voting rights, but they had to meet specific residential and property ownership rights qualifications. Blacks and Coloureds as defined during the apartheid era did not have the same residential and property ownership rights until the mid-1980s. Smaller urban settlements south of the Red Cordon Fence and all small formal and formalised urban settlements in the 'Bantustans' (rural 'homelands') were managed by a village advisory board appointed by the central government. Urban settlements with village status were run by village secretaries with funding coming directly from central government (in the case of non-'Bantustan' urban settlements) and funding from the homeland government (in the case of formal and formalised urban settlements situated in Bantustan areas). Before independence the population growth in all smaller urban settlements south of the Red Cordon Fence was very slow compared to that of the north of the Fence.¹⁷

Before independence, the service delivery at the sub-national level was biased towards in favour of the affluent white residential areas. From 1985 onwards policy measures aimed at segregating the population according to income and racial lines were abolished by the Transitional Government of National Unity. In principle, this opened up all residential areas, but in practice a high degree of *de facto* segregation persisted in all urban areas, especially outside of Windhoek. From 1988 onwards, informal settlements started to mushroom in larger urban areas south of the Red Cordon Fence because of the abolishment of the restrictive and cohesive policy measures, the acceptance of the rights of squatters to shelter, and the acknowledgement that rural-urban migration was unavoidable as it was linked to peoples' aspirations for improving their lives. The population in the informal settlements north of the Red Cordon Fence started to expand from the 1975 onwards when the protracted war between SWAPO

14 Fjeldstad et al.2005, 6.

15 Boex et al. 2006, 6.

16 Regional Councils Act No. 22 of 1992, Section 28.

17 This section is adapted from Fjeldstad et al. 2005, 4-5.

and the South African Defence Force intensified. None of these informal settlements were ever formalised, and they did not receive any services until independence.¹⁸

The newly established local authorities had to start tackling the problems they inherited from the old racially segregated system, and issues merging with the rapid urban growth in Namibia. After the independence in 1990, key services such as health, education and agricultural extension were centralised under line ministries¹⁹. The Cabinet endorsed a decentralisation policy on 11 December 1996, and the decentralisation policy was adopted as a national policy by the National Assembly on 30 September 1997²⁰.

The implementation of the decentralisation policy in Namibia aims to decentralise functions from the line ministries to the regional councils and local authorities first by delegation, and ultimately by devolution. In the discussions on decentralisation there are different kinds of definitions on different types of decentralisation. In general terms delegation refers to the transfer of responsibility for decision making and administration of public functions from central government to semi-autonomous organisations, which are accountable on these functions to the central government. Devolution is a more comprehensive type of decentralisation, and generally refers to the transfer of authority for decision making, finance and management from central government to local authorities with corporate status and considerable degree of autonomy from the central government. There are some features that are commonly present in devolution. For example, the local authorities have authority to raise their own revenues and to acquire resources to perform public functions, and have clearly recognised geographical boundaries over which they exercise authority.

The Namibian decentralisation policy is discussed in more detail in Chapter 6.2. The envisaged implementation of the decentralisation policy is changing the role of the local authorities in service provision, but the implementation of has been slow, and faces many challenges.

18 This section is adapted from Fjeldstad et al. 2005, 4–5.

19 Fjeldstad et al. 2005, 6.

20 Ministry of Regional and Local Government, Housing and Rural Development 2008b, 27.

4 Composition of Local Authorities

Chapter 12 of the Constitution of the Republic of Namibia provides for the establishment of regional and local government in Namibia. Article 102 of the Constitution provides on the structures of regional and local government as follows:

- (1) For purposes of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such region and Local Authorities as may be determined and defined by Act of Parliament.
- (2) The delineation of the boundaries of the regions and Local Authorities referred to in Sub-Article (1) hereof shall be geographical only, without any reference to the race, colour or ethnic origin of the inhabitants of such areas.
- (3) Every organ of regional and local government shall have a Council as the principal governing body, freely elected in accordance with this Constitution and the Act of Parliament referred to in Sub-Article (1) hereof, with an executive and administration which shall carry out all lawful resolutions and policies of such Council, subject to this Constitution and any other relevant laws.
- (4) For the purposes of this Chapter, a Local Authority shall include all municipalities, communities, village councils and other organs of local government defined and constituted by Act of Parliament.
- (5) There shall be a Council of Traditional Leaders to be established in terms of an Act of Parliament in order to advise the President on the control and utilization of communal land and on all such other matters as may be referred to it by the President for advice.

Article 111 (2) of the Constitution also provides that the boundaries of Local Authorities, the election of Councils to administer the affairs of Local Authorities, the method of electing persons to Local Authority Councils, the methods of raising revenue for Local Authorities, the remuneration of Local Authority Councillors and all other matters dealing with or incidental to the administration and functioning of Local Authorities, shall be determined by Act of Parliament.

Guided by the Articles of Chapter 12 of the Constitution, the parliament of Namibia enacted two important legislations: the Regional Councils Act No. 22 of 1992 and the Local Authorities Act No. 23 of 1992, which provide for the establishment, powers, duties, functions and other related matters of the regional councils and local authority councils. Both of these Acts have been amended several times. The latest amendment to the Local Authorities Act is the Local Authorities Amendment Act No. 27 of 2003.

The Local Authorities Act No. 23 of 1992 defines the establishment of local authorities, which are also referred to as local authority councils in the Act. According to Section 2 of the Local Authorities Act, for the purposes of local government, as contemplated in Chapter 12 of the Constitution, there shall be local authority councils in respect of municipalities, towns and villages. Section 6 (1) of the Local Authorities Act prescribes that the affairs of a municipality shall be governed by a municipal council, the affairs of a town a town council, and the affairs of a village a village council.

The Local Authorities Act provides that the Minister responsible for regional and local government may from time to time by notice in the *Gazette* establish any area

specified in the notice as the area of a local authority, and declare such area to be a municipality, town or village under the name specified in the notice. The municipal councils are the most autonomous local authorities of the local authority categories. Under the Local Authorities Act, the Minister responsible for regional and local government may further classify the municipalities into two types: Part I municipalities and Part II municipalities.²¹ Currently there are three Part I municipalities (Windhoek, Walvis Bay and Swakopmund), 15 Part II municipalities, and in total 30 towns and villages in Namibia²².

The Local Authorities Act prescribes conditions according to which the Minister may declare a local authority as a municipality, town or village. The Minister may declare a local authority as a municipality only if its municipal council will in the opinion of the Minister be able to exercise and perform the powers, duties and functions conferred and imposed upon the municipal council in terms of the provisions of the Local Authorities Act, and be able to pay out of its own funds its debts incurred in the exercise and performance of such powers, duties and functions, and to comply with all its other liabilities and obligations so incurred.²³ In other words, a municipal council must pay all costs related to the execution of its powers and functions out of its own funds²⁴.

Similarly, the status of a town is obtained only if the town council is able to pay, with or without any financial or other assistance by the Government of Namibia or any regional councils, out of its funds its debts incurred in the exercise and performance of the powers, duties and functions assigned to it under the Local Authorities Act²⁵. This means that the town council has to be able to pay some of the costs out of its own funds. The Minister may declare a local authority as a village, if in the opinion of the Minister the village council can perform, with or without assistance from the Government of Namibia or any regional council or other local authority council, the powers, duties and functions conferred and imposed upon the village council in terms of the provisions in the Local Authorities Act. The Local Authorities Act does not prescribe any requirements for financial self-sufficiency on the village councils.²⁶

Part I municipalities generally have a solid financial basis and considerable autonomy with regard to the determination of property tax and obtaining loans under the provisions of the Local Authorities Act. Part II municipalities have a more fragile financial basis and are subject to control exercised by the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD) with respect to setting property rates and obtaining credit facilities. Most of the town councils cannot balance their budgets without substantial transfers from the central government or donors, and their financial autonomy, in general, is limited.²⁷

The Local Authorities Act provides that the Minister responsible for regional and local government may alter the status of the local authority councils²⁸. Both upgrading and downgrading of councils from town council to Part II municipality, and from village to town council, and vice versa, have happened. However, this does not necessarily imply that functions of the councils change.²⁹ According to Fjeldstad et al., there are three interesting implications of the self-sufficiency principle. First, the classification of councils is not related to the population size of the council as is the case in many other African countries. Second, since the principle is only stated in general terms in the Lo-

21 Local Authorities Act No. 23 of 1992, Section 3.

22 Association for Local Authorities in Namibia.

23 Local Authorities Act No. 23 of 1992, Section 3 (2)(a).

24 Fjeldstad et al. 2005, 11.

25 Local Authorities Act No. 23 of 1992, Section 3 (2)(b).

26 Local Authorities Act No. 23 of 1992, Section 3 (2)(c).

27 Fjeldstad et al. 2005, 6.

28 Local Authorities Act No. 23 of 1992, Section 4.

29 Fjeldstad et al. 2005, 7.

cal Authorities Act, it gives the Minister responsible for regional and local government considerable power of discretion with respect to the classification of councils, as well as the upgrading and downgrading of councils depending on their financial situation. Thirdly, as will be discussed in more detail in Chapter 7 on the financial resources of the local authorities, the financially self-sufficient municipal councils have a considerable degree of autonomy in running their affairs.³⁰

If a local authority council, excluding Part I municipalities, in the opinion of the Minister responsible for regional and local government fails to exercise its powers and perform its duties and functions by law imposed on such council, the Minister responsible for regional and local government may declare by a notice in the *Gazette* that all or some of the powers, duties and functions of the local authority council shall be vested in the Minister. The Minister may use this power if an audit report prepared by the Auditor General shows in the opinion of the Minister that the local authority council is unable to meet its financial commitments or that no proper control is exercised over the assets and liabilities of the council, or if the council does not comply with the requirements of Section 14 (1)(a) in relation to the holdings of meetings. The Minister may also remove or suspend the members of the local authority council in question from office if all or some of the powers, duties and functions of the local authority council are vested in the Minister. If the Minister exercises this power, the Minister has to set a date for an election of members of the local authority council in question, if a general election for members of local authority councils is to be held later than six months from the date of the notice.³¹

The members of the municipal, town and village councils are elected on party lists at a general election. The term of office of the local authority councillors is five years.³² The Local Authorities Act provides that a municipal council shall consist of such number of members, but not less than seven and not more than 15, as may be determined by the Minister responsible for regional and local government in the notice establishing the municipality in question. Similarly a town council shall consist of such number of members as may be determined by the Minister in the notice establishing the town, but not less than seven and not more than 12 members. In the first two general elections for a village council, seven members will be elected to the council. From the third general election for a village council onwards, five members will be elected to the council.³³ The Minister has the power to increase or decrease the number of members of a municipal council or town council³⁴.

The members of municipal councils and town councils elect a mayor and a deputy mayor from amongst themselves to be the chairperson and vice-chairperson of the council. The members of village councils elect a chairperson and a deputy chairperson from amongst themselves.³⁵ The Local Authorities Act prescribes that each municipal and town council must elect a management committee from among the councillors of the council. The mayor and deputy-mayor are *ex officio* members of the management committee. The number of other members in the management committee is three in the case of a municipal or town council constituted of nine or fewer members, four members in the case of a municipal council or town council constituted of ten members, or five members in the case of a municipal council or town council constituted of 11 or more members.³⁶ The powers, duties and functions of the management committee include, among other things, to deliberate on local authority affairs and make recommendations on policy to the full council, prepare for the approval of the local

30 Feldstad et al. 2005, 11–12.

31 Local Authorities Act No. 23 of 1992, Section 92.

32 Local Authorities Act No. 23 of 1992, Sections 6 (2), 8.

33 Local Authorities Act No. 23 of 1992, Section 6 (1).

34 Local Authorities Act No. 23 of 1992, Section 4 (1)(d).

35 Local Authorities Act No. 23 of 1992, Sections 11 (1), 12.

36 Local Authorities Act No. 23 of 1992, Section 21.

authority council the estimates and supplementary estimates of revenue and expenditure of the local authority council, and to ensure that the decisions of the local authority council are carried out³⁷.

Even though the local municipal and town councils have a management committee and a mayor, the executive power of a local authority council is vested in the council as a collective body. As discussed above, the Local Authorities Act prescribes that the affairs of a municipality, town and village shall be governed by a local authority council. Section 14 (5) of the Local Authorities Act provides that the decision of the majority of a local authority council present at the meeting thereof shall constitute a decision of the local authority council, and, in the event of an equality of votes relating to any matter, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote. However, a municipal council or a town council may delegate or assign to its management committee some of its powers and duties. The powers that may not be delegated to a management committee include power to make rules, to approve the council's estimates or supplementary estimates of revenue and expenditure, to determine rates, charges, fees or other moneys which may be levied under any provision of the Local Authorities Act, to borrow money, or any matter that the Minister responsible for regional and local government may determine by notice in the *Gazette*.³⁸

The local authority councils have power to establish from time to time such committees as they may deem necessary to advise them generally or in relation to any particular matter in the exercise of any of their powers or the performance of any of their duties and functions, and may appoint such members or such other persons as they may deem fit to be members of such committees³⁹. Also the management committees may establish from time to time such committees as they may deem necessary to advise them on the exercise of any of their powers or the performance of any of their duties and functions, and may appoint such members of the management committee or such other persons as they may deem fit to be members of such committees⁴⁰.

37 Local Authorities Act No. 23 of 1992, Section 26.

38 Local Authorities Act No. 23 of 1992, Section 31 (1).

39 Local Authorities Act No. 23 of 1992, Section 30 (1)(w).

40 Local Authorities Act No. 23 of 1992, Section 26 (1).

5 Remuneration of Political Office-Holders

The Local Authorities Act No. 23 of 1992 provides that the municipal council of a Part I municipality and, subject to such conditions as the Minister responsible for regional and local government may impose, the municipal council of a Part II municipality or a town council or a village council, may pay or provide to its members such remuneration, allowances and other benefits as it may from time to time determine. Any remuneration, allowances or other benefits paid or provided by the municipal council of a Part II municipality or a town council or a village council shall not exceed such remuneration, allowances or other benefits as the Minister may from time to time determine in respect of the municipal council, town council or village council in question. The Local Authorities Act also provides that any remuneration, allowances or other benefits determined by any of the local authorities may differ in respect of different members of local authority councils according to the different offices held by them in the local authority council, and the different powers, duties and functions exercised or performed by them from time to time.⁴¹

The Local Authorities Act also prescribes that a local authority council may indemnify its members in respect of any harm, damage or loss suffered by them in the course of the exercise or performance of their powers, duties and functions⁴².

⁴¹ Local Authorities Act No. 23 of 1992, Section 18 (1–3)

⁴² Local Authorities Act No. 23 of 1992, Section 18 (4).

6 Functions and Powers of Local Authorities

The powers, duties and functions of the local authority councils are prescribed in the Local Authorities Act No. 23 of 1992. Local authorities deliver services in urban areas, while the regional councils are responsible for specified service delivery in rural areas⁴³. However, the framework for service delivery in Namibia is being reformed. Namibia adopted a decentralisation policy in 1997⁴⁴. The strategy for implementing the decentralisation policy strives towards first decentralising by delegation a number of functions to the regional councils and local authorities, and ultimately devolving the political and administrative responsibility of the service provision to the regional councils and local authorities.

6.1 Functions and Powers under the Local Authorities Act

The powers, duties and functions of the different types of local authority councils are prescribed in Section 30 of the Local Authorities Act No. 23 of 1992, and defined further in other following Sections of the Act.

The Local Authorities Act prescribes that a local authority council shall exercise the power to supply water to the residents in its area for household, business or industrial purposes, to provide, maintain and carry on a system of sewerage and drainage for the benefit of the residents in its area, or to provide, maintain and carry on services for residents for the disposal of refuse. A municipal council or town council shall exercise the power to establish and maintain cemeteries, or to take over any cemetery situated within its area.⁴⁵ Some powers and functions, such as providing public transport service and abattoirs, are to be exercised by town councils and village councils only if the Minister responsible for regional and local government has assigned the power to a town council or village council by a notice in the Gazette.⁴⁶ Other than these provisions, the Local Authorities Act does not prescribe any minimum set of services that the local authorities should provide.

The Local Government Act provides that a local authority council may generally do anything that is necessary or conducive to the exercise of its powers and the performance of its duties and functions in terms of the Local Authorities Act⁴⁷.

Table 1 summarises the functions and powers of the local authorities as provided by the Local Authorities Act 1992.

43 Fjeldstad et al. 2005, 6; Regional Councils Act No. 22 of 1992, Section 28.

44 Ministry of Regional and Local Government, Housing and Rural Development 1997.

45 Local Authorities Act No. 23 of 1992, Section 30 (2)(a)(b).

46 Local Authorities Act No. 23 of 1992, Section 30 (3)(a)(b).

47 Local Authorities Act No. 23 of 1992, Section 30 (1)(ae).

Table 1. Powers of Local Authorities in terms of the Local Authorities Act

All local authorities	Towns and municipalities (plus villages with the Minister's consent)	Only municipalities (plus villages and towns with the Minister's consent)
<ul style="list-style-type: none"> • Water supply • Cemeteries • Sewerage and drainage • Streets and public places • Markets • Refuse disposal • Pounds • Bands and orchestras • Beautification of local areas • Promotion of tourism • Power to accept donations from sources inside Namibia • Power to buy and sell land and buildings • Power to set fees for services provided • Power to operate farms on town lands 	<ul style="list-style-type: none"> • Supply electricity and gas • Dipping tanks • Ambulance services • Fire brigades • Construct and maintain community buildings and structures • Power to buy and sell property other than land and buildings 	<ul style="list-style-type: none"> • Public transport • Quarries • Housing schemes • Museums and libraries • Abattoirs • Aerodromes • Plant nurseries • Parking areas • Railway sidings • Traffic services • Bursaries • Storage of perishable goods (goods which may spoil) • Power to confer honours for services to community • Power to enter into joint business ventures • Power to privatise functions and services

Source: Table adapted from Ministry of Regional and Local Government, Housing and Rural Development 2008b, 9.

Local authorities are responsible for the provision, operation and maintenance of a wide range of municipal infrastructures and services, as can be seen from Table 1.

A local authority council may enter into agreements with other local authority councils, the Government of Namibia or regional councils to act as an agent for the local authority council on any power, duty or function of the local authority council. The agreement may also provide that the local authority council performs the powers, duties or functions of the government or regional councils as their agent.⁴⁸

The local authority councils may, after consultation with the Minister responsible for regional and local government, make regulations by notice in the *Gazette* in relation to their functions and powers⁴⁹. Article 111 (5) of the Constitution prescribes that all regulations made by Local Authorities shall be tabled in the National Assembly and shall cease to be of force if a resolution to that effect is passed by the National Assembly. The procedure for this is defined in Section 94 (5) of the Local Authorities Act.

The Minister responsible for regional and local government may make regulations relating to, among other things, the establishment and composition of local tender boards, the circumstances under which a local authority council may enter into joint business ventures, and the circumstances under which a local authority council may commercialise any service rendered or function or duty exercised or carried out by it⁵⁰.

As discussed above in Chapter 4 on the composition of the local authorities, the Minister responsible for Local and Regional Government and Housing has power to discharge any or all powers, duties and functions of the local authority councils except the councils of Part I municipalities, if the councils in the opinion of the Minister fail to exercise adequately their functions and perform their powers and duties by law im-

48 Local Authorities Act No. 23 of 1992, Section 32.

49 Local Authorities Act No. 23 of 1992, Section 94.

50 Local Authorities Act No. 23 of 1992, Section 94A.

posed on such council, and vest the powers, duties and functions in question in the Minister. The Minister may also use this power if an audit report prepared by the Auditor General shows in the opinion of the Minister that the local authority council, excluding Part I municipality councils, is unable to meet its financial commitments or that no proper control is exercised over the assets and liabilities of the council, or if the council does not comply with the requirements of Section 14 (1)(a) in relation to the holdings of meetings.⁵¹

6.2 Decentralisation Policy and its Implementation

Namibia has adopted a decentralisation policy in 1997⁵². In the implementation of the decentralisation policy, the government has adopted a two-phase strategy. Firstly, the strategy includes a phase of delegation of functions from line ministries to regional councils and local authorities, which enables and empowers them to function as agents on behalf of the line ministries. Secondly, the strategy includes a phase of devolution, in which the political and administrative responsibility for the delivery of services that has been vested in the line ministries will be devolved to the regional councils and local authorities.⁵³ Because of the complexity of the processes of the decentralisation policy, the implementation started with preparations for delegation of functions in April 1998. The ultimate aim is to decentralise the functions by devolution to the regional councils and local authorities within the framework of the unitary state.⁵⁴

The Decentralisation Enabling Act No. 33 of 2000 is the most important legislation providing for the decentralisation policy. The Decentralisation Enabling Act has overriding effect vis-à-vis sector legislation.⁵⁵ The Decentralisation Enabling Act provides that the Minister responsible for regional and local government matters may decentralise, by notice in the *Gazette* and subject to provisions in Section 2 of the Act, to any regional or local authority council any function determined by him or her. When the Minister decentralises a function, he or she has to state whether the decentralisation of the function defined in the notice is a delegation or a devolution of the function. The Minister must exercise this power only in consultation with the Cabinet, and after consulting prior to the decentralisation of any function the Minister responsible for the Line Ministry concerned.⁵⁶ This means that the Minister may exercise his or her power to decentralise functions only with the approval of the Cabinet. The Minister must also consult the Line Ministry in question, but the approval of the Minister responsible for the Line Ministry is not required for the decentralisation of the function.⁵⁷

The Decentralisation Enabling Act also provides provisions under which the Minister responsible for regional and local government matters may withdraw the delegated and devolved functions. For example, the Minister may withdraw a delegated or devolved function if the local authority council in question is no longer able or competent to perform the function concerned. The Minister may withdraw delegated or devolved functions only in consultation with the Cabinet.⁵⁸

In the Decentralisation Policy of 1997 the functions to be decentralised are divided by timing of decentralisation – that is whether the decentralisation of a function will be implemented immediately, in the medium term, or in the long term. The decentralisation policy also distinguishes which functions are to be decentralised to regional

51 Local Authorities Act No. 23 of 1992, Section 92.

52 Ministry of Regional and Local Government, Housing and Rural Development 1997.

53 Ekandjo, Jerry, Minister, Regional and Local Government, Housing and Rural Development 2008.

54 Ministry of Regional and Local Government, Housing and Rural Development 1998.

55 Ekandjo, Jerry, Minister, Regional and Local Government, Housing and Rural Development 2008.

56 Decentralisation Enabling Act No. 33 of 2000, Section 2.

57 Ministry of Regional and Local Government, Housing and Rural Development 2008a, 17.

58 Decentralisation Enabling Act No. 33 of 2000, Sections 5, 6.

councils or different types of local authorities; Part I and II municipalities, towns, and villages.⁵⁹

The decentralisation policy identifies a number of functions to be decentralised to the local authorities. For example, the functions to be decentralised to Part I municipalities include, among other things, community development and early childhood development, responsibility and accountability for electricity distribution, full responsibility for the environment and conservation, primary health care, and pre-primary and primary education. Some of these functions such as primary health care and primary education are identified to be also decentralised to Part II municipalities along with other identified functions. Functions to be decentralised to towns include, among other things, traffic control, vehicle registration, sales tax collection, libraries, sports and recreational facilities, and tourism. Functions to be decentralised to villages include, among other things, collection of taxes, recreational facilities, water services collection fees, and tourism management.⁶⁰

Functions that were identified to be decentralised to the regional councils include many of the same functions as the ones identified for the local authorities, such as primary health care and primary education. The regional councils were also to be assigned responsibility of rural water development and management, among other things.⁶¹

The pace of implementing the decentralisation policy has been slow to take hold, and a number of functions that were initially envisaged to be decentralised by the year 2002 have not yet been decentralised to the regional councils and local authorities.⁶² Alongside the adoption of the decentralisation policy and the strategy for its implementation, the National Assembly earmarked a number of functions for decentralisation to regional councils and local authorities with immediate effect. The functions include the following⁶³:

- community development and early childhood development;
- administration of settlements;
- rural water development and management;
- management and control of communal lands;
- primary health care;
- pre-primary and primary education;
- forest development and management;
- physical and economic planning (including capital development projects);
- emergency management;
- resettlement, rehabilitation and housing;
- regional council personnel responsibility;
- vehicle testing and licensing;
- rural electricity distribution;
- town planning schemes within the framework of approved master plans;
- business registration;
- housing provisions;
- electricity distribution;
- liquor licensing;
- environment conservation;
- social services;
- youth, sports and recreational activities;

59 Ministry of Regional and Local Government, Housing and Rural Development 1997.

60 For a full list of functions and phases of timing for their decentralisation see Ministry of Regional and Local Government, Housing and Rural Development 1997.

61 Ministry of Regional and Local Government, Housing and Rural Development 1997.

62 Boex et al. 2005, i; CLGE, 140–141.

63 Ministry of Regional and Local Government, Housing and Rural Development 2008b, 11–12.

- collection of assessment rates and some form of taxes, excluding income tax, general sales tax, and additional sales levies;
- libraries;
- agency services to towns, villages and settlements;
- traffic control;
- control of aerodromes;
- rural assets management; and
- small miners development.

According to the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD), while many of the above listed minor functions had been decentralised to the regional councils and local authorities even before the promulgation of the Decentralisation Enabling Act of 2000, none of the functions that are the most substantial ones, except rural water supply, had been decentralised by 2007. These include primary health care, pre-primary and primary education, lands management and resettlement, and forestry and parks development and management.⁶⁴

Only few line ministries have progressed well in preparations for the delegation of functions, the secondment of staff to sub-national entities and the transfer of assets and other resources since the enactment of the Decentralisation Enabling Act of 2000 and the Decentralisation Implementation Plan (DIP), which is a road map for the decentralisation implementation process endorsed by the Cabinet in 2001. The Namibia Vision 2030 published in 2004 and the National Development Plans II and III provide the overall planning framework for the decentralisation process. The line ministries failure to prepare the processes needed for decentralisation on time, mainly because of unwillingness within the ministries, is noted in the Namibia Vision 2030. The government has also acknowledged that the magnitude and complexity of the decentralisation process has been grossly underestimated since the introduction of the decentralisation policy.⁶⁵

Despite of the slowness of the planned implementation of the decentralisation policy, progress has been made. According to the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD), a level of enabling environment and sub-national governments' readiness has now been created, which enables the line ministries to start negotiating with the regional councils, which are to receive the bulk of the delegated functions from the line ministries. However, the local authorities are not expected to receive additional functions from line ministries in the short term. Some of the problems to be addressed before local authorities can receive more functions from the line ministries include, among other things, dilapidated infrastructure, gaps in the legislation governing local authorities, lack of capacities of the local authorities in meeting the requirements of their responsibilities, local authorities' poor revenue base, and insufficient financial and technical resources. MRLGHRD is preparing for the initiation of a local government reform to overcome the identified structural and performance-related shortcomings in local authorities. The local authorities are still expected to play an increasingly important role in the medium to long term of the implementation of the decentralisation policy.⁶⁶

64 Ministry of Regional and Local Government, Housing and Rural Development 2008b, 12. This publication is the 2nd edition if the original booklet printed in September 2007.

65 Ministry of Regional and Local Government, Housing and Rural Development 2008b, 9–10, 12.

66 Ministry of Regional and Local Government, Housing and Rural Development 2008b, 3, 15, 19.

7 Financial Resources of Local Authorities

The local authorities' own source revenues in Namibia consist mainly of different kinds of rates, charges and fees, and revenue from letting and selling immovable property such as land. The local authorities have power to determine by notice in the *Gazette* the charges and fees for the services, amenities and facilities provided by them under the Local Authorities Act No. 23 of 1992 subject to certain restrictions prescribed in other relevant Acts, such as the Acts regulating rates of interest⁶⁷. The local authorities may also determine rates for property. Levying some special rates, such as a penalty rate on rateable property, require the prior approval of the Minister responsible for regional and local government⁶⁸. Local authorities must share five percent of the revenue they collect on the property rates with the regional councils⁶⁹. The local authorities may also sell townlands with the approval of the Minister. The local authorities may let townlands for maximum of one year and sell other immovable property than townlands without having to acquire the approval of the Minister.⁷⁰ The local authorities may also receive funds from other resources, such as donations from donors and transfers from the central government⁷¹. The Trust fund for Regional Development and Equity Provisions Act No. 22 of 2000 was enacted to provide central government financial assistance to the implementation of the decentralisation programmes at regional and local authority levels, and also, among other things, to provide funding for developmental projects and formulation of other specific projects in the regions or local authorities⁷².

As discussed above in Chapter 4 on the composition of the local authorities, the Local Authorities Act prescribes conditions according to which the Minister may declare a local authority as a municipality, town or village. As summarised by Fjeldstad et al., to obtain municipal status, a council must pay all costs related to the execution of its powers and functions out of its own funds. Town council status is obtained when a council is able to pay some of these costs. Village council status is obtained if it can perform specified mandatory functions, but there is no specific requirement for financial self-sufficiency stated in the Act.⁷³

Part I municipalities generally have a solid financial basis and considerable autonomy with regard to the determination of property tax and obtaining loans under the provisions of the Local Authorities Act. Part II municipalities have a more fragile financial basis and are subject to control exercised by the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD) with respect to setting property rates and obtaining credit facilities. Most of the town councils cannot balance their budgets without substantial transfers from the central government or donors, and their financial autonomy, in general, is limited.⁷⁴

The Local Authorities Act provides that the local authority councils may not incur any expenditure in respect of which an amount of money has been appropriated

67 Local Authorities Act No. 23 of 1992, Sections 30 (1)(u), 80 (1)(b).

68 Local Authorities Act No. 23 of 1992, Section 76A.

69 Local Authorities Act No. 23 of 1992, Section 77.

70 Local Authorities Act No. 23 of 1992, Sections 30 (1)(t), 63 (1).

71 Local Authorities Act No. 23 of 1992, Section 80 (1).

72 Trust Fund for Regional Development and Equity Provisions Act No. 22 of 2000, Sections 2–3.

73 Fjeldstad et al. 2005, 11.

74 Fjeldstad et al. 2005, 6.

and which relates to revenue derived from the Government of Namibia, unless it has obtained prior authorisation of the Minister responsible for regional and local government⁷⁵. Therefore the requirement of obtaining an authorisation from the Minister for the expenditures financed from government transfers clearly limits the financial autonomy of the local authorities, which are dependent on the transfers.

Fjeldstad et al. highlight some essential features that relate to the striving towards financial self-sufficiency of the local authorities⁷⁶:

- Local authorities aim – or are pushed – to operate on a full cost recovery basis for all services that they deliver, although some – mainly sector specific and area based – cross-subsidisation is made;
- Local authorities generate most of their funds from user fees except for the more well established authorities which levy property taxes and sell land; and
- Local authorities receive limited funding from central government, and then mainly for specific investment projects on an *ad hoc* basis. There is also some recurrent cost support from the central government on an *ad hoc* basis.

The central government has only in recent years started to develop recurrent and development grants systems for the local authorities and regional councils. A draft policy paper for the implementation of a development and recurrent grant system has been drafted⁷⁷. The development of grant systems for regional councils seems to have advanced further than the systems for local authorities, as the central government is preparing to decentralise by delegation functions to the regional councils sooner than to the local authorities⁷⁸.

Fjeldstad et al. describe some of the problems with the local authorities' own source revenue in the context of growing urban population as follows:

...local authorities rely mainly on user charges, especially on water and electricity, to obtain the revenues that are needed to finance their operations. This revenue is generated by a surcharge added to the cost of the utilities that the local authorities typically buy from the utility companies, or, if the authority itself produces the utility, added to the cost of producing it. However, according to a recent study commissioned by the ministry responsible for local government⁷⁹ the majority of town councils are not determining their tariffs in accordance with an approved tariff policy. Hence, several trading services, including water distribution, are operated with significant losses in a number of local authorities. The situation is worsened by an increasing number of outstanding debtors in all local authorities, i.e. consumers who do not pay for basic services due to various reasons, including affordability. A number of town councils therefore find it increasingly difficult to sustain their service levels without using their accumulated surpluses.⁸⁰

75 Local Authorities Act No. 23 of 1992, Section 84.

76 Fjeldstad 2005, 12.

77 Ministry of Regional and Local Government, Housing and Rural Development 2008b, 11.

78 See e.g. Boex et al. 2006.

79 Ministry of Regional and Local Government, Housing and Rural Development 2004, 19.

80 Fjeldstad et al. 2005, 12.

8 Conclusion

This chapter summarises some of the most central issues identified in the present study which relate to the principles of local self-government used as a guiding framework in the study.

Constitutional and legal foundation for local self-government

The Constitution of the Republic of Namibia provides that for the purposes of regional and local government, Namibia shall be divided into regional and local units, which shall consist of such region and Local Authorities as may be determined and defined by Act of Parliament. According to the Constitution every local authority shall have a council as the principal governing body. The Local Authorities Act No. 23 of 1992 provides for the establishment, powers, duties, functions and other related matters of the local authorities.

Concept of local-self government

The compositions of the councils of the local authorities are provided in the Local Authorities Act. The members of the municipal (Part I and Part II municipalities), town and village councils are elected on party lists at a general election. The Minister responsible for regional and local government may determine the number of councillors in the local authority councils within the limits set by the Local Authority Act.

The Minister responsible for regional and local government may declare a local authority as a municipality if the municipal is able to pay all costs related to the execution of its powers and functions out of its own funds. Similarly, the status of a town is obtained only if the town council is able to pay with or without any financial or other assistance by the Government of Namibia or any regional councils, out of its funds its debts incurred in the exercise and performance of the powers, duties and functions assigned to it under the Local Authorities Act, meaning that the town council has to be able to pay some of the costs out of its own funds. The Minister may declare a local authority as a village, if in the opinion of the Minister the village council can perform, with or without assistance from the Government of Namibia or any regional council or other local authority council, the powers, duties and functions conferred and imposed upon the village council in terms of the provisions in the Local Authorities Act. The Local Authorities Act does not prescribe any requirements for financial self-sufficiency on the village councils.

Part I municipalities are most autonomous of the local authorities, followed by Part II municipalities, towns and villages. The Local Authorities Act provides that the Minister responsible for regional and local government may alter the status of the local authority councils by upgrading or downgrading them, for example by upgrading a town into a Part II municipality.

Local authorities are responsible for the provision, operation and maintenance of a wide range of municipal infrastructures and services. The decentralisation of key public services, such as education and health, to local authorities as planned in the decentralisation policy of Namibia has progressed slowly.

Scope of Local self-Government

The basic powers and responsibilities of the local authorities are prescribed in the Local Authorities Act, and the Act provides some discretion to the local authorities to exercise their initiative with regard to any matter which is not excluded in their competence.

The local authority councils may, after consultation with the Minister responsible for regional and local government, make regulations by notice in the *Gazette* in relation to their functions and powers. Article 111 (5) of the Constitution prescribes that all regulations made by Local Authorities shall be tabled in the National Assembly and shall cease to be of force if a resolution to that effect is passed by the National Assembly.

Namibia has adopted a policy of decentralisation. The strategy of implementation of the policy consists firstly of delegating functions from the line ministries to the regional councils and local authority councils. Ultimately the aim of the implementation strategy is to devolve the functions to the regional councils and local authority councils. The implementation of the decentralisation policy has advanced slower than initially planned, and currently the government is preparing to decentralise functions to the regional councils before decentralising functions to the local authority councils.

If a local authority council, excluding Part I municipalities, in the opinion of the Minister responsible for regional and local government fails to exercise its powers and perform its duties and functions by law imposed on such council, the Minister responsible for regional and local government may declare by a notice in the *Gazette* that all or some of the powers, duties and functions of the local authority council shall be vested in the Minister. The Minister may use this power if an audit report prepared by the Auditor General shows in the opinion of the Minister that the local authority council is unable to meet its financial commitments or that no proper control is exercised over the assets and liabilities of the council, or if the council does not comply with the requirements in relation to the holdings of meetings. The Minister may also remove or suspend the members of the local authority council in question from office if all or some of the powers, duties and functions of the local authority council are vested in the Minister.

Conditions under which responsibilities at local level are exercised

The Local Authorities Act provides that the municipal council of a Part I municipality and, subject to such conditions as the Minister responsible for regional and local government may impose, the municipal council of a Part II municipality or a town council or village council, may pay or provide to its members such remuneration, allowances and other benefits as it may from time to time determine. Any remuneration, allowances or other benefits paid or provided by the municipal council of a Part II municipality referred or a town council or a village council shall not exceed such remuneration, allowances or other benefits as the Minister may from time to time determine in respect of the municipal council, town council or village council in question. Any remuneration, allowances or other benefits determined by any of the local authorities may differ in respect of different members of local authority councils according to the different offices held by them in the local authority council, and the different powers, duties and functions exercised or performed by them from time to time.

Financial resources of local authorities

The local authorities' own source revenues consist mainly of different kinds of rates, charges and fees, and revenue from letting and selling immovable property such as land. The local authorities have power to determine the charges and fees for the services, amenities and facilities provided by them under the Local Authorities Act subject to certain restrictions. The local authorities may also determine rates for property.

Levying some special rates require the prior approval of the Minister responsible for regional and local government.

Part I municipalities generally have a solid financial basis and considerable autonomy with regard to the determination of property tax and obtaining loans under the provisions of the Local Authorities Act. Part II municipalities have a more fragile financial basis and are subject to control exercised by the Ministry of Regional and Local Government, Housing and Rural Development with respect to setting property rates and obtaining credit facilities. Most of the town councils cannot balance their budgets without substantial transfers from the central government or donors. Their financial autonomy is limited as the intergovernmental transfers are allocated on *ad hoc* basis, and the approval of the Minister responsible for regional and local government is required for expenditures paid from the funds of the intergovernmental transfers.

The legislation does not provide that the financial resources of the local authorities shall be commensurate with the responsibilities provided for by the constitution and the law. The local authorities are pushed towards financial self-sufficiency to obtain a more autonomous status. The Government of Namibia has started to develop a system of recurrent and development grants to local authorities in recent years.

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Annex 1. Selected Principles of Local Self-Government

The principles selected and defined for a flexible guiding framework of the study:

CE = Council of Europe: European Charter of Local Self-Government

UN-Habitat = UN-Habitat: International Guidelines on Decentralisation and the Strengthening of Local Authorities

1. Constitutional and legal foundation for local self-government:

The principle of local self-government is recognised in domestic legislation, and where practicable in the constitution. (Based on CE Art. 2 & UN-Habitat Part C 1.1.)

2. Concept of local self-government:

1. The concept of a council or an assembly is recognised in domestic legislation.
 - Description of the composition of councils and assemblies: elected and appointed members etc.
2. Local authorities have authority to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
 - Description of the extent of the authority

The above is based on CE Art. 3.1, Art. 3.2. and UN-Habitat Part C1.1. Remarks: The CE Art. 3.1 notion of “substantial share of public affairs” varies even in Europe. UN-Habitat Part C1.1 speaks only of a legally autonomous sub-national entity without defining the concept (the extent of authority and composition of council membership) explicitly.

3. Scope of local self-government:

1. The basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, this provision does not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. (Based on CE Art. 4.1 & cf. UN-Habitat Part C1.2, Part B1.6.)
2. Local authorities have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. (Based on CE Art 4.2 & cf. UN-Habitat Part C1.5, C2.6.)
3. The principle of subsidiarity: Public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. (Based on CE Art. 4.3 & UN-Habitat Part B1.1, B1.5.)
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. (Based on CE Art. 4.4 & cf. UN-Habitat C2.6.)
5. Where powers are delegated to them by a central or regional authority, local authorities are guaranteed discretion in adapting their exercise to local conditions. (Based on CE Art. 4.5 & UN-Habitat Part D2.9.)

4. Conditions under which responsibilities at local level are exercised

1. The conditions of office (material and remunerative) of local political office holders should provide for free exercise of their functions. (Based on CE Art. 7.1, 7.2 & UN-Habitat A2.11.)

5. Financial resources of local authorities:

1. Local authorities are entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. (Based on CE Art. 9.1 & UN-Habitat D2.10.)

2. It is recognised in legislation that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. Local authorities should be guaranteed the resources necessary to exercise powers delegated to them by central or regional governments. (Based on CE Art. 9.2 & UN-Habitat D2.8.)
3. At least part of the financial resources of local authorities derive from local taxes and charges of which, within the limits of the statute, they have the power to determine the rate. (Based on CE Art. 9.3 & cf. UN-Habitat D2.11.)

Annex 2. European Charter of Local Self-Government

European Charter of Local Self-Government
Strasbourg, 15.10.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribu-

tion to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - o Article 2,

- o Article 3, paragraphs 1 and 2,
 - o Article 4, paragraphs 1, 2 and 4,
 - o Article 5,
 - o Article 7, paragraph 1,
 - o Article 8, paragraph 2,
 - o Article 9, paragraphs 1, 2 and 3,
 - o Article 10, paragraph 1,
 - o Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
 3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex 3. International Guidelines on Decentralisation and the Strengthening of Local Authorities

Sections of the UN-Habitat 2007 International Guidelines on Decentralisation and the Strengthening of Local Authorities

A. Governance and democracy at the local level

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.

12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.
13. Mechanisms should be put in place to allow citizens to reinforce the code.
14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.
4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C Administrative relations between local authorities and other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.
11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions - if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.

14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.
19. Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.

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Summary

This study examines aspects of local self-government (so called legally autonomous sub-national entity/autonomous local authority) in the Republic of South Africa. The object of the study is to provide basic information on local self-government in South Africa by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework.

The principles applied as a framework in the study were formed using the European Charter of Local Self-Government and the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities as a basis. The principles are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities.

The legislation in South Africa provides quite comprehensive a framework for local self-government. The concept of a municipal council and the authority of the municipal council are recognised in the Constitution and in national legislation.

The constitution prescribes the basic functions and powers of the municipalities, which are defined further in national legislation. The Constitution and national legislation provide quite strict restrictions to provincial intervention in functions and powers prescribed to municipal executive authority. The Constitution provides that the three spheres of government in South Africa, the national, provincial and local spheres, engage in cooperative government.

The municipalities in South Africa are largely self-financing, although there are differences in the ability of the richer and poorer municipalities to generate revenue. The legislation provides that the municipalities are entitled to resources commensurate to their responsibilities, but in many service sectors this is not realised in practice as poverty is pervasive especially in the rural areas.

Some of the problems facing local government in South Africa include variations in resources between the richer and poorer municipalities to exercise their authority and provide basic services. With many services there is also confusion on the division of roles and responsibilities between the different categories of municipalities and the provincial government, which has led to inefficiencies in service provision.

Abbreviations

MEC	Member of the Executive Council
Municipal Structures Act	Local Government: Municipal Structures Act No. 117 of 1998
Municipal Systems Act	Local Government: Municipal Systems Act No. 32 of 2000
REDs	Regional Electricity Distributors
SALGA	South African Local Government Association
UN-Habitat	United Nations Human Settlements Programme

1 Introduction

The present study examines aspects of local self-government in the Republic of South Africa. The object of the study is to provide basic information on some selected aspects of local self-government in South Africa by using some of the internationally recognised principles of local self-government as a guideline and framework. The study is part of a larger study concentrating on providing information on issues shaping local self-government in the African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study.

The study uses a selected set of internationally recognised principles of local self-governance as a starting point to the study. The questions concerning the application of the principles in different countries and contexts as well as the criteria for the selection of and defining the principles used as a framework in the study are discussed in further detail in Chapter 2. To summarise the application of the principles, the selected principles are used as a relatively flexible framework guiding the approach and concentration of the study. These guiding principles are listed in Annex 1 of the present study. The study does not try to compare the local self-government in the selected countries in a systematic way or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

The present study aims to provide an overview on the scope of local self-government in South Africa by giving an overall picture of the local government authorities' basic powers and responsibilities to regulate and manage public affairs, possibilities to exercise initiative within their powers and functions, and the exclusiveness of their authority. The study also discusses briefly the financial resources of the local government authorities, and highlights some of the effects that the composition of the financial resources has on local self-government in South Africa.

In addition to describing the basic functions and powers prescribed to the local government authorities in the Constitution of South Africa of 1996 and the different Acts on local government, the study discusses the functions of the local government authorities in providing services in electricity distribution and municipal roads supply and maintenance in order to give examples on how the municipalities are able to exercise their authority – how the local self-government is realised in practice. The discussions are not exhaustive, but rather try to give a picture on the legislative, policy and operational frameworks in which the local government authorities operate. The Government of South Africa has defined electricity and municipal roads as one of the priorities in attaining social and economic development. Water and sanitation are also defined as urgent priorities, but as the Association of Finnish Local and Regional Authorities has already commissioned a study¹ on local environmental management and administration in the North-South Local Government Co-operation Programme

1 Refer to Peltola, Outi 2008: *Selvitys Suomen, Namibian, Etelä-Afrikan, Tansanian, Kenian, Ghanan ja Swasimaan paikallisesta ympäristöhallinnosta*. Suomen Kuntaliitto, Helsinki.

countries, functions in water and sanitation service provision were not selected to be treated in further detail in the present study.

The study was conducted as a desk study. The material of the study comprises mainly of legislations, reports and policies of government institutions, and different kinds of manuals and presentations produced by aid agencies and the South African Local Government Association (SALGA).

The study first produces an overview on the local government authorities in South Africa. Then the study discusses the composition of local government authorities and remuneration of political office holders before turning to examining the functions and powers of the local government authorities. After that the study describes some aspects of the financial resources available to the local government authorities. Finally the study illustrates some elements of the roles of the local government authorities as service providers in electricity distribution and municipal roads supply and maintenance, and summarises some of the central issues identified in the study relating to the principles of local self-government that were used as a framework in the study.

2 Principles of Local Self-Government

There are some internationally recognised principles shaping the conception of local self-government, such as the *European Charter of Local Self-Government*² and the *International Guidelines on Decentralisation and the Strengthening of Local Authorities* published by the United Nations Human Settlements Programme (UN-Habitat)³. However, there are no global standards or charter on local self-government, which would be applicable to countries worldwide, even though the guidelines of the UN-Habitat represent a product of efforts to create a global charter on the principles of local-self-government comparable to the European Charter of Local Self-Government.

The European Charter of Local Self-Government was adopted by the Council of Europe and opened for signature by the member states of the Council of Europe on 15 October 1985. The European Charter of Local Self-Government is not an attempt to create common local government legislation in Europe, but the Charter sets a framework for local self-government at the local level, which the states member to the Charter must uphold. The Charter allows flexibility for the member states in determining their framework. The Charter provides that the member states ratifying, accepting or approving the Charter must consider themselves bound by at least twenty paragraphs of Part I of the Charter, ten of which from among specified paragraphs. The principles in the Charter form a flexible framework and a set of goals which the member states parties to the Charter should aspire to achieve.

After the European Charter of Local Self-Government was opened for signature, the national associations of local authorities which participated in the drafting of the Charter sought to create a world-wide charter on local self-government. Some national spheres of government also supported the quest. Some international associations of local authorities such as the International Union of Local Authorities (IULA) and later the United Cities and Local Governments (UCLG) formed in 2004 started exchanging ideas in close collaboration with UN-Habitat on a possible World Charter of Local Self-Government in the follow-up to the Habitat II Conference held in Istanbul in 1996 where local authorities made the case for the preparation of a worldwide charter on local autonomy. The World Charter met resistance among some Member States of the United Nations mainly because they considered that the Charter addressed issues in the realm of internal affairs of the Member States. Finally a step towards the goal was made in April 2007 when the Governing Council of the UN-Habitat approved the International Guidelines on Decentralisation and the Strengthening of Local Authorities. The Second Committee of the United Nations General Assembly has noted the approval of the guidelines by the UN-Habitat Governing Council in the following way at the sixty-second session of the General Assembly:

Notes the approval by the Governing Council of UN-Habitat of the guidelines on decentralization and strengthening of local authorities, and requests UN-Habitat to assist interested Governments in adapting the guidelines to their national contexts, where appropriate, and in further developing tools and indicators as part of its support for the application of the guidelines, bearing in mind

2 Council of Europe 1985.

3 UN-Habitat 2007.

that the guidelines do not constitute a uniform or rigid blueprint to be applicable to all States Members of the United Nations.⁴

As the principles in the European Charter of Local Self-Government and the UN-Habitat guidelines are numerous, the present study uses a selected set of principles as a flexible framework guiding the approach and the concentration of the study in its efforts to highlight some essential governance issues and relations of power that shape local self-government in South Africa. The principles were formed using the European Charter of Local Self-Government and the UN-Habitat guidelines as a basis. The principles formed are listed in Annex 1. They are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities. For reference and comparison, the articles of the European Charter of Local Self-Government are listed in Annex 2, and the sections of the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities are listed in Annex 3.

The same principles are used as a framework also in the other country studies concentrating on the North-South Local Government Co-operation Programme countries, but the country studies do not attempt to compare the local self-government in the selected countries in a systematic way, or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

4 United Nations General Assembly 2007, Section II.6.6.

3 Overview on the Local Government System

The municipal system forming the local government sphere in South Africa has been restructured since the end of apartheid and the first free general election in South Africa in 1994. New legislations changing the provisions for the determining boundaries, functions and powers, and other governance issues of municipalities have been passed, and many processes are still on-going.

In the Republic of South Africa, the government is constituted of national, provincial and local spheres of government. The Constitution provides that the three spheres of government are distinctive, interdependent and interrelated.⁵

The national sphere of government consists of a Parliament, which is the legislative authority of South Africa, and has the power to make laws for the country in accordance with the Constitution. The Parliament consists of the National Assembly and the National Council of Provinces (NCOP). The Parliament was established in 1994. The National Assembly consists of no fewer than 350 and no more than 400 members elected through a system of proportional representation for a term of five years. The National Council of Provinces consists of 54 permanent members and 36 special delegates, and aims to represent provincial interests in the national sphere of government. Delegations consist of 10 representatives from each province. The National Council of Provinces must have a mandate from the provinces before it can make certain decisions. The National Council of Provinces cannot initiate a Bill concerning money, which is the prerogative of the Minister of Finance.⁶

The provincial sphere of government consists of provinces. There are currently nine provinces in South Africa. Each province has its own legislature, which consists of between 30 to 80 members. The executive council of a province consists of a premier and a number of Members of the Executive Council (MECs). The premiers are appointed by the President of the Republic of South Africa.⁷

The local sphere of government consists of municipalities. Their functions are concentrated on local economies and providing infrastructure and services. In accordance with the Constitution and the Organised Local Government Act No. 52 of 1997, organised local government (currently referring to the South African Local Government Association, SALGA) may designate up to 10 part-time representatives to represent municipalities and to participate in proceedings of the National Council of Provinces.⁸

Chapter 3 of the Constitution prescribes principles for cooperative government for the three spheres of government. These principles are defined further in the Intergovernmental Relations Framework Act No. 13 of 2005, which provides among other things the establishment of intergovernmental forums at national, provincial and municipal levels.

The status of the municipalities is defined in the Constitution of the Republic of South Africa, 1996, Section 151 as follows:

5 Constitution of the Republic of South Africa, 1996, Chapter 3.

6 Government Communication and Information System 2008, 296.

7 Government Communication and Information System 2008, 300.

8 Government Communication and Information System 2008, 302.

- (1) The local sphere of government consists of municipalities, which must be established for the whole territory of the Republic.
- (2) The executive and legislative authority of a municipality is vested in its Municipal Council.
- (3) A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.
- (4) The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

The Constitution of 1996 provides that the local government in South Africa is divided into three categories of A, B and C, and that these categories should be further defined in national legislation. Guided by the Constitution, the Local Government: Municipal Structures Act No. 117 of 1998 prescribes that the local government in South Africa is divided into three categories⁹:

- 'metropolitan municipality' means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155 (1) of the Constitution as a category A municipality;
- 'local municipality' means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155 (1) of the Constitution as a category B municipality;
- 'district municipality' means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155 (1) of the Constitution as a category C municipality.

The division of the local government into the three categories of municipalities means that the local government in South Africa is a mix of unitary and two tiered structures. There are currently in total 282 municipalities in South Africa¹⁰. The Local Government: Municipal Structures Act of 1998 provides that the metropolitan municipalities (category A municipalities), which have exclusive executive and legislative authority in their area, can only be established in metropolitan areas¹¹. At the moment there are nine metropolitan municipalities¹²:

- Buffalo City (East London)
- City of Cape Town
- Ekurhuleni Metropolitan Municipality (East Rand)
- City of eThekweni (Durban)
- City of Johannesburg
- Mangaung Municipality (Bloemfontein)
- Msunduzi Municipality (Pietermaritzburg)
- Nelson Mandela Metropolitan Municipality (Port Elizabeth)
- City of Tshwane (Pretoria)

The Local Government: Municipal Structures Act provides that the areas which are not eligible for a metropolitan municipality status must have district municipalities (category C municipalities) and local municipalities (category B municipalities) within

9 Local Government: Municipal Structures Act No. 117 of 1998, Section 1.

10 Government Communication and Information System 2008, 302.

11 Local Government: Municipal Structures Act No. 117 of 1998, Section 2.

12 Government Communication and Information System 2008, 303.

their area¹³. Therefore the non-metropolitan areas consist of district municipalities, which contain several local municipalities within their area. At the moment there are in total 46 district municipalities in South Africa¹⁴.

The municipal councils of metropolitan municipalities, district municipalities, and local municipalities are called, respectively, metro councils, district councils, and local councils.

Section 6 of the Local Government: Municipal Structures Act of 1998 provides that if there are parts of district municipalities' areas in which the local municipalities are not viable (for example because of low population density) in terms of the fulfilment of the objectives set in Section 24 of the Municipal Demarcation Act of 1998, these parts will not have local municipalities within their area. In stead, the Demarcation Board, which is an institution responsible for determining the municipal boundaries, can after consulting with the Minister responsible for local government (currently situated at the Department of Local and Municipal Government, DPLG) and the MEC for local government in the province concerned, declare these parts as district management areas. The district municipalities are directly responsible for the service provision and have all the municipal functions and powers in the district management areas¹⁵. In 2003 there were 25 district management areas in South Africa. They consisted of ten low population areas, two world heritage sites, nine provincial parks, and four national parks.¹⁶

Section 155 (3)(b) of the Constitution provides that national legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority. The Municipal Demarcation Board was established by the Local Government: Municipal Demarcation Act No. 27 of 1998. The main function of the Municipal Demarcation Board is to determine the boundaries of the municipalities in accordance with the Municipal Demarcation Act and other related legislation.

Section 4 of the Municipal Demarcation Act provides:

The functions of the Board are-

- (a) to determine municipal boundaries in accordance with this Act and other appropriate legislation enacted in terms of Chapter 7 of the Constitution; and
- (b) to render an advisory service in respect of matters provided for in this Act and other appropriate legislation when so requested.

The Local Government: Municipal Structures Act of 1998 provides that the Municipal Demarcation Board is responsible for the delimiting all metropolitan municipalities, and all local municipalities that must have wards, into wards for electoral purposes¹⁷.

13 Local Government: Municipal Structures Act No. 117 of 1998, Section 3.

14 Government Communication and Information System 2008, 305.

15 Local Government: Municipal Structures Act No. 117 of 1998, Section 89.

16 Municipal Demarcation Board 2003, 8.

17 Local Government: Municipal Structures Act No. 117 of 1998, Schedule 1.

4 Composition of Local Government Authorities

The provincial legislation must determine for each category of municipality (A, B and C) the different types of municipality that may be established in that category in the province¹⁸. The Member of the Executive Committee (MEC) for local government in a province establishes a municipality in each municipal area which the Demarcation Board demarcates in the province in terms of the Demarcation Act¹⁹. The MEC has to follow the provisions set in the Local Government: Municipal Structures Act of 1998. All metropolitan municipalities and the local municipalities that have seven or more councillors are divided into wards for electoral purposes. When the MEC establishes a metropolitan or local municipality, the MEC has to define the number of wards that the municipality shall consist of.²⁰ Local municipalities with fewer than seven councillors have no wards²¹.

The electoral system for metro and local councils with wards consists of a combination of first-past-the-post elections in the wards, and proportional representation elections where the voter votes for a party list and not a specific person. Half of the councillors are elected according to proportional representation, and the other half of the councillors are elected as ward councillors by the residents in each ward.²² Each voter votes for a ward councillor and a party list:

- The councillors representing the wards are directly elected by voters registered in the respective wards in the municipality. In an election of a councillor for a ward each voter has only one vote. The voter may vote for only one candidate in the ward. In each ward the councillor who receives the most votes is the elected councillor for that ward. In the event of two or more councillors receiving an equal number of votes, the result will be determined by lot. If only one candidate is duly nominated in a ward, an election is not held in that ward and the uncontested ward candidate is deemed to have been elected.²³
- The rest of the councillors are elected from party lists to represent parties proportionally in the council²⁴.

If a local municipality does not have wards, there are no elections for ward representatives. In stead, only the proportional representation election system is used: all councillors must be elected by voters who vote for a party list of their choice.²⁵

In addition to voting for the representation in the local councils, the voters also participate in electing the representatives of the district councils. District councils share powers with local councils within their borders. There are usually approximately four to six local councils within the area of one district council. Each local council is allocated a certain number of seats in the district council. A district council consists of representatives that have been elected in the local government elections by voters vot-

18 Local Government: Municipal Structures Act No. 117 of 1998, Section 11.

19 Local Government: Municipal Structures Act No. 117 of 1998, Section 12 (1).

20 Local Government: Municipal Structures Act No. 117 of 1998, Section 12 (2–4).

21 Local Government: Municipal Structures Act No. 117 of 1998, Section 22 (4), Schedule 1 Item 2.

22 Local Government: Municipal Structures Act No. 117 of 1998, Section 22, Schedule 1.

23 Local Government: Municipal Structures Act No. 117 of 1998, Section 22, Schedule 1 Items 6, 8, 8A.

24 Local Government: Municipal Structures Act No. 117 of 1998, Schedule 1 Item 6, Part 3.

25 Local Government: Municipal Structures Act No. 117 of 1998, Section 22 (4).

ing a party list, and representatives elected by the parties elected to the local councils in proportion to the parties' representation in the local council in question:²⁶

- Each voter registered in the area of a local municipality has one vote and can vote for one party list contending for representation in the district council. 40 per cent of the district council members are elected using this system.
- The other 60 per cent of the district council representation is elected indirectly after the general election: all local councils must within 14 days after the results have been declared call a meeting of their local council to elect the 60 percent of the members through a nomination and voting procedure.

The residents in the district management areas, which have no local councils in their area, have two votes in the district council elections. One vote is used for voting for a party list in the 40 per cent quota, and one vote is used for voting for a representative as part of the 60 per cent quota by voting for a party list. Each district management area must have at least one representative in the 60 per cent quota of councillors in the district council.²⁷

A municipal council consists of a number of councillors determined by the MEC for local government in the province concerned by notice in the *Provincial Gazette*²⁸. *The local and district councils must have 3–90 councillors. The number of councillors in a metro council must not exceed 270. The number of councillors is determined in accordance with a formula, which must be based on the number of voters registered on that municipality's segment of the national common voter's roll.*²⁹ *The term of all municipal councils is five years*³⁰.

*The Local Government: Municipal Structures Act provides the types of governing arrangements that can be applied in the municipalities. There are three possible types of executive systems, and the provincial legislation must define which of them may be applied in the municipal categories of A, B and C in the province in question*³¹. *The MEC for local government in the province must issue a notice to regulate which type of municipality governing arrangement will be applied in the municipalities in the province*³².

*In the councils with the executive committee system, an executive committee is elected by all the councillors from amongst the councillors of the municipal council. The executive committee is vested with executive authority: the executive committee system is also called the collective executive system. There is a limit to the number of councillors in the executive committee: no more than 20 per cent of the councillors or 10 councillors, whichever is the least, can be elected to the executive committee.*³³ *The municipal council must elect a member of its executive committee as the mayor who heads the executive committee. If the MEC for local government in the province so approves, another member of the executive committee will be elected as the deputy mayor. An executive committee must be composed in such a way that parties and interests represented in the municipal council are represented in the executive committee in substantially the same proportion as they are represented in the council.*³⁴ *In many cases the executive committees are multi-party executive committees, as the members are elected by all the councillors*³⁵.

The municipal councils can also have an executive mayoral system, where all the councillors elect an executive mayor, and if the MEC for local government approves, also an

26 Local Government: Municipal Structures Act No. 117 of 1998, Section 23, Schedule 2; EISA 2006, 10.

27 Local Government: Municipal Structures Act No. 117 of 1998, Schedule 2; EISA 2006, 11.

28 Local Government: Municipal Structures Act No. 117 of 1998, Section 18 (3).

29 Local Government: Municipal Structures Act No. 117 of 1998, Section 20 (1).

30 Local Government: Municipal Structures Act No. 117 of 1998, Section 24 (1).

31 Local Government: Municipal Structures Act No. 117 of 1998, Section 11.

32 Local Government: Municipal Structures Act No. 117 of 1998, Section 12.

33 Local Government: Municipal Structures Act No. 117 of 1998, Sections 7, 43, 45.

34 Local Government: Municipal Structures Act No. 117 of 1998, Sections 43, 49.

35 EISA 2006, 12.

executive deputy mayor from amongst the councillors. The executive mayor is vested with the executive leadership of the municipality.³⁶ If the municipal council has more than nine members, the executive mayor must appoint mayoral committee from amongst the councillors to assist the executive mayor. No more than 20 per cent of the councillors, or 10 councillors, whichever is the least, may be appointed to the mayoral committee by the executive mayor.³⁷ The executive mayoral system more or less replicates the system of cabinet government prevalent in South African national politics, and is likely to result in mayoral committees composed principally of one party³⁸.

The municipal councils can also establish a plenary executive system, in which the exercise of the executive authority is limited to the municipal council itself³⁹. This system is likely to be adopted in the smaller municipalities⁴⁰.

The metro councils can establish metropolitan sub-councils, which cover areas consisting of clusters of adjoining wards. The sub-councils have power to make recommendations to the metro council any matter affecting the areas of the sub-councils. The metro council may also delegate duties and powers to the sub-councils in accordance with the Municipal Structures Act. The metropolitan sub-councils comprise of the ward councillors representing the wards in the area of the sub-council, and councillors elected to the council from party lists.⁴¹

The metro councils, and the local councils that have wards, may establish ward committees. The objective of the ward committee is to enhance participatory democracy in local government. A ward committee consists of the councillor representing the ward, who is the chairperson of the committee, and ten other persons from the ward community. The metro or local council must make rules regulating the procedure to elect the ten persons from the ward community taking into account the equal representation of women and the diversity of interests in the ward to be represented. The members drawn from the community do not receive remuneration for participating in the ward committee. A ward committee may make recommendations on any matter affecting its ward to the ward councillor or through the ward councillor to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan sub-council. The metro or local council may also delegate duties and powers to the ward committee in accordance with the Municipal Structures Act.⁴²

The municipal council may also establish other committees and committees to assist the executive committee or executive mayor, and delegate powers and duties to the established committees⁴³.

The traditional authorities that traditionally observe a system of customary law in the area of a municipality may participate through their leaders in the proceedings of the council of the municipality. These traditional leaders must be allowed to attend and participate in any meeting of the council. The MEC for local government in a province must identify the traditional leaders who may participate in the proceedings of the municipal council in accordance with the Municipal Structures Act. The number of traditional leaders participating in the proceedings in a municipal council may not exceed 20 per cent of the total number of councillors in the council, but if the council has fewer than ten councillors, only one traditional leader may participate. Before the municipal council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter. A traditional leader who participates in the proceedings of a municipal council is entitled for the payment for pocket expenses, which are paid from the budget of the municipality in question.⁴⁴

36 Local Government: Municipal Structures Act No. 117 of 1998, Sections 7, 55.

37 Local Government: Municipal Structures Act No. 117 of 1998, Section 60.

38 EISA 2006, 12.

39 Local Government: Municipal Structures Act No. 117 of 1998, Section 7.

40 EISA 2006, 13.

41 Local Government: Municipal Structures Act No. 117 of 1998, Sections 61–64.

42 Local Government: Municipal Structures Act No. 117 of 1998, Sections 72–77.

43 Local Government: Municipal Structures Act No. 117 of 1998, Sections 79–80.

44 Local Government: Municipal Structures Act No. 117 of 1998, Section 81.

5 Remuneration of Political Office Bearers

The municipalities may have full-time and part-time councillors. Section 18 (4) of the Municipal Structures Act provides that the municipality has the power to designate councillors as full-time councillors. According to Section 8 of the Municipal Systems Act, the full-time councillors may not undertake any other paid work unless he or she has the consent of his or her municipal council. In most municipalities the mayor and the speaker are full-time councillors. Sometimes members of the executive committees and mayoral committees are full-time councillors.⁴⁵

Section 219 of the Constitution provides that national legislation must establish a framework determining the upper limit of salaries, allowances and benefits of members of municipal councils as well as an independent commission to make recommendations concerning the salaries, allowances and benefits. The municipal councillors are paid salaries, and in certain cases also allowances, within the framework of the Remuneration of Public Office Bearers Act No. 8 of 1998. The Remuneration of Public Office Bearers Act prescribes how the upper limit of the salaries, allowances and benefits of municipal councillors are determined. Chapter 7 provides that the upper limit of salaries and allowances shall from time to time be determined by the Minister for Provincial Affairs and Constitutional Development after consultation with the member of the Executive Council responsible for local government in each province, and after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers established in terms of the Independent Commission for the Remuneration of Public Office-bearers Act of 1998. According to Section 7 of the Remuneration of Public Office-bearers Act, the Minister also has to take into consideration other criteria, such as the gross income, the area of jurisdiction and the nature of settlement of each municipality. The salary and allowances of a member of a municipal council is determined by the municipal council in question by resolution of a supporting vote of a majority of its members, in consultation with the member of the Executive Council responsible for local government in the province concerned, and having regard to the set upper limits and other criteria prescribed in Section 7 of the Remuneration Public Office Bearers Act. The salaries of the members of the municipal councils are paid from the budget of the municipality in question.

⁴⁵ SALGA and GTZ South Africa 2006, 53.

6 Functions and Powers of Local Government Authorities

Section 151 (3–4) of the Constitution provides on the status of the municipalities that a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. The national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Section 152 (1) of the Constitution prescribes the objects that the local government must strive to achieve as follows:

- (a) to provide democratic and accountable government for local communities;
- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment; and
- (e) to encourage the involvement of communities and community organisations in the matters of local government.

The Constitution also prescribes developmental duties to the municipalities, which include:

- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.

The Constitution provides powers and functions for municipalities. According to Section 156, a municipality has executive authority in respect of, and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution, and any other matter assigned to it by national or provincial legislation. For these functions the provincial government must provide for the monitoring and support of local government in the province⁴⁶. Also, the national government (with some restrictions regarding Schedule 5) and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedules 4 and 5 by regulating the exercise by municipalities of their executive authority in these matters⁴⁷.

The metropolitan municipalities have exclusive authority on the matters listed in the mentioned parts of the Schedules. However, the Municipal Systems Act prescribes which of the duties and powers are to be allocated to district municipalities and the local municipalities within their area, and how this division of functions and powers is to be regulated. This is discussed in more detail in the next chapter on the division of functions and powers between municipalities.

Part B of Schedule 4 to the Constitution prescribes the following functional areas to the local government:

⁴⁶ Constitution of the Republic of South Africa, 1996, Schedules 4 and 5, Section 155 (6)(a).

⁴⁷ Constitution of the Republic of South Africa, 1996, Schedules 4 and 5, Section, Section 155 (7).

- Air pollution
- Building regulations
- Child care facilities
- Electricity and gas reticulation
- Fire fighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under this Constitution or any other law
- Pontoons, ferries, jetties, piers and harbours, excluding the regulation of international and national shipping and matters related thereto
- Storm water management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems

Part B of Schedule 5 to the Constitution prescribes the following functional areas to the local government:

- Beaches and amusement facilities
- Billboards and the display of advertisements in public places
- Cemeteries, funeral parlours and crematoria
- Cleansing
- Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals
- Fencing and fences
- Licensing of dogs
- Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets
- Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds
- Public places
- Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking

The Constitution also provides that the national government and the provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 and Part A of Schedule 5 of the Constitution which necessarily relates to local government if that matter would most effectively be administered locally, and the municipality has the capacity to administer it⁴⁸. These functions, which consist of functional areas of concurrent national

⁴⁸ Constitution of the Republic of South Africa, 1996, Section 156 (4).

and provincial legislative competence (e. g. agriculture, health services), and functional areas of exclusive provincial legislative competence (e. g. ambulance services, libraries), are listed in Annexes 4 and 5.

The Constitution provides powers to the municipalities to make and administer by-laws for the effective administration of the matters which it has the right to administer. The by-laws must not conflict with national or provincial legislation.⁴⁹

The Constitution also prescribes some initiative to the municipalities in exercising their functions by proving that a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions⁵⁰. This prescription is stated also in the Municipal Systems Act, which states that the council has the right to govern on its own initiative the local government affairs of the local community⁵¹. The Municipal Systems Act also defines different methods for municipalities to exercise their legislative or executive authority such as setting and implementing budgets, policies and strategies, and prescribes that in addition to the listed activities, the municipalities have the power to do anything else within their legislative and executive competence to exercise their legislative or executive authority⁵².

The Municipal Systems Act provides for the mechanisms of providing municipal services. For example, the Act provides that the municipalities themselves can provide the services, or the services can be delivered by entering into service delivery agreements with another municipality, an organ of the state, a traditional authority etc.⁵³

The Municipal Systems Act provides the Minister responsible for local government powers to make regulations and issue guidelines on a range of issues related to the functions and powers of the municipalities. The guidelines must be consistent with the Municipal Systems Act, and be published in the *Gazette*, after consultations with organised local government representing local government nationally. For example, the Minister responsible for local government may issue guidelines and make regulations for example on the preparation, adoption and implementation of municipal tariff policy, and preparing the integrated development plans, which each municipal council is required to prepare and adopt as provided by Chapter 5 of the Municipal Systems Act.⁵⁴ The integrated development plan is a single, inclusive strategic plan for the development of the municipality, which must be compatible with national and provincial development plans. A copy of the integrated development plan is submitted to the MEC for local government in the province, who assists and monitors the preparation and implementation of the integrated development plan.

6.1 Division of Functions and Powers between Municipalities

The Municipal Structures Act defines how the functions and powers prescribed to the municipalities in the Constitution are to be divided between district and local municipalities. According to the Municipal Structures Act, the functions and powers assigned to the municipalities by the Constitution must be divided between the district municipality and the local municipalities in its area. Section 83 (3) of the Municipal Structures Act Provides that a district municipality must seek to achieve integrated, sustainable and equitable social and economic development of its area by:

49 Constitution of the Republic of South Africa, 1996, Section 156 (2–3).

50 Constitution of the Republic of South Africa, 1996, Section 156 (5).

51 Local Government: Municipal Systems Act No. 32 of 2000, Section 4 (1)(a).

52 Local Government: Municipal Systems Act No. 32 of 2000, Section 11 (3).

53 Local Government: Municipal Systems Act No. 32 of 2000, Sections 73–94.

54 Local Government: Municipal Systems Act No. 32 of 2000, Section 120.

- (a) ensuring integrated development planning for the district as a whole;
- (b) promoting bulk infrastructural development and services for the district as a whole;
- (c) building the capacity of the local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
- (d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

The Municipal Structures Act provides that the functions and powers assigned to the municipalities in Parts B of the Schedules 4 and 5 of the Constitution (listed above in Chapter 5) and the municipal fiscal powers and functions conferred to the municipalities in Section 229 of the Constitution have to be divided between the local municipalities and district municipality so that the district municipality in the area has the following functions and powers⁵⁵:

- (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.
- (b) Potable water supply systems.
- (c) Bulk supply of electricity, which includes for the purposes of such supply the transmission, distribution and, where applicable, the generation of electricity.
- (d) Domestic waste-water and sewage disposal systems.
- (e) Solid waste disposal sites, in so far as it relates to:
 - (i) the determination of a waste disposal strategy;
 - (ii) the regulation of waste disposal;
 - (iii) the establishment, operation and control of waste disposal sites, bulk water transfer facilities and waste disposal facilities for more than one local municipality in the district.
- (f) Municipal roads which form an integral part of a road transportation system for the area of the district municipality as a whole.
- (g) Regulation of passenger transport services.
- (h) Municipal airports serving the area of the district municipality as a whole.
- (i) Municipal health services.
- (j) Fire fighting services serving the area of the district municipality as a whole, which includes:
 - (i) planning, co-ordination and regulating of fire services;
 - (ii) specialised fire fighting services such as mountain, veld and chemical fire services;
 - (iii) co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;
 - (iv) training of fire officers.
- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.
- (l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.
- (m) Promotion of local tourism for the area of the district municipality.
- (m) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.
- (n) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.

55 Local Government: Municipal Structures Act No. 117 of 1998, Section 84 (1).

- (o) The imposition of the collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

The Minister responsible for local government and the MEC for local government in the province have some powers to redistribute and adjust the above described division of powers and functions between the district municipality and the local municipalities in its area. The Minister may, by notice in the *Government Gazette*, and after consultations with the Cabinet member responsible for the functional area in question as well as the MEC responsible for local government in the province, authorise a local municipality to perform a function or exercise a power in the categories of (b), (c), (d) and (i) listed above. The Minister must also take into consideration the relevant national legislation in the functional area, if there is any.⁵⁶

The MEC for local government in a province may adjust the division of functions and powers between district and local municipalities by allocating any of the functions or powers vested in a local municipality by Parts B of the Schedules 4 and 5 and Section 229 of the Constitution to the district municipality. The MEC may also allocate the functions and powers of the district municipality in categories of (e), (f), (g), (h), (j), (k), (l), (m) and (n) listed above to a local municipality. The MEC may allocate functions and powers vested in a municipality to another municipality only if the municipality in question lacks the capacity to perform the particular function or exercise the particular power in question. The MEC has to consult the Demarcation Board before the re-allocation of any function or power between municipalities, but the MEC does not have to apply the recommended solution of the Demarcation Board.⁵⁷ The Minister responsible for local government has some powers to intervene and vary the adjusted division of powers and functions, if the MEC has disagreed with the Demarcation Board and not applied its recommendations⁵⁸.

If the provision of basic services by a district or local municipality collapses or is likely to collapse because of that municipality's lack of capacity or for any other reason, the MEC for local government in a province may allocate temporarily any functions or powers of a district or local municipality to a local municipality within the area of the district council, or to the district municipality in whose area a local municipality is located, as the case may be. The municipalities have a right to lodge an objection against the allocation. The MEC has to re-allocate the function or power back to the original municipality when that municipality is in a position to resume the provision of the basic services in question.⁵⁹ Provincial intervention in local government is also regulated in the Constitution. The relevant provincial Executive may intervene when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation. The provincial executive may even dissolve a municipal council, but the Constitution prescribes regulations to ensure strict monitoring of the exercise of that power.⁶⁰

6.2 Assignment of Functions and Powers to Municipalities

Section 99 of the Constitution provides that a national cabinet member may assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council. According to the Section, an assignment:

56 Local Government: Municipal Structures Act No. 117 of 1998, Section 84 (3).

57 Local Government: Municipal Structures Act No. 117 of 1998, Section 85 (1–6).

58 Local Government: Municipal Structures Act No. 117 of 1998, Section 85 (7).

59 Local Government: Municipal Structures Act No. 117 of 1998, Section 87.

60 Constitution of the Republic of South Africa, 1996, Section 139.

- (a) must be in terms of an agreement between the relevant Cabinet member and the Executive Council member or Municipal Council;
- (b) must be consistent with the Act of Parliament in terms of which the relevant power or function is exercised or performed; and
- (c) takes effect upon proclamation by the President.

Along the same lines, Section 126 of the Constitution provides that a member of the Executive Council of a province may assign any power or function that is to be exercised or performed in terms of an Act of Parliament or a provincial Act, to a Municipal Council. According to the Section, an assignment:

- (a) must be in terms of an agreement between the relevant Executive Council member and the Municipal Council;
- (b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and
- (c) takes effect upon proclamation by the Premier.

Sections 9 and 10 of the Municipal Systems Act also provide that the organised local government at the national or provincial level has to be consulted before a draft legislation providing for the assignment of a function to municipalities generally is introduced in the Parliament or in the relevant provincial legislature. This is also prescribed in Section 154 of the Constitution. The Cabinet member, Deputy Minister or MEC initiating the national or provincial legislation must take appropriate steps to ensure sufficient funding, and capacity building initiatives as may be needed, for the performance of the assigned function or power to the municipalities concerned if⁶¹:

- the assignment imposes a duty to the municipalities concerned;
- that duty falls outside the functional areas listed in Part B of Schedule 4 or Part B of Schedule 5 to the Constitution or is not incidental to any of those functional areas; and
- the performance of that duty has financial implications for the municipalities concerned.

The Cabinet members and MECs also have powers to initiate national and provincial legislation in which functions and powers are assigned to specific municipalities. In these cases the same financial and capacity building needs have to be taken into account as with assigning functions and powers to municipalities in general.⁶²

6.3 Functions of Traditional Councils

The Constitution recognises the institution, status and role of traditional leadership according to customary law, and a traditional authority that observes a system of customary law⁶³. The role of traditional leadership and authority is defined further in the Traditional Leadership and Governance Framework Act No. 41 of 2003. The Act defines how traditional leaders and authorities have to organise and conduct their affairs in connection with the Constitution and national legislation. The act provides that the institution of traditional leadership must promote the principles of co-operative governance in its interaction with all spheres of government and organs of state⁶⁴.

61 Local Government: Municipal Systems Act No. 32 of 2000, Section 9 (3).

62 Local Government: Municipal Systems Act No. 32 of 2000, Section 10.

63 Constitution of the Republic of South Africa, 1996, Chapter 12.

64 Traditional Leadership and Governance Framework Act No. 41 of 2003, Preamble.

According to Section 3 of the Traditional Leadership and Governance Framework Act, each traditional authority must establish a traditional council. The functions of the traditional councils include, among other things, to administer the affairs of the traditional community in accordance with customs and tradition, to support traditional leaders in the performance of their functions, and to participate in the development policy and legislation at local level as well as promote the ideals of co-operative governance and integrated development planning.⁶⁵ With regard to service provision, a traditional council may enter into a service delivery agreement with a municipality in accordance with the Municipal Systems Act and any other applicable legislation⁶⁶. In addition, the national government or a provincial government may provide a role for traditional councils or traditional leaders in a number of functional areas such as agriculture, health, welfare, environment and tourism. Whenever the national government or a provincial government considers allocating a role for traditional councils or traditional leaders, they must consult the relevant ministers and MECs as well as the South African Local Government Association.⁶⁷

⁶⁵ Traditional Leadership and Governance Framework Act No. 41 of 2003, Section 4.

⁶⁶ Traditional Leadership and Governance Framework Act No. 41 of 2003, Section 5 (3).

⁶⁷ Traditional Leadership and Governance Framework Act No. 41 of 2003, Section 20.

7 Financial Resources of Local Authorities

The Constitution of the Republic of South Africa provides that the municipalities may impose⁶⁸:

- Rates on property and surcharges on fees for services provided by or on behalf of the municipality.
- If authorised by national legislation, other taxes, levies and duties appropriate to local government or to the category of local government into which that municipality falls, but no municipality may impose income tax, value-added tax, general sales tax or customs duty.

According to the Constitution, the power of a municipality to impose rates on property, surcharges on fees for services provided by or on behalf of the municipality, or other taxes, levies or duties may not be exercised in a way that materially and unreasonably prejudices national economic policies, economic activities across municipal boundaries, or the national mobility of goods, services, capital or labour. The power of the municipality to impose rates may be regulated by national legislation. When two municipalities have the same fiscal powers and functions with regard to the same area, an appropriate division of those powers and functions must be made in terms of national legislation.⁶⁹

The power of the municipalities to impose rates on property is regulated in the Local Government: Municipal Property Rates Act No.6 of 2004. A municipality must adopt by-laws to give effect to the implementation of its rates policy⁷⁰. According to the Municipal Systems Act, a municipal council must adopt and implement a tariff policy on the levying of fees for municipal services provided by the municipality itself or by way of service delivery agreements. The municipal council must adopt by-laws to give effect to the implementation and enforcement of its tariff policy.⁷¹

The municipalities' right to equitable shares and allocation of revenue raised nationally among the national, provincial and local spheres of government, and the general provisions of the municipal and fiscal powers of the municipalities are provided in the Constitution of the Republic of South Africa. According to the Constitution, an Act of Parliament must provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government, the determination of each province's equitable share of the provincial share of that revenue, and any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made. The Act must provide for the need to ensure that the municipalities are able to provide basic services and perform the functions allocated to them. The Act has to take into account, among other things, the fiscal capacity and efficiency of the municipali-

68 Constitution of the Republic of South Africa, 1996, Section 229 (1).

69 Constitution of the Republic of South Africa, 1996, Section 229 (2–3).

70 Local Government: Municipal Property Rates Act No. 6 of 2004, Section 6.

71 Local Government: Municipal Systems Act No. 32 of 2000, Sections 74–75.

ties, developmental and other needs of the municipalities and the obligations of the municipalities in terms of the national legislation.⁷²

The municipalities' right to equitable shares and allocation of revenue raised nationally among the national provincial and local spheres of government for the 2008/09 financial year (commencing 1 April and ending 31 March 2009) is regulated in the Division of Revenue Act No. 2 of 2008. The Schedules to the Division of Revenue Act contain lists of each municipality's equitable share of the local government sphere's share of the revenue raised nationally, and conditional allocations that are to be allocated to the municipalities from the national government's share of the revenue raised nationally. The equitable share grant is the largest national transfer to the municipalities.

One of the most important developments in intergovernmental fiscal transfers to the municipalities in recent years has been the adoption of the conditional allocation called the Municipal Infrastructure Grant (MIG), which is allocated to supplement the capital finance for basic municipal infrastructure for poor households, micro enterprises and social institutions funded from municipal budgets. The conditional specific purpose allocations to municipalities consist of recurrent grants and infrastructure grants. For example, the water service operating subsidy grant was the largest recurrent grant totalling at approximately 861 million rands for fiscal year 2008/09, and the infrastructure grant of the Integrated National Electrification Programme (Eskom) Grant was one of the largest specific purpose allocations totalling at approximately 1.2 billion rands for fiscal year 2008/09.

Municipalities in South Africa are largely self-financing. This means that the bulk of their resources are raised from own revenue sources such as taxes and service charges. Approximately 75 per cent of the municipalities operating revenues originated from the municipalities own source revenues in fiscal year 2007/08. This principle of self-financing is an important feature of democratic local government system as it ensures that municipalities are directly accountable to their citizens. However, in South Africa there are two important dimensions to this principle:

1. There is a structural imbalance between available local resources and the expenditure functions that are assigned to local government.
2. Not all municipalities have the same capacity to raise revenues, as levels of poverty vary considerably and are particularly high in mostly rural municipalities.⁷³

The National Treasury's Local Government Budgets and Expenditure review highlights a problematic trend in the local government revenues: The share of and the total volume of the government grants to the municipalities have grown, and the municipal own revenue collection has declined as a proportion of total revenue, with service charges in particular having grown at the slowest pace of all revenue sources. For example, in fiscal year 2003/04 the share of government grants of total municipal operating revenue was approximately 12 per cent, where as the share had grown to reach approximately 25 per cent in fiscal year 2006/07. The growth of the share of government grants is partly explained by the allocations to FIFA World Cup preparation grants, but all in all the municipalities have become increasingly reliant on government grants. This has implications for local self-government as the municipalities are becoming increasingly dependent on specific purpose grants. Also, the increasing share of government grants indicates that there may be significant leakage of national resources to non-poor households.⁷⁴

72 Constitution of the Republic of South Africa, 1996, Section 214.

73 National Treasury of the Republic of South Africa 2008, Chapter 3.

74 National Treasury of the Republic of South Africa 2008, Chapter 3.

The Local Government: Municipal Finance Management Act No. 56 of 2003 was passed in order to modernise municipal budgeting and financial management, and to foster transparency at the local government level through budget and reporting requirements⁷⁵. The Act prescribes among other things the procedures for preparing municipal budgets and setting their contents. For example, according to the Act, the Minister for Finance, acting with the concurrence of the Cabinet Member responsible for local government, must prescribe the form of the annual budget of the municipalities, and may prescribe in the form of resolutions and supporting documentation relating to the annual budget other standards, norms and inflation projections that have to be used with regard to the annual budget. In the budget preparation process the Mayor of the municipality has to coordinate the budget preparation with the integrated development plan of the municipality, and, if the municipality is a local municipality, consult the relevant district municipality and other local municipalities in the area, the provincial treasury, and if requested also other organs of the provincial and national governments.⁷⁶

75 Government Communication and Information System 2008, 305.

76 Local Government: Municipal Finance Management Act No. 56 of 2003, Chapter 4.

8 Service Provision in Electricity Distribution and Municipal Roads

This chapter will concentrate on discussing some aspects of the functions assigned to the municipalities in providing services in electricity distribution and municipal roads delivery and maintenance. Municipal services in these household infrastructure and service sectors have been defined as priority areas in municipal services.

Between fiscal years 2003/04 and 2007/08, expenditure by the local government sphere amounted to an average of 6.9 per cent of South Africa's gross domestic product (GDP)⁷⁷. Most of the expenditure of the municipalities in South Africa is used for major utility trading services such as water, electricity and refuse collection⁷⁸. The Treasury stresses the importance of the municipal infrastructure and service provision as follows:

The infrastructure and services provided by municipalities are essential ingredients to the functioning and growth of other economic sectors. Municipal services are delivered predominantly to households, which provide the labour force for the economy. Water, electricity and refuse collection are critical inputs into all productive processes, while local road networks are essential to the delivery of goods and services to consumers. On average, local government accounted for 24 per cent of total public sector infrastructure expenditure between 2004/05 and 2007/08. The share of local government is, however, set to decline in response to more rapid growth in infrastructure expenditure by provincial government and public enterprises.⁷⁹

Backlogs in access to basic levels of services are most significant in the sanitation sector. Again, the mostly rural municipalities face the most significant absolute backlogs in access to services, while metros report high levels of backlogs in access to electricity for lighting and formal housing.⁸⁰

The Government of South Africa puts emphasis on delivering sustainable human settlements to all South Africans. President Thabo Mbeki announced in his state of the Nation Address that: "We will also integrate the programme to speed up the development of sustainable human settlements, with intensified efforts, as a matter of urgent priority, to accelerate universal access to water, sanitation and electricity, so that by 2014, we should have decent human settlements and access by all households to these services."⁸¹ The Government's White Paper on Local Government of 1998, which establishes the basis for a new developmental local government system, defines the provision of household infrastructure and services such as one of the three key developmental outcome areas of local government. The other two are defined as creation of liveable, integrated cities, towns and urban areas, and local economic development. The White Paper defines household infrastructure and services such as water, sanitation, local roads, storm water drainage, refuse collection and electricity as an essential component of social and economic development.⁸² Many components of these services

77 National Treasury of the Republic of South Africa 2008, 10.

78 National Treasury of the Republic of South Africa 2008, 5.

79 National Treasury of the Republic of South Africa 2008, 10.

80 National Treasury of the Republic of South Africa 2008, 13.

81 Mbeki 2008.

82 Department of Provincial and Local Government 1998.

are monitored as part of the set of key development indicators, which the Government monitors and publishes in the reports of the Ten Year Reviews: first monitored towards the first decade of freedom since 1994, and now towards the second decade of freedom⁸³.

8.1 Electricity Distribution

Electricity reticulation is listed as a local government function in Part B of Schedule 4 of the Constitution. Therefore the municipalities have a constitutional right to administer electricity reticulation within their areas of jurisdiction. 187 municipalities and Eskom, the Electric Supply Commission established by the Electricity Act of 1922 as a public entity in 1923, distributed electricity to the communities in 2008.⁸⁴

The current electricity distribution industry (EDI) in South Africa is very inefficient because of the fragmentation of the industry, which has led to many problems such as inadequate maintenance of networks and lack of skills and specialisation especially in the smaller municipalities. Consumers across the country are also treated inequitably because of the different tariffs charged by municipalities (there are about 2000 different tariffs), and poor service delivery in the poor municipalities. South Africa has a policy on providing free basic electricity to poor households, but no municipality has been able to implement the policy fully.⁸⁵

The governments of South Africa have sought to restructure the electricity distribution system since the end of the 1990s. The Government's White Paper on Energy set goals to establish Regional Electricity Distributors (REDs), which would transform the current system into a more efficient one.⁸⁶

On 25th of October 2006 the Cabinet approved the proposal to establish six wall-to-wall Regional Electricity Distributors (REDs), which will be established as public entities. The municipalities and Eskom will transfer their electricity distribution businesses in the REDs. The National Government, Eskom and municipalities will become shareholders of the REDs. Because the REDs are public entities, the National Government will be the majority shareholder as provided by the Public Finance Management Act No. 1 of 1999. Eskom will be a shareholder for a transitional period, and it should reduce its shareholding over a period of time. The municipalities will still be the electricity distribution service authorities, but REDs will be the preferred service providers. Municipalities should enter into service delivery agreements with REDs in accordance with the provisions in the Municipal Systems Act.⁸⁷

In its 25th of October decision, the Cabinet agreed that the Department of Minerals and Energy (DME) will oversee and control the establishment of the REDs through EDI Holdings, a public entity set up by the Government in 2003 as a first step in the restructuring process. There are also a number of institutional structures, which act as consultative, support and monitoring structures in the electricity distribution industry restructuring process, and have local government representatives as members.⁸⁸

The REDs will be regulated according to a number of legislations such as the Public Finance Management Act No. 1 of 1999 and the Electricity Regulation Act No. 4 of 2006 (amended in 2007). The establishment of REDs has generated a need for new legislations, for example the REDs Establishment Bill dealing with the issues of governance, valuation and compensation, which are being prepared by the Government in

83 For the set of indicators refer to the Presidency of the Republic of South Africa 2007.

84 Maseko 2008, SALGA 2007.

85 Maseko 2008; SALGA 2007; Sonjica 2008.

86 Department of Minerals and Energy 1998, Chapter 7.1.

87 Maseko 2008; SALGA 2007.

88 Maseko 2008, 434; SALGA 2007.

consultation with the local government representatives, Eskom, and other stakeholders. Some structures for creating the REDs have already been finalised, but the delay in finalising the needed new legislation such as the REDs Establishment Bill has led to uncertainties among the stakeholders in the electricity distribution industry. These uncertainties have culminated in challenges such as the lack of maintenance of electricity infrastructure by both the municipalities and Eskom, and resulted in widespread power outages.⁸⁹

So far only one RED, the RED1 in Cape Town, has been established as a pilot project in May 2005, when the City of Cape Town was mandated to acquire ownership of the Municipal Entity RED1 (Pty) Ltd. The City of Cape Town entered into a service delivery agreement with the Municipal Entity RED1 as its service provider for electricity reticulation in June 2005, but the pilot project failed because there was no nationally approved Asset Transfer Framework. No transfer of assets or staff took place from the City of Cape Town, which culminated in the demise of the RED1 in January 2007.⁹⁰

The South African Local Government Association SALGA has identified areas of critical concern to the municipalities in the restructuring of the Electricity Distribution Industry, such as⁹¹:

- Shareholding in the REDs (formulae to be used for the allocation of shares to national government, Eskom and municipalities);
- Governance arrangements of the REDs;
- Transfer of electricity undertakings;
- Compensation for electricity undertakings (compensation of municipal assets contributed and the valuation methodology to be used for the valuation of such assets);
- Service delivery agreements;
- Articles of association of REDs (capital structure for the REDs); and
- Municipal revenue stream (financial incentives for municipalities to join the REDs and impact on the credit rating of municipalities).

The local government is authorised by the Constitution to undertake electricity reticulation, which means that no other organisation or institution is allowed to reticulate electricity unless there are constitutional amendments. At the moment the Constitution is seen as an obstacle to the successful implementation of the restructuring process. At the moment the Government cannot force the municipalities to participate in the REDs. Because of the current legislative framework the participation of the municipalities is voluntary. The transfer into REDs is an important question to the 187 municipalities that have electricity distribution licences from the National Electricity Regulator of South Africa (NERSA) because a large share, about 30 to 40 per cent, of their revenue originates from the distribution of electricity.⁹²

Currently the powers and duties of the municipalities as electricity distribution authorities are regulated in the Electricity Regulation Amendment Act No. 28 of 2007, which amended the Electricity Regulation Act No. 4 of 2006. According to Section 27 of the Electricity Regulation Amendment Act, the municipalities must exercise their executive authority and perform their duty by:

- (a) complying with all the technical and operational requirements for electricity networks determined by the Regulator;

89 Maseko 2008.

90 Maseko 2008, 440.

91 SALGA 2007.

92 Maseko 2008, 435–436.

- (b) integrating its reticulation services with its integrated development plans;
- (c) preparing, implementing and requiring relevant plans and budgets;
- (d) progressively ensuring access to at least basic reticulation services through appropriate investments in its electricity infrastructure;
- (e) providing basic reticulation services free of charge or at a minimum cost to certain classes of end users within its available resources;
- (f) ensuring sustainable reticulation services through effective and efficient management and adherence to the national norms and standards contemplated in section 35;
- (g) regularly reporting and providing information to the Department of Provincial and Local Government, the National Treasury, the Regulator and customers;
- (h) executing its reticulation function in accordance with relevant national energy policies; and
- (i) keeping separate financial statements, including a balance sheet of the reticulation business.

When a municipality enters into a service delivery agreement with an external service provider for electricity distribution, the service delivery agreement must comply with the Municipal Systems Act, the Municipal Finance Management Act and the Electricity Regulation Amendment Act⁹³. The distributors must obtain a licence from the National Energy Regulator of South Africa (NERSA), which is the National Energy Regulator established by Section 3 of the National Energy Regulator Act⁹⁴. NERSA is the custodian and enforcer of the regulatory framework provided for in the Electricity Regulation Amendment Act. The powers and duties of NERSA include, among other things, issuing licences and regulating prices and tariffs.⁹⁵ The Minister for Minerals and Energy may, by notice in the *Gazette*, make regulations regarding for example the norms and standards relating to quality of supply, compulsory national standards for reticulation services, and for norms and standards for the setting of reticulation tariffs in consultation with the Minister of Finance⁹⁶.

8.2 Municipal Roads

The Department of Transport's Rural Transport Strategy for South Africa gives an overview of the current situation of delivering municipal roads and other transport infrastructure in rural areas and its connection to rural poverty:

Rural poverty is pervasive and difficult to address. Improving mobility can reduce poverty by facilitating communities to social services and facilitate their participation in political, economic activities... Whereas 50% of the population of South Africa is rural, the rural areas contain 72% of those members of the total population who are poor. Compared to their urban counterparts, rural people also have vastly inferior access to basic social services and the economic mainstream. Given this context, the delivery of rural transport infrastructure and services can be a significant catalyst for sustainable economic development, improved social access and poverty alleviation in South Africa's rural areas.⁹⁷

In practice, responsibilities for the delivery of rural transport infrastructure fall mainly on the municipal and provincial spheres of government, assisted by the Department of

93 Electricity Regulation Amendment Act No. 28 of 2007, Section 28.

94 Electricity Regulation Act No. 4 of 2006, Section 3.

95 Electricity Regulation Act No. 4 of 2006, Sections 3–4.

96 Electricity Regulation Amendment Act No. 28 of 2007, Section 12.

97 Department of Transport 2007, 9.

Public Works (DPW) and the South African National Roads Agency (SANRAL). The focus of rural infrastructure projects managed by these agencies has been on rural district and access roads.⁹⁸

The Municipal Structures Act defines that the delivery of municipal roads is assigned to the district municipalities, and that the MEC for local government in the province may assign the delivery of municipal roads also to a local municipality.

The division of functions and powers between the three spheres of government is prescribed in the Constitution of South Africa so that the national sphere is responsible for national roads, the provincial sphere for provincial roads and traffic and the local sphere for municipal roads.

As stated in the Department of Transport's Rural Transport Strategy for South Africa, the Department of Transport has a coordinating and enabling role:

The Department of Transport (DOT) is responsible for maximising the contribution of transport to the economic and social development goals of society by providing fully integrated transport operations and infrastructure. The Department's main roles are developing policies, strategies and guidelines, and ensuring that the provisions of the White Paper on National Transport Policy (1996), the National Land Transport Transition Act (NLTTA, 2000) and other legislation (including the National Road Traffic Act and the National Roads Act) are implemented. Depending on the provisions of the relevant legislation, it provides strategic direction and where necessary arranges for transfer of monies or takes direct facilitating actions to address service delivery priorities and develop the requisite planning and implementation capacity in the provincial and local spheres of government.

The legislations mentioned in the strategy, the National Road Traffic Act No. 93 of 1996 and the South African National Roads Agency Limited and National Roads Act No. 7 of 1998, specify only to a limited detail the powers and functions of municipalities in municipal roads delivery in terms of road construction and repairs. The National Road Traffic Act deals with regulating traffic on the roads and defines the powers of the municipalities in regulating traffic on public roads (e.g. power to make by-laws on traffic regulation), and the National Roads act regulates for the administering of national roads in the municipal areas and the conditions under which municipalities may operate national roads on behalf of the national sphere of government. The road construction and repairs, as well as other transport infrastructure, by municipalities are mainly guided by policies such as the Department of Transport's Strategy for Africa of 2007, Roads Infrastructure Strategic Framework for South Africa (RFSA) of 2006 and the Government's White Paper on National Transport Policy of 1996⁹⁹.

The National Land Transport Strategic Framework (NLTSF) is a legal requirement in terms of Clause 21 of the National Land Transport Transition Act (No. 22 of 2000) (NLTTA). It embodies the overarching, national five-year (2006 to 2011) land transport strategy, which gives guidance on transport planning and land transport delivery by national government, provinces and municipalities over the five-year period. Strategies within 15 functional areas are outlined in terms of actions and outputs.¹⁰⁰ The rural transport strategy's action plans are in line with the National Land Transport Strategic Framework. For roads the National Land Transport Strategic Framework envisages that:

A revised and prioritised strategic countrywide road network will be identified and it will be managed by appropriate institutions in the national, provincial

98 Department of Transport 2007, 9.

99 Department of Transport 2007.

100 Department of Transport 2007, 18.

and municipal spheres of government. This countrywide road network will be needs-based, and it must support development priorities. The network may include some toll roads where they are financially viable and where they can contribute substantially to the funding of sections of the network.¹⁰¹

The Department of Transport has started to prepare a roads development plan, which aims to identify constraints in the delivery of roads and to propose more effective road delivery mechanisms. The plan is being developed in consultation with all spheres of government and will include recommendations on the appropriate road network, institutional structures, funding mechanisms and information systems. The plan will include measures to improve the delivery of the road network. The measures include for example identifying the above mentioned strategic countrywide road network based on objectives such as avoiding duplication of infrastructure and addressing social and development imperatives.¹⁰²

In line with the National Land Transport Strategic Framework, the Department of Transport's Rural Transport Strategy for South Africa aims to provide strategic guidance to all three spheres of government in an ongoing effort to address mobility and access challenges experienced by rural communities in an integrated, aligned and co-ordinated manner. The strategy is aimed at developing balanced and sustainable rural transport systems by supporting local infrastructure and services. Changes are needed because even though provinces, local authorities, and the National Department of Public Works have collectively been spending considerable amounts on rural district and access roads, resulting in significant job creation and poverty alleviation, The multitude of roads-procuring agencies and different funding sources has resulted in an overly complex and un-coordinated rural roads planning and procurement process. The Department of Transport's Rural Transport Strategy for South Africa summarises the needs for institutional alignment and transformation and identifies causes in complexities in the rural roads sector as follows¹⁰³:

- Different development processes and initiatives, many of them resulting in competing road project proposals
- Different forums and channels for interacting with communities (not all of which are yet coordinated in terms of integrated development plan processes)
- Different contract types, procurement mechanisms and protocols
- Different design standards and approaches

The Rural Transport Strategy for South Africa points out that many institutional arrangements in the roads sector are possibly unconstitutional, that is they fail vest the local sphere of government with the primary responsibility for local rural roads¹⁰⁴. In addition to aiming to develop an improved integrated road network system in the rural areas, the strategy aims to support programmes to increase the capacities of municipalities to perform their functions. According to the strategy it is accepted that the delivery of most rural transport infrastructure and services will increasingly be a local government responsibility, funded through Municipal Infrastructure Grants, the equitable share mechanism and transfers of monies in terms of the National Treasury Regulations. Although some provinces may still have a strong direct delivery role in the short to medium term, the long term focus of all provinces – together with that of the national sphere – should be on the facilitation, coordination and strengthening of service delivery.¹⁰⁵

101 Department of Transport 2006, 6.

102 Department of Transport 2006, 20–21.

103 Department of Transport 2007, 33.

104 Department of Transport 2007, 33.

105 Department of Transport 2007, 38.

9 Conclusion

This chapter summarises some of the most central issues identified in the present study which relate to the principles of local self-government used as a guiding framework in the study.

Constitutional and legal foundation for local self-government

The Constitution of the Republic of South Africa provides that the local sphere of government consists of municipalities, and that the municipalities have a right to govern, on their own initiative, the local government affairs of their communities, subject to national and provincial legislation. The Constitution provides that the municipalities have exclusive municipal executive and legislative authority in their area, but the local municipalities have to share their authority with the district municipality within whose area they fall. As provided by the Constitution, the provisions on the composition and authority of the municipalities in the Constitution are defined further in national legislation.

Concept of local-self government

The Constitution provides that the executive and legislative authority of a municipality is vested in its municipal council. The electoral procedures and governing arrangements are prescribed in the Constitution and in the national legislation.

The Constitution assigns a number of functions of to the exclusive authority of the municipalities. The Constitution prescribes many objects and duties to the municipalities to manage public affairs in the interests of the local population. For example, the Constitution requires the municipalities to give priority to the basic needs of the communities and to promote their social and economic development. The municipalities also must participate in national and provincial development programmes and to promote a safe and healthy environment for the local communities, among other objectives.

Scope of local self-government

The basic powers and responsibilities of the municipalities are prescribed by the Constitution. According to the Constitution, the municipalities can also be assigned with other matters by national or provincial legislation.

The Constitution and the Municipal Systems Act provide for some initiative to the municipalities in exercising their functions. The Constitution provides that a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions. The Municipal Systems Act states that the council has the right to govern on its own initiative the local government affairs of the local community.

The principle of subsidiarity is not clearly stated in the legislation as such, but the policies concerning local government for example in providing municipal roads stress the strengthening of the role of the municipalities in service provision. In addition, the Constitution provides that the national government and the provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 and Part A of Schedule 5 of the Constitution which necessarily relates to local government if that matter would most

effectively be administered locally, and the municipality has the capacity to administer it. These functions consist of functional areas of concurrent national and provincial legislative competence (e.g. agriculture and health services), and functional areas of exclusive provincial legislative competence (e.g. ambulance services and libraries).

The Constitution prescribes that the national or provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions. The national and provincial governments have the right to monitor the municipalities and regulate some of the functions of the municipalities. However, the powers of the Member of the Executive Council (MEC) responsible for local government in the province to allocate temporarily any function or power of a municipality to another municipality, assume a responsibility for municipality's function itself, or dissolve a municipal council are strictly monitored as provided in the Constitution and the Municipal Structures Act. The MEC may resort to the power of allocating powers and functions to another municipality, or assuming the powers and functions to the provincial executive, if the municipality fails or is likely to fail in providing basic services or fails to fulfil an executive obligation prescribed in the Constitution or legislation.

The Constitution and the national legislation provide that national Cabinet members and MECs may assign powers and functions to the municipal council, but the assignment must be made in terms of an agreement made with the municipal council. The municipalities must also be guaranteed necessary financial resources and capacity building initiatives necessary to fulfil their new functions and powers.

Conditions under which responsibilities at local level are exercised

The municipalities may have full-time and part-time councillors. The councillors are paid salaries, and in certain cases also allowances within the framework of the Remuneration of Public Office Bearers Act of 1998, which prescribes how the upper limit of the salaries, allowances and benefits of municipal councillors are determined. The upper limit of salaries and allowances are from time to time be determined by the Minister for Provincial Affairs and Constitutional Development after consultation with the member of the Executive Council responsible for local government in each province, and after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers. The salaries and allowances of the members of a municipal council are determined by the municipal council in question.

Financial resources of local authorities

The municipalities' right to equitable shares and allocation of revenue raised nationally among the national, provincial and local spheres of government are provided in the Constitution of the Republic of South Africa. According to the Constitution, an Act of Parliament must provide for the equitable division of revenue raised nationally among the national, provincial and local spheres of government, the determination of each province's equitable share of the provincial share of that revenue, and any other allocations to provinces, local government or municipalities from the national government's share of that revenue, and any conditions on which those allocations may be made. The Act must provide for the need to ensure that the municipalities are able to provide basic services and perform the functions allocated to them. The municipalities' right to equitable shares and allocation of revenue raised nationally among the national provincial and local spheres of government is regulated in the Division of Revenue Acts (for the 2008/09 financial year in the Division of Revenue Act No. 2 of 2008).

The Constitution and the national legislation provide that when municipalities are assigned new functions and powers, the necessary financial resources and capacity building measures have to be provided to the municipalities for the exercising of those functions and powers.

The municipalities in South Africa are largely self-financing, although there are variations between the richer and poorer municipalities. The municipalities have power to set rates for taxes and fees (excluding income tax, value added tax, general sales tax or customs duty).

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Traditional Leadership and Governance Framework Act No. 41 of 2003.

Annex 1. Selected Principles of Local Self-Government

The principles selected and defined for a flexible guiding framework of the study:
CE = Council of Europe: European Charter of Local Self-Government
UN-Habitat = UN-Habitat: International Guidelines on Decentralisation and the Strengthening of Local Authorities

1. Constitutional and legal foundation for local self-government:

The principle of local self-government is recognised in domestic legislation, and where practicable in the constitution. (Based on CE Art. 2 & UN-Habitat Part C 1.1.)

2. Concept of local self-government:

1. The concept of a council or an assembly is recognised in domestic legislation.
 - Description of the composition of councils and assemblies: elected and appointed members etc.
2. Local authorities have authority to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
 - Description of the extent of the authority

The above is based on CE Art. 3.1, Art. 3.2. and UN-Habitat Part C1.1. Remarks: The CE Art. 3.1 notion of “substantial share of public affairs” varies even in Europe. UN-Habitat Part C1.1 speaks only of a legally autonomous sub-national entity without defining the concept (the extent of authority and composition of council membership) explicitly.

3. Scope of local self-government:

1. The basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, this provision does not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. (Based on CE Art. 4.1 & cf. UN-Habitat Part C1.2, Part B1.6.)
2. Local authorities have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. (Based on CE Art 4.2 & cf. UN-Habitat Part C1.5, C2.6.)
3. The principle of subsidiarity: Public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. (Based on CE Art. 4.3 & UN-Habitat Part B1.1, B1.5.)
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. (Based on CE Art. 4.4 & cf. UN-Habitat C2.6.)
5. Where powers are delegated to them by a central or regional authority, local authorities are guaranteed discretion in adapting their exercise to local conditions. (Based on CE Art. 4.5 & UN-Habitat Part D2.9.)

4. Conditions under which responsibilities at local level are exercised

1. The conditions of office (material and remunerative) of local political office holders should provide for free exercise of their functions. (Based on CE Art. 7.1, 7.2 & UN-Habitat A2.11.)

5. Financial resources of local authorities:

1. Local authorities are entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. (Based on CE Art. 9.1 & UN-Habitat D2.10.)
2. It is recognised in legislation that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. Local authorities should be guaranteed the resources necessary to exercise powers delegated to them by central or regional governments. (Based on CE Art. 9.2 & UN-Habitat D2.8.)
3. At least part of the financial resources of local authorities derive from local taxes and charges of which, within the limits of the statute, they have the power to determine the rate. (Based on CE Art. 9.3 & cf. UN-Habitat D2.11.)

Annex 2. European Charter of Local Self-Government

European Charter of Local Self-Government
Strasbourg, 15.10.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribu-

- tion to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
 3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
 4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
 5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
 6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - Article 2,
 - Article 3, paragraphs 1 and 2,

- Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
 3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.
3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex 3. International Guidelines on Decentralisation and the Strengthening of Local Authorities

Sections of the UN-Habitat 2007 International Guidelines on Decentralisation and the Strengthening of Local Authorities

A. Governance and democracy at the local level

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.

12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.
13. Mechanisms should be put in place to allow citizens to reinforce the code.
14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.
4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C Administrative relations between local authorities and other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.
11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions - if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.

14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.
19. Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.

Annex 4. Part A of Schedule 4 to the Constitution

Functional areas of concurrent national and provincial legislative competence

- Administration of indigenous forests
- Agriculture
- Airports other than international and national airports
- Animal control and diseases
- Casinos, racing, gambling and wagering, excluding lotteries and sports pools
- Consumer protection
- Cultural matters
- Disaster management
- Education at all levels, excluding tertiary education
- Environment
- Health services
- Housing
- Indigenous law and customary law, subject to Chapter 12 of the Constitution
- Industrial promotion
- Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence
- Media services directly controlled or provided by the provincial government, subject to section 192
- Nature conservation, excluding national parks, national botanical gardens and marine resources
- Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence
- Pollution control
- Population development
- Property transfer fees
- Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
- Public transport
- Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
- Regional planning and development
- Road traffic regulation
- Soil conservation
- Tourism
- Trade
- Traditional leadership, subject to Chapter 12 of the Constitution
- Urban and rural development
- Vehicle licensing
- Welfare services

Annex 5. Part A of Schedule 5 to the Constitution

Functional areas of exclusive provincial legislative competence

- Abattoirs
- Ambulance services
- Archives other than national archives
- Libraries other than national libraries
- Liquor licences
- Museums other than national museums
- Provincial planning
- Provincial cultural matters
- Provincial recreation and amenities
- Provincial sport
- Provincial roads and traffic
- Veterinary services, excluding regulation of the profession

Swaziland

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Summary

This study examines aspects of local self-government (so called legally autonomous sub-national entity/autonomous local authority) in the Kingdom of Swaziland. The object of the study is to provide basic information on local self-government in Swaziland by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework.

The principles applied as a framework in the study were formed using the European Charter of Local Self-Government and the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities as a basis. The principles are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities.

The study concentrates mostly on the urban local authorities in Swaziland as the rural local authorities called tinkhundla are administered under traditional law and custom. The Urban Government Act prescribes a range of municipal services that the urban local authorities of municipal (city) councils, town councils and town boards must or may perform. The Minister responsible for urban government, appointed by the King, has significant powers to restrict and vary most of the powers of the urban local authorities and confer additional powers on them, and even to dissolve the urban councils.

The revenues of the urban local authorities consist of, among other things, different kinds of rates, fees, charges and central government grants. Fees for any service or facility provided by the urban local authorities or for any licence or permit issued by them are regulated by by-laws, which have to be submitted to the Minister responsible for local government for approval. The Minister also approves the budgets of the urban local authorities, and may issue financial regulations to control the financial affairs of the urban local authorities.

Abbreviations

CLGF	Commonwealth Local Government Forum
UN-Habitat	United Nations Human Settlements Programme
Urban Government Act	Urban Government Act No. 8 of 1969

1 Introduction

The present study examines aspects of local self-government in the Kingdom of Swaziland. The object of the study is to provide basic information on some selected aspects of local self-government in Swaziland by using some of the internationally recognised principles of local self-government as a guideline and framework. The study is part of a larger study concentrating on providing information on issues shaping local self-government in the African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study.

The study uses a selected set of internationally recognised principles of local self-governance as a starting point to the study. The questions concerning the application of the principles in different countries and contexts as well as the criteria for the selection of and defining the principles used as a framework in the study are discussed in further detail in Chapter 2. To summarise the application of the principles, the selected principles are used as a relatively flexible framework guiding the approach and concentration of the study. These guiding principles are listed in Annex 1 of the present study. The study does not try to compare the local self-government in the selected countries in a systematic way or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

The present study aims to provide an overview on the scope of local self-government in Swaziland by presenting an overall picture of the local authorities' basic powers and responsibilities to regulate and manage public affairs, possibilities to exercise initiative within their powers and functions, and the exclusiveness of their authority. The study also discusses briefly the financial resources of the local authorities in Swaziland. The study concentrates mostly on the urban local authorities as the rural local authorities called *tinkhundla* are administered under traditional law and custom.

The study was conducted as a desk study. The material of the study comprises mainly of legislations, studies, and reports of international development institutions.

The study first produces an overview on the local authorities in Swaziland. Then the study discusses the functions and powers of the local authorities. After that the study describes some aspects of the financial resources available to the local authorities. Finally the study summarises some important issues identified in the study relating to the principles of local self-government that were used as a framework in the study.

2 Principles of Local Government

There are some internationally recognised principles shaping the conception of local self-government, such as the *European Charter of Local Self-Government*¹ and the *International Guidelines on Decentralisation and the Strengthening of Local Authorities* published by the United Nations Human Settlements Programme (UN-Habitat)². However, there are no global standards or charter on local self-government, which would be applicable to countries worldwide, even though the guidelines of the UN-Habitat represent a product of efforts to create a global charter on the principles of local-self-government comparable to the European Charter of Local Self-Government.

The European Charter of Local Self-Government was adopted by the Council of Europe and opened for signature by the member states of the Council of Europe on 15 October 1985. The European Charter of Local Self-Government is not an attempt to create common local government legislation in Europe, but the Charter sets a framework for local self-government at the local level, which the states member to the Charter must uphold. The Charter allows flexibility for the member states in determining their framework. The Charter provides that the member states ratifying, accepting or approving the Charter must consider themselves bound by at least twenty paragraphs of Part I of the Charter, ten of which from among specified paragraphs. The principles in the Charter form a flexible framework and a set of goals which the member states parties to the Charter should aspire to achieve.

After the European Charter of Local Self-Government was opened for signature, the national associations of local authorities which participated in the drafting of the Charter sought to create a world-wide charter on local self-government. Some national spheres of government also supported the quest. Some international associations of local authorities such as the International Union of Local Authorities (IULA), and later the United Cities and Local Governments (UCLG) formed in 2004, started exchanging ideas in close collaboration with UN-Habitat on a possible World Charter of Local Self-Government in the follow-up to the Habitat II Conference held in Istanbul in 1996 where local authorities made the case for the preparation of a worldwide charter on local autonomy. The World Charter met resistance among some Member States of the United Nations mainly because they considered that the Charter addressed issues in the realm of internal affairs of the Member States. Finally a step towards the goal was made in April 2007 when the Governing Council of the UN-Habitat approved the International Guidelines on Decentralisation and the Strengthening of Local Authorities. The Second Committee of the United Nations General Assembly has noted the approval of the guidelines by the UN-Habitat Governing Council in the following way at the sixty-second session of the General Assembly:

Notes the approval by the Governing Council of UN-Habitat of the guidelines on decentralization and strengthening of local authorities, and requests UN-Habitat to assist interested Governments in adapting the guidelines to their national contexts, where appropriate, and in further developing tools and indicators as part of its support for the application of the guidelines, bearing in mind

1 Council of Europe 1985.

2 UN-Habitat 2007.

that the guidelines do not constitute a uniform or rigid blueprint to be applicable to all States Members of the United Nations.³

As the principles in the European Charter of Local Self-Government and the UN-Habitat guidelines are numerous, the present study uses a selected set of principles as a flexible framework guiding the approach and the concentration of the study in its efforts to highlight some essential governance issues and relations of power that shape local self-government in Swaziland. The principles were formed using the European Charter of Local Self-Government and the UN-Habitat guidelines as a basis. The principles formed are listed in Annex 1. They are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities. For reference and comparison, the articles of the European Charter of Local Self-Government are listed in Annex 2, and the sections of the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities are listed in Annex 3.

The same principles are used as a framework also in the other country studies concentrating on the North-South Local Government Co-operation Programme countries, but the country studies do not attempt to compare the local self-government in the selected countries in a systematic way, or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

3 United Nations General Assembly 2007, Section II.6.6.

3 Overview on the Local Government System

After the British colonial rule the Kingdom of Swaziland inherited a dual system of governance, in which modern and traditional systems coexist. The modern half of the governance system is based on a "Westminster" system of a bi-cameral Parliament, a judiciary, and an executive. The Parliament consists of a mixture of elected and royally appointed members. Swaziland is divided into four administrative regions, which are administered by regional administrations under the Deputy Prime Minister's Office. The geographical areas of the regions contain urban and rural local government units. Swaziland has had a system of urban local governments since 1964. The urban local authorities currently comprise of two cities, three town councils and seven town boards. The department of Urban Government in the Ministry of Housing and Urban Development is responsible for the administration and regulation of urban local authorities. The traditional system of governance consists of traditional institutions of local government called tinkhundla (in singular form inkhundla) in the rural areas.⁴

In 2005, Swaziland's head of state, King Mswati III, ratified Swaziland's new Constitution, which came into force in 2006. The previous constitution was suspended in 1973 by Royal Proclamation issued by King Sobhuza II. By the Royal Proclamation all executive powers were vested in the Swazi monarch, and political parties were banned. The new 2005 Constitution of the Kingdom of Swaziland provides that the current system of local government in Swaziland will be reassessed and reformed.

The Parliament consists of the House of Assembly and the Senate. The House of Assembly consists of 65 seats. 55 members of the House of Assembly are directly elected from the tinkhundla constituencies, and ten members are appointed by the Head of state (the King). There are 30 seats of Senators in the Senate. 20 Senators are appointed by the King, and ten are elected by the House of Assembly. The term of the Parliament is five years. The executive authority is vested in the King. The King exercises his authority as both Head of State of the modern government as well as Ingwenyama, traditional leader and custodian of Swazi Land and Custom. The responsibilities of the Monarchy are shared by the King and the Queen Mother (Indlovukazi). The day-to-day management of government business is carried out by a Cabinet of Ministers. The Cabinet of Ministers is headed by a Prime Minister. The King appoints all the Ministers, including the Prime Minister. The King also appoints senior civil servants.⁵

Each of the four administrative regions has a district administration responsible for coordinating the functions of Government at district level. The political head of a region is the Regional Administrator, and the administrative head of a region is the Regional Secretary who facilitates the coordination and provision of technical and social services to the people within the region. The Deputy Prime Minister is responsible for the district administration as well as for regional development and tinkhundla administration.⁶ The local government level consists of urban and rural local authorities.

4 World Bank 2008, 2–3.

5 United Nations 2004, 5–6.

6 United Nations 2004, 6.

3.1 Urban Local Authorities

The urban local authorities consist of two municipal councils, which are commonly also referred to as city councils, three town councils and seven town boards. The Ministry of Housing and Urban Development is responsible for the urban local authorities.⁷

The urban local authorities are established and administered under the Urban Government Act No. 8 of 1969⁸. The Minister responsible for urban government may by notice in the *Gazette* declare an area to be either a municipality or a town. The Minister also establishes by a notice in the *Gazette* either a municipal council (in practice commonly referred to as city councils) or a town council in each municipality, and a town board in each town. The position of the towns and town boards is slightly different than the position of the municipalities and municipal and town councils under the Urban Government Act. Only some of the provisions in the Sections of the Urban Government Act apply automatically to the town boards as they do to municipalities and municipal councils and town councils (e.g. sections on composition of councils and election regulations), and the rest of the Sections of the Act (e.g. sections on municipal funds) apply to town boards only if the Minister declares that any or all of the remaining provisions apply to a town or a town board by publishing a notice in the *Gazette*.⁹

The areas of the urban local authorities are divided into wards, and the councillors are elected from the wards under the first-past-the-post system on the basis of universal adult suffrage. The term of office of the councillors is three years.¹⁰ The councillors elect a Mayor from amongst themselves¹¹. The post of a Mayor is a part-time post and is limited to chairing the council meetings and performing ceremonial functions. The remuneration of the councillors is set by each urban local authority, but must be approved by the Minister responsible for urban government.¹² The municipal councils (city councils) and town councils, and also the town boards if the Minister so decides, are required to appoint a finance committee for regulating and controlling the finances of the council¹³. The municipal and town councils may appoint other committees as they choose¹⁴. Decisions of the municipal councils, town councils and the town boards are made by the majority of councillors present at a full council meeting (one half of the total membership of the council or town board constitutes a quorum for the transaction of business)¹⁵.

If the Minister responsible for urban government has cause to suspect that an urban council has failed to perform any of its duties conferred upon it by the provisions of the Urban Government Act or any other law, has cause to suspect that a council has performed something without due authority, has cause to suspect that a council member or former council member has abused his or her position or neglected to perform duties as a member, or is otherwise of the opinion that an investigation should be made into the affairs of a council, the Minister may appoint a commission to investigate the suspected matter and to report to him. The chairman of the commission is the Attorney-General or a law officer appointed by him. After the Minister has received the commission's report, he may make an order which the council must comply with

7 United Nations 2004, 6.

8 According to CLGF, the Urban Government Act of 1969 was amended in 2001 and 2003. The present study uses a copy of the Act obtained on the web site of the Ministry of Housing and Urban Development, which does not state whether or not the amendments have been included in the copy.

9 Urban Government Act No. 8 of 1969, Sections 4, 5, 111.

10 CLGF, 208.

11 Urban Government Act No. 8 of 1969, Section 7.

12 CLGF, 208.

13 Urban Government Act No. 8 of 1969, Section 20.

14 Urban Government Act No. 8 of 1969, Section 19.

15 Urban Government Act No. 8 of 1969, Section 18.

in order to correct the situation. If the council fails to comply with the order, the Minister may suspend any of the powers of the council or dissolve the council. The Minister may also suspend powers of the council and dissolve the council pending the report of the commission.¹⁶

3.2 Rural Local Authorities

Approximately 80 per cent of Swaziland's population lives in rural and semi-urban areas. The administration of these areas falls in the authority of the Chiefs, who are traditional authorities and the representatives of the King at the local level. The Chiefs administer the areas of their chiefdoms in accordance with customary law by allocating land for family use and have responsibility for the welfare of the people living in the area and for ensuring law and order.¹⁷ The office of a Chief is hereditary and non-salaried.¹⁸ Each region is divided into several tinkhundlas, which are the regions' constituencies. There are currently more than 350 traditional chiefs grouped into 55 tinkhundlas, so one inkhundla (singular form of tinkhundla) consist of many chiefdoms¹⁹. An inkhundla is under the general administration of an executive committee called Bucopho, which consists of persons elected from the chiefdoms within the inkhundla. The Bucopho operates under the chairmanship of an elected Indvuna YeNkhundla, who supervises the activities of the inkhundla and convenes and presides over meetings of the inkhundla.²⁰ Allowances for the Bucopho members are determined by the Deputy Prime Minister's Office²¹.

In the chiefdoms within the tinkhundla, the appointment of a chief is a family affair, the heir to a deceased chief. He/she is the head of the area in law, economics, and ritual. Dlamini, referring Kuper (1980), describes the position and functions of the chief as follows:

He/she [the chief] mediates between his/her subjects and the rulers; presides over cases that family councils could not settle; sanctions fines and other punishments inflicted by his/her court; investigates serious cases before sending them on appeal; exercises rights over land and in brief reflects in miniature the privileges and duties of the King of the nation. His/her mother shares with him/her the responsibility of control and is in charge of the main section of the homestead.²²

Each chief also has at least one headman (headmen lead the villages) as a councillor:

Each chief has at least one headman to attend to cases, supervise labour, and represents the claims of subjects. In one principality, there may be as many as three headmen, each with specific duties. No chief possesses autocratic powers within his/her principality. If councillors see that the chief has seriously infringed the rights of subjects, they fine him/her without hesitation. If a chief

16 Urban Government Act No. 8 of 1969, Section 107.

17 According to the World Bank accountability and land management practices are among the most critical constraints to growth and poverty reduction especially in the rural areas in Swaziland. Currently approximately 60 per cent of the country is still held in trust for the people by the King as Swazi Nation Land, on which 75 per cent of the population live on subsistence agriculture. In accordance with the customary law, male heads of households can acquire customary right of use of land, but may not own land within a chiefdom. Prior to the new Constitution women could only acquire a customary right of use through a male relative or heir. Securing land tenure is one of the biggest challenges facing the majority of Swaziland's poor. (World Bank 2008, 13.)

18 United Nations 2004, 6.

19 World Bank 2008, 13.

20 Constitution of the Kingdom of Swaziland, 2005, Section 81 (1–3); Government of the Kingdom of Swaziland; United Nations 2004, 6.

21 CLGF, 208.

22 Dlamini 2005, 28.

does not accept the advice of the councilors, he/she may always appeal to the central authorities, who will, if they consider necessary, order him/her 'to rest' and appoint another member of the area to act in his/her place until the installation of another one.²³

3.3 The New Constitution and the Local Government System

Implementing some of the provisions in the new Constitution of the Kingdom of Swaziland, 2005, will mean reforming the present local government system in Swaziland. The Constitution provides that "Parliament shall within five years of the commencement of this Constitution provide for the establishment of a single country-wide system of local government which is based on the *tinkhundla* system of government, hierarchically organised according to the volume or complexity of service rendered and integrated so as to avoid the urban/rural dichotomy."²⁴ The Constitution prescribes that local government will be organised and administered, as far as practicable, through democratically established regional and sub-regional councils or committees²⁵. The Constitution further prescribes on the composition of the councils or committees that "a local government area shall be administered by an elected or appointed, or partly elected and partly appointed council or committee as Parliament may prescribe"²⁶.

On the new *tinkhundla*-based local government system, Section 80 of the Constitution provides as follows:

- (1) For purposes of political organisation and popular representation of the people in Parliament, Swaziland is divided into several areas called *tinkhundla*.
- (2) An *inkhundla* –
 - (a) is established by the King on the recommendation of the Elections and Boundaries Commission;
 - (b) consists of one or more chiefdoms which act as nomination areas for the elected members of the House (the *primary* level elections);
 - (c) is, among other things, also used as a constituency for the election of the elected members of the House (the *secondary* level elections).
- (3) The *tinkhundla* units or areas, inspired by a policy of decentralisation of state power, are the engines of development and the central pillars underpinning the political organisation and economic infrastructure of the country through which social services to the different parts of the Swazi community are facilitated and delivered.

According to the new Constitution of 2005, an *inkhundla* represented by the Bucopho has a corporate status and may perform acts as bodies corporate may perform²⁷.

The new Constitution also envisages the establishment of a Regional Council in each of the four regions in Swaziland consisting of persons nominated by each *inkhundla* in that region from among the Bucopho members in the region. A Regional Council will advise the Regional Administrator on the administration of the Region and coordinate social and economic development of the Region and perform such other functions within the Region as may be prescribed.²⁸

In the new Constitution of 2005 the executive authority is vested in the King: the executive authority is vested in the King as Head of State, and the King may exercise the executive authority either directly or through the Cabinet or a Minister.²⁹

23 Dlamini 2005, 29.

24 Constitution of the Kingdom of Swaziland, 2005, Section 218 (1).

25 Constitution of the Kingdom of Swaziland, 2005, Section 218 (3).

26 Constitution of the Kingdom of Swaziland, 2005, Section 220 (1).

27 Constitution of the Kingdom of Swaziland, 2005, Section 81 (4).

28 Constitution of the Kingdom of Swaziland, 2005, Section 82.

29 Constitution of the Kingdom of Swaziland, 2005, Section 64.

4 Functions and Powers of Urban Local Authorities

The Urban Government Act No. 8 of 1969 provides for the duties and powers of the municipal (city) and town councils. The provisions on the duties and powers of councils apply also to the town boards to the extent which the Minister responsible for urban government may prescribe by a notice published in the *Gazette*³⁰. Section 55 (1) of the Urban Government Act provides general duties that the urban councils must perform, for example control, manage and administer the municipality, maintain public streets and open spaces vested in the Council, safeguard public health and provide sanitary services, establish and administer, subject to the extent of the council's resources, housing schemes for the inhabitants of the municipality, and generally promote the public health, welfare and development of the municipality. According to Section 55 (1) the councils shall perform these duties subject to and in accordance with the provisions of the Urban Government Act and any other law relating to the duties of a Council, so far as is reasonably practicable.

The urban councils may also exercise the powers that are listed in the Schedule to the Urban Government Act in accordance with any other law relating to these powers. The Minister responsible for urban government may by publishing a notice in the *Gazette* restrict a particular council's right to exercise the powers listed in the Schedule, vary the Schedule or confer additional powers on a particular council.³¹ The powers listed in the Schedule include, among other things, the following:

General public services; to establish, acquire, maintain, promote, assist and control:

- cemeteries, crematoria, mortuaries and ancillary services, and to provide for the burial of bodies of destitute persons and unclaimed bodies;
- omnibus stations and related office accommodation, cafes, restaurants, refreshment rooms and other buildings;
- health centres and crèches;
- public halls, libraries, art galleries and museums;
- slaughter houses, cold storage facilities and premises for the inspection or processing of milk, meat or hides and skins;
- markets;
- botanical and zoological gardens;
- public baths and swimming pools;
- laundries and other places for washing clothes;
- canteens, social centres and clubs including such facilities for employees and staff;
- public lavatories and urinals;
- pounds for stray animals and clinics for the treatment of sick animals;
- camping and grazing grounds;
- lairages and dipping tanks;
- public weighing machines; and
- public monuments.

³⁰ Urban Government Act No. 8 of 1969, Section 113 (2).

³¹ Urban Government Act No. 8 of 1969, Section 29.

Other categories of powers listed in the Schedule include, among other things, to establish and maintain public streets and places, to undertake private works and services, to maintain and administer fire brigades, subject to the approval of the Minister responsible for urban government undertake and administer housing schemes and engage in trading activities, such as maintaining public transport services, with the consent of the Minister.

The municipal (city) councils and town councils may make by-laws for carrying out the powers conferred on them by the Urban Government Act or any other law³². The town boards may make by-laws if the Minister responsible for urban government allows them to do so by publishing a notice in the Gazette³³. The by-laws have to be submitted to the Minister responsible for urban government for approval³⁴. The review processes of the by-laws can be lengthy impacting the urban local authorities' ability to operate sustainably³⁵.

32 Urban Government Act No. 8 of 1969, Section 77.

33 Urban Government Act No. 8 of 1969, Section 113.

34 Urban Government Act No. 8 of 1969, Section 79.

35 World Bank 2008, 3.

5 Financial resources of Local Authorities

The municipal (city) councils and town councils, and also the town boards if the Minister responsible for urban government assigns them the power by a notice in the *Gazette*, have powers to raise revenue and set budgets, but the tinkhundla do not have these powers. The tinkhundla have very few staff members, and are funded entirely by government grants.³⁶

An urban council may charge fees for any service or facility provided by it or for any licence or permit issued by it. All these fees are regulated by by-laws - which have to be submitted to the Minister responsible for local government for approval – except where a specific provision is made in respect of any fee in the Urban Government Act No. 8 of 1969 or any other law.³⁷

The Urban Government Act provides that the revenues of the urban councils consist of, among other things, different kinds of rates, fees, charges, rents, and government grants³⁸. The council may borrow money with the approval of the Minister responsible for urban government³⁹. The revenues of the urban councils have consisted mostly of rates, service charges, and government grants⁴⁰.

Every urban council must prepare a budget for a financial year, and submit it to the Minister responsible for urban government for approval⁴¹. The Minister may make financial regulations to control the financial affairs of the councils⁴². The Minister also has power to direct a council to make and levy a rate sufficient to liquidate an aggregate deficit revealed in the final accounts of the council at the end of the financial year⁴³.

36 CLGF, 208; Urban Government Act No. 8 of 1969, Section 113.

37 Urban Government Act No. 8 of 1969, Section 57 (1–2).

38 Urban Government Act No. 8 of 1969, Section 86.

39 Urban Government Act No. 8 of 1969, Sections 94–95.

40 CLGF, 208.

41 Urban Government Act No. 8 of 1969, Section 91.

42 Urban Government Act No. 8 of 1969, Section 93.

43 Urban Government Act No. 8 of 1969, Section 109 (3).

6 Conclusion

This chapter summarises some important issues identified in the present study which relate to the principles of local self-government that were applied as a guiding framework in the study. The chapter concentrates on the urban local authorities of municipal (city) councils, town councils and town boards as the rural local authorities, the tinkhundla, are administered under traditional law and custom.

Constitutional and legal foundation for local self-government

The urban local authorities of municipal (city) councils, town councils, and town boards are established and regulated under the Urban Government Act No. 8 of 1969. Swaziland's new constitution was ratified in 2005 and came into force in 2006. The new constitution recognises local authorities, and provides for the reform of the local government system within five years of the commencement of the constitution.

Concept of local self-government

The Urban Government Act provides that the Minister responsible for urban government may by notice in the *Gazette* declare an area to be either a municipality or a town. The Minister also establishes by a notice in the *Gazette* either a municipal council (in practice commonly referred to as city councils) or a town council in each municipality, and a town board in each town. The areas of the urban local authorities are divided into wards, and the councillors are elected from the wards under the first-past-the-post system on the basis of universal adult suffrage.

The Urban Government Act prescribes a range of municipal services that the urban local authorities must or may perform. The Minister responsible for urban government has significant power to alter the powers of the local authorities.

Scope of local self-government

The basic powers and responsibilities of the urban local authorities are prescribed in the Urban Government act. The Minister responsible for urban government has considerable powers to restrict and vary most of the powers of the urban local authorities and confer additional powers on them, and even to dissolve the urban councils.

Conditions under which responsibilities at local level are exercised

The remuneration of the councillors is set by each urban local authority, but must be approved by the Minister responsible for urban government.

Financial resources of local authorities

The revenues of the urban local authorities consist of, among other things, different kinds of rates, fees, charges and central government grants. Fees for any service or facility provided by the urban local authorities or for any licence or permit issued by them are regulated by by-laws, which have to be submitted to the Minister responsible for local government for approval. The Minister also approves the budgets of the urban local authorities.

The Urban Government Act does not prescribe provisions that recognise or guarantee that sufficient financial resources commensurate with the responsibilities of the urban local authorities have to be made available for the urban local authorities.

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Legislations

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Annex 1. Selected Principles of Local Self-Government

The principles selected and defined for a flexible guiding framework of the study:

CE = Council of Europe: European Charter of Local Self-Government

UN-Habitat = UN-Habitat: International Guidelines on Decentralisation and the Strengthening of Local Authorities

1. Constitutional and legal foundation for local self-government:

The principle of local self-government is recognised in domestic legislation, and where practicable in the constitution. (Based on CE Art. 2 & UN-Habitat Part C 1.1.)

2. Concept of local self-government:

1. The concept of a council or an assembly is recognised in domestic legislation.
 - Description of the composition of councils and assemblies: elected and appointed members etc.
2. Local authorities have authority to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
 - Description of the extent of the authority

The above is based on CE Art. 3.1, Art. 3.2. and UN-Habitat Part C1.1. Remarks: The CE Art. 3.1 notion of “substantial share of public affairs” varies even in Europe. UN-Habitat Part C1.1 speaks only of a legally autonomous sub-national entity without defining the concept (the extent of authority and composition of council membership) explicitly.

3. Scope of local self-government:

1. The basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, this provision does not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. (Based on CE Art. 4.1 & cf. UN-Habitat Part C1.2, Part B1.6.)
2. Local authorities have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. (Based on CE Art 4.2 & cf. UN-Habitat Part C1.5, C2.6.)
3. The principle of subsidiarity: Public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. (Based on CE Art. 4.3 & UN-Habitat Part B1.1, B1.5.)
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. (Based on CE Art. 4.4 & cf. UN-Habitat C2.6.)
5. Where powers are delegated to them by a central or regional authority, local authorities are guaranteed discretion in adapting their exercise to local conditions. (Based on CE Art. 4.5 & UN-Habitat Part D2.9.)

4. Conditions under which responsibilities at local level are exercised

1. The conditions of office (material and remunerative) of local political office holders should provide for free exercise of their functions. (Based on CE Art. 7.1, 7.2 & UN-Habitat A2.11.)

5. Financial resources of local authorities:

1. Local authorities are entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. (Based on CE Art. 9.1 & UN-Habitat D2.10.)
2. It is recognised in legislation that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. Local authorities should be guaranteed the resources necessary to exercise powers delegated to them by central or regional governments. (Based on CE Art. 9.2 & UN-Habitat D2.8.)
3. At least part of the financial resources of local authorities derive from local taxes and charges of which, within the limits of the statute, they have the power to determine the rate. (Based on CE Art. 9.3 & cf. UN-Habitat D2.11.)

Annex 2. European Charter of Local Self-Government

European Charter of Local Self-Government
Strasbourg, 15.10.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex 3. International Guidelines on Decentralisation and the Strengthening of Local Authorities

Sections of the UN-Habitat 2007 International Guidelines on Decentralisation and the Strengthening of Local Authorities

A. Governance and democracy at the local level

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.

12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.
13. Mechanisms should be put in place to allow citizens to reinforce the code.
14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.
4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C Administrative relations between local authorities and other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.
11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions - if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.

14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.
19. Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.

Ghana

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Summary

This study examines aspects of local self-government (so called legally autonomous sub-national entity/autonomous local authority) in the Republic of Ghana. The object of the study is to provide basic information on local self-government in Ghana by using a selected set of some of the internationally recognised principles of local self-government as a flexible guideline and framework.

The principles applied as a framework in the study were formed using the European Charter of Local Self-Government and the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities as a basis. The principles are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities.

The Constitution of the Republic of Ghana provides that a District Assembly is the highest political authority in the district, and that the District Assembly has deliberative, legislative and executive powers. The District Assemblies autonomy is limited by the presidential appointees: 30 per cent of the members of the Assembly and the District Chief Executive are appointed by the President. The District Chief Executive heads the executive committee of the Assembly, and is responsible for the day-to-day performance of the executive and administrative functions of the District Assembly. The District Chief Executive is the chief representative of the Government in the district. The position of the District Chief Executive allows the central government to exercise considerable control over the affairs of the local government.

The District Assemblies deliver many services at the local level, but with varying degrees of authority and responsibility for the service provision. The sector legislations and legislative instruments establishing the District Assemblies provide in many cases overlapping responsibilities to the District Assemblies and to the Ministries, Departments and Agencies of the central government, which creates inefficiencies in local service delivery.

The District Assemblies finances are to a large extent dependent on transfers from the central government and donors. The autonomy of the District Assemblies is limited by the fact that they have to submit their annual budgets to the Ministry of Finance for approval.

Abbreviations

CLGF	Commonwealth Local Government Forum
DCE	District Chief Executive
Local Government Act	Local Government Act No. 462 of 1993
MDAs	Ministries, Departments and Agencies
PNDC	Provisional National Defence Council
RCC	Regional Coordinating Council
UN-Habitat	United Nations Human Settlements Programme

1 Introduction

The present study examines aspects of local self-government in the Republic of Ghana. The object of the study is to provide basic information on some selected aspects of local self-government in Ghana by using some of the internationally recognised principles of local self-government as a guideline and framework. The study is part of a larger study concentrating on providing information on issues shaping local self-government in the African countries in which the North-South Local Government Co-operation Programme administered by the Association of Finnish Local and Regional Authorities supported local government co-operation at the time of the preparation of the study.

The study uses a selected set of internationally recognised principles of local self-governance as a starting point of the study. The questions concerning the application of the principles in different countries and contexts as well as the criteria for the selection of and defining the principles used as a framework in the study are discussed in further detail in Chapter 2. To summarise the application of the principles, the selected principles are used as a relatively flexible framework guiding the approach and concentration of the study. These guiding principles are listed in Annex 1 of the present study. The study does not try to compare the local self-government in the selected countries in a systematic way or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

The present study aims to provide an overview on the scope of local self-government in Ghana by presenting an overall picture of the local authorities' basic powers and responsibilities to regulate and manage public affairs, possibilities to exercise initiative within their powers and functions, and the exclusiveness of their authority. The study also discusses briefly the financial resources of the local authorities in Ghana.

The study was conducted as a desk study. The material of the study comprises mainly of legislations and different kinds of studies prepared by, or for, the Government of Ghana and donor agencies. Some Acts, such as the National Development Planning Commission Act No. 479 of 1994, which could have been used as primary sources in the study, were not available for the study, and therefore the information on these Acts was gathered from the studies applied as references.

The study first produces an overview on the local authorities in Ghana. Then the study discusses the composition of local authorities and remuneration of political office-holders before turning to examining the functions and powers of the local authorities. After that the study describes some aspects of the financial resources available to the local authorities. Finally the study summarises some of the central issues identified in the study relating to the principles of local self-government that were used as a framework in the study.

2 Principles of Local Self-Government

There are some internationally recognised principles shaping the conception of local self-government, such as the *European Charter of Local Self-Government*¹ and the *International Guidelines on Decentralisation and the Strengthening of Local Authorities* published by the United Nations Human Settlements Programme (UN-Habitat)². However, there are no global standards or charter on local self-government, which would be applicable to countries worldwide, even though the guidelines of the UN-Habitat represent a product of efforts to create a global charter on the principles of local-self-government comparable to the European Charter of Local Self-Government.

The European Charter of Local Self-Government was adopted by the Council of Europe and opened for signature by the member states of the Council of Europe on 15 October 1985. The European Charter of Local Self-Government is not an attempt to create common local government legislation in Europe, but the Charter sets a framework for local self-government at the local level, which the states member to the Charter must uphold. The Charter allows flexibility for the member states in determining their framework. The Charter provides that the member states ratifying, accepting or approving the Charter must consider themselves bound by at least twenty paragraphs of Part I of the Charter, ten of which from among specified paragraphs. The principles in the Charter form a flexible framework and a set of goals which the member states parties to the Charter should aspire to achieve.

After the European Charter of Local Self-Government was opened for signature, the national associations of local authorities which participated in the drafting of the Charter sought to create a world-wide charter on local self-government. Some national spheres of government also supported the quest. Some international associations of local authorities such as the International Union of Local Authorities (IULA), and later the United Cities and Local Governments (UCLG) formed in 2004, started exchanging ideas in close collaboration with UN-Habitat on a possible World Charter of Local Self-Government in the follow-up to the Habitat II Conference held in Istanbul in 1996 where local authorities made the case for the preparation of a worldwide charter on local autonomy. The World Charter met resistance among some Member States of the United Nations mainly because they considered that the Charter addressed issues in the realm of internal affairs of the Member States. Finally a step towards the goal was made in April 2007 when the Governing Council of the UN-Habitat approved the International Guidelines on Decentralisation and the Strengthening of Local Authorities. The Second Committee of the United Nations General Assembly has noted the approval of the guidelines by the UN-Habitat Governing Council in the following way at the sixty-second session of the General Assembly:

Notes the approval by the Governing Council of UN-Habitat of the guidelines on decentralization and strengthening of local authorities, and requests UN-Habitat to assist interested Governments in adapting the guidelines to their national contexts, where appropriate, and in further developing tools and indicators as part of its support for the application of the guidelines, bearing in mind

1 Council of Europe 1985.

2 UN-Habitat 2007.

that the guidelines do not constitute a uniform or rigid blueprint to be applicable to all States Members of the United Nations.³

As the principles in the European Charter of Local Self-Government and the UN-Habitat guidelines are numerous, the present study uses a selected set of principles as a flexible framework guiding the approach and the concentration of the study in its efforts to highlight some essential governance issues and relations of power that shape local self-government in Ghana. The principles were formed using the European Charter of Local Self-Government and the UN-Habitat guidelines as a basis. The principles formed are listed in Annex 1. They are grouped under five categories: constitutional and legal foundation for local self-government, concept of local self-government, scope of local self-government, conditions under which responsibilities at local level are exercised, and financial resources of local authorities. For reference and comparison, the articles of the European Charter of Local Self-Government are listed in Annex 2, and the sections of the UN-Habitat's International Guidelines on Decentralisation and the Strengthening of Local Authorities are listed in Annex 3.

The same principles are used as a framework also in the other country studies concentrating on the North-South Local Government Co-operation Programme countries, but the country studies do not attempt to compare the local self-government in the selected countries in a systematic way, or try to produce recommendations on how to support the development of local self-government, decentralisation or other governance matters in the countries examined. The country studies rather aim to highlight some important governance issues and relations of power that shape local self-government in the selected countries.

3 United Nations General Assembly 2007, Section II.6.6.

3 Overview on the Local Government System

The local government units in Ghana are called District Assemblies. The first District Assemblies were established in 1988 after the first District Assembly elections were held under the Provisional National Defence Council (PNDC) rule. At the late 1980s the PNDC rule promoted ‘democratic centralism’, and the primary objective was to make the District Assemblies as the highest elected political structures in the country. Many of the current features of the decentralisation processes retain some of the characteristics of the PNDC era decentralisation, such as the – at least in principle – non-partisan membership of the present District Assemblies.⁴

The Republic of Ghana is a unitary state with multiparty democracy as provided by the Constitution of the Republic of Ghana, 1992, which established the Fourth Republic. The 1992 Constitution marked the end of the rule of the Provisional National Defence Council (PNDC), and a return to multiparty democracy in Ghana. The Parliament is unicameral and has 230 seats. The Members of Parliament are directly elected by universal adult suffrage by a first-past-the-post system for a term of four years. The President is the head of state and government. The President is directly elected by universal adult suffrage requiring more than 50 per cent of the vote to be elected. The President appoints the vice-president. The Cabinet is called the Council of Ministers, and is nominated by the President and approved by the Parliament. In addition, the Council of State is an appointed advisory committee to the President consisting of 25 citizens which is required to be established by the Constitution.⁵

The Republic of Ghana is divided into ten administrative regions. Each of the regions is headed by a Regional Minister appointed by the President.⁶

The Constitution provides the foundation for decentralisation and local government in Ghana. Section 35 (5) of the Constitution provides that the State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs. For the achievement of this objective, the Article 35 (6)(d) of the Constitution requires the State to “...to take appropriate measures to ensure decentralisation in administrative and financial machinery of government and to give opportunities to people to participate in decision-making at every level in national life and government.” The Constitution prescribes that Ghana shall have a system of local government and administration which shall, as far as practicable, be decentralised⁷.

The Constitution provides for the features of the decentralised local government system, which include the following⁸:

- (a) Parliament shall enact appropriate laws to ensure that functions, powers, responsibilities and resources are at all times transferred from the Central Government to local government units in a co-ordinated manner;
- (b) Parliament shall by law provide for the taking of such measures as are necessary to enhance the capacity of local government authorities to plan, initiate, co-ordinate, manage and execute policies in respect of all matters affecting the

4 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 25–26.

5 CLGF, 81.

6 CLGF, 81.

7 Constitution of the Republic of Ghana, 1992, Article 240 (1).

8 Constitution of the Republic of Ghana, 1992, Article 240 (2)(a–e).

- people within their areas, with a view to ultimately achieving localization of those activities;
- (c) there shall be established for each local government unit a sound financial base with adequate and reliable sources of revenue;
 - (d) as far as practicable, persons in the service of local government shall be subject to the effective control of local authorities;
 - (e) to ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance.

The Constitution provides that for the purposes of local government, Ghana has been divided into districts, which existed immediately before the coming into force of the Constitution. The Parliament may enact legislations to make provisions for the re-drawing of the boundaries of districts or for reconstituting the districts. The Constitution also prescribes that a District Assembly shall be the highest political authority in the district. The District Assembly shall have deliberative, legislative and executive powers.⁹

The Constitution also provides, among other things, the foundation for determining the composition of the District Assemblies, and the basis for their financial resources.

The constitutional provisions for decentralisation and local government are provided and defined further in national legislations. The most important ones include the following¹⁰:

- Local Government Act No. 462 of 1993, together with supporting enactments and subsidiary legislation such as the Local Government – Urban, Zonal and Town and Unit Committees – Establishment Instrument, and the 138 Legislative Instruments¹¹ establishing the 138 Metropolitan, Municipal and District Assemblies;
- National Development Planning (System) Act 480 of 1994;
- National Development Planning Commission Act 479 of 1994;
- District Assemblies’ Common Fund Act 455 of 1993;
- Local Government (District Tender Boards) Establishment Regulations (which is now repealed);
- Local Government Service Act 656 of 2003, (and other legislation pertaining to administration of local government and central government personnel at local level);
- Institute of Local Government Studies Act 647 of 2003;
- A range of finance legislation, such as the District Assemblies Common Fund Act No. 455 of 1993, and local government fiscal regulations.

The Local Government Act No. 462 of 1993, which repealed the PNDC Local Government Law No. 207 of 1988 that provided the establishment of the first District Assemblies, provides for the establishment of the current districts and the District Assemblies. The President may declare an area to be a district and assign a name to the district. The Local Government Act provides that there are three kinds of districts – districts, municipalities and metropolises – and each of them have an Assembly as the highest political authority in the district¹²:

9 Constitution of the Republic of Ghana, 1992, Article 241.

10 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 6–7.

11 “A Legislative Instrument is a formal legal document issued by the Executive or independent authority, which has been approved by a resolution in Parliament” The Parliament of Ghana, The Legislative Instruments, http://www.parliament.gh/const_legislative.php. Art. 11(7) of the Constitution states that any Order, Rule or Regulation made under a power conferred by the Constitution or any other law, shall be laid before Parliament, published in the Gazette and come into force after twenty-one sitting days of Parliament, unless two-thirds or more members of Parliament vote to annul it. (Joint Government of Ghana and Development Partner Decentralisation Policy Review, 14.)

12 Local Government Act No. 462 of 1993, Sections 1, 3 (1).

- District Assemblies in districts with a minimum population of 75,000 people;
- Municipal Assemblies in districts with a minimum population of 95,000 people; and
- Metropolitan Assemblies in districts with a minimum population of 250,000 people.

Because of the above classification of districts, the District, Municipal and Metropolitan Assemblies are all often commonly referred to as District Assemblies. The Minister responsible for local government, currently situated at the Ministry of Local Government, Rural Development and Environment, establishes with a legislative instrument an Assembly for each district, municipality and metropolis in accordance with Article 241 (3) of the Constitution¹³. 70 percent of the District Assembly members are elected, and 30 per cent are appointed¹⁴. The Assemblies are non-partisan bodies¹⁵. Each District Assembly has an executive committee, which is responsible for the performance of the executive and administrative functions of the District Assembly. The executive committee is headed by a District Chief Executive (DCE).¹⁶ There are currently four Metropolitan Assemblies, ten Municipal Assemblies and 124 District Assemblies in Ghana¹⁷.

The Minister may also establish, with the prior approval of the Cabinet, sub-metropolitan district councils (secretariats serving as branches of the Metropolitan Assembly, whose areas are further divided into town councils), urban or zonal councils, town or area councils, and unit committees within the area of authority of the District Assembly¹⁸. The District Assemblies may delegate some of their functions to these bodies, which comprise of elected and appointed members¹⁹. There are presently in total 13 sub-metropolitan district councils, 1,300 urban, zonal, town and area councils, and 16,000 unit committees in Ghana²⁰.

The National Planning (System) Act No. 480 of 1994 provides the framework for decentralised development planning of the different types of District Assemblies, and the role of the Regional Coordinating Councils (RCCs) in providing oversight, coordination and capacity building functions related to the planning. The RCC is chaired by the Regional Minister appointed by the President. The membership of the RCCs consists of²¹:

- The Regional Minister and his/her Deputy;
- The Presiding Member and DCE from each district;
- Two chiefs from the Regional House of Chiefs;
- Additionally the Regional Heads of decentralised ministries in the Region as non-voting members.

The regional level is in various legislations and policies indicated to be part of the local government system. However, a recent decentralisation policy review conducted for the Government of Ghana and development partners prefers to clarify the RCCs' role as one of a de-concentrated layers of central government rather than proper local government because RCCs do not have an elected council, and since their role foremost

13 Local Government Act No. 462 of 1993, Section 3 (1–2).

14 Local Government Act No. 462 of 1993, Section 5; Joint Government of Ghana and Development Partner Decentralisation Policy Review, 9.

15 Local Government Act No. 462 of 1993, Section 7.

16 Constitution of the Republic of Ghana, 1992, Article 243; Local Government Act No. 462 of 1993, Sections 19–20.

17 CLGF, 82; Federation of Canadian Municipalities 2007, 4.

18 Local Government Act No. 462 of 1993, Section 3 (3–4).

19 Local Government Act No. 462 of 1993, Section 15.

20 Federation of Canadian Municipalities 2007, 4; Joint Government of Ghana and Development Partner Decentralisation Policy Review, 28.

21 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 30.

appears to be one of coordination, oversight and support to Metropolitan, Municipal and District Assemblies on behalf of central government.²²

The structure of the local government system consisting of the District Assemblies and their sub-structures, as well as the coordinating bodies of RCCs, is illustrated in Annex 4.

There is no one coherent policy document defining the decentralisation policies in Ghana. The latest and overall guiding programming document is the National Decentralisation Action Plan (NDAP), which has been endorsed by the Cabinet in February 2004. The NDAP is foremost an operational plan that seeks to enhance practical work on harmonisation of development funding and capacity building. The Government of Ghana and development partners recognise that further real progress of the decentralisation reform will require a more coherent and coordinated approach and comprehensive policy strategy, and are developing initiatives aiming at achieving this.²³

Because of the lack of a comprehensive policy document guiding the decentralisation processes in Ghana, one has to concentrate mainly on the Constitution of Ghana and the subsequent national legislations. The objectives of Ghana's decentralisation reforms are enshrined in the 1992 Constitution. The subsequent national legislations, such as the local government legislation of the Local Government Act No. 462 of 1993, incorporate the decentralisation policy intentions of the Constitution in varying degrees. This has led to substantial divergence between Government intentions for decentralisation – including the intentions as stated in the Constitution – and the actual practices in the country. The variety of laws gives legitimacy to the divergent practices, especially in the choices made by sectors that tend to define decentralisation as “deconcentration”²⁴. The divergence can be in part explained by lack of clarity of the Local Government Act. The Local Government Act does not assign functions to different levels of government clearly enough, and pays very limited attention to sub-district levels, and does not adequately define the extent to which the region level should be considered a fully fledged local government unit.²⁵

The Ghanaian decentralisation policy intentions are aiming to devolve power to be governance structures closer to the people, which can be noted for example in the Local Government Act of 1993. The sub-structures of the Assemblies play a vital role in ensuring that people are able to participate in local governance. However, there have been difficulties turning these intentions into practice. For example, even though each district is established with a legislative instrument that provides for the establishment of sub-structures such as sub-metropolitan district councils, urban or zonal councils, town or area councils, and unit committees, in many instances they have not been operationalised. This is because there is no further policy guidance on the operationalisation of these sub-structures. In addition, District Chief Executives have not been held accountable when these structures have not been put in place.²⁶

22 Joint Government of Ghana and Development Partner Decentralisation Policy Review, iv.

23 Joint Government of Ghana and Development Partner Decentralisation Policy Review, ii, 1, 6.

24 Deconcentration is generally considered as the weakest form of decentralisation. In general terms it refers to redistribution of decision making authority and financial and administrative responsibilities among different levels of central government. This can involve distributing responsibilities from the central government officials stationed in the capital to ones stationed in regions, districts etc., creating field administrations staffed with central government officials with authority for planning and making routine decisions in line with central government directions and under the supervision and control of central government, or creating local administration under the supervision of the central government.

25 Joint Government of Ghana and Development Partner Decentralisation Policy Review, ii, 1, 6.

26 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 3.

4 Composition of Local Authorities

As discussed above in Chapter 3, 70 per cent of the District Assembly members are elected, and the remaining 30 per cent of the members are appointed to the District Assembly. When the Minister responsible for local government establishes an Assembly for a district with a legislative instrument, the Minister also has to specify in the legislative instrument the numbers of persons that are to be elected to the Assembly and appointed to the Assembly by the President²⁷. However, the Local Government Act No. 462 of 1993 prescribes special provisions for the establishment of Metropolitan Assemblies. The Local Government Act provides that the legislative instrument establishing a Metropolitan Assembly shall specify the appropriate and relevant provisions of the Local Government Act that are applicable to the Metropolitan Assembly in question; Sections 2 to 25 of the Local Government Act do not apply to Metropolitan Assemblies²⁸.

Article 242 of the Constitution of the Republic of Ghana and Section 5 of the Local Government Act No. 462 of 1993 provide that the a District Assembly shall consist of the District Chief Executive, one person from each electoral area within the district elected by universal adult suffrage in accordance with the regulations made by the Electoral Commission, the member or members of Parliament from the constituencies that fall within the area of authority of the District Assembly, but these members of Parliament shall not have a voting right at the District Assembly, and other persons not exceeding 30 per cent of the total membership of the District Assembly appointed by the President in consultation with the traditional authorities and any other interest groups in the district.

The district assembly elections are conducted by using the first-past-the-post system. The elected Assembly members may stand for re-election for any number of terms.²⁹ The Constitution and the Local Government Act prescribe that a candidate seeking election to a District Assembly or any of the sub-structures of a District Assembly must stand at the elections as an individual, and not represent any political party³⁰. The members appointed by the President may be reappointed³¹. Fifty per cent of the appointed members must be women, and another 30 per cent represent traditional authorities³². The term of the District Assemblies is four years³³.

Article 244 of the Constitution prescribes that the District Assembly elects a Presiding Member from amongst its members by at least two thirds majority of all the members of the Assembly. The term of office of the Presiding Member is two years, and he or she is eligible for re-election. The Presiding Member convenes and presides over the meetings of the Assembly, and performs any other functions prescribed by law. The Presiding Member ceases to hold office if the Assembly votes by a majority of at least two-thirds of the total number of members of the Assembly to remove the Pre-

27 Local Government Act No. 462 of 1993, Section 3 (2)(b).

28 Local Government Act No. 462 of 1993, Section 26.

29 CLGF, 82–83.

30 Constitution of the Republic of Ghana 199, 248; Local Government Act No. 462 of 1993, Section 7.

31 Local Government Act No. 462 of 1993, Section 5 (2).

32 CLGF, 83.

33 Constitution of the Republic of Ghana, 1992, Article 246 (1); Local Government Act No. 462 of 1993, Section 5 (3).

siding Member from office. The District Chief Executive or a member of Parliament is not qualified to be elected as the presiding member³⁴.

The Constitution provides that an executive committee is established in each District Assembly, and that the executive committee is responsible for the performance of the executive and administrative functions of the District Assembly³⁵. The members of the executive committee are elected by the members of the District Assembly from amongst themselves. The number of members of the executive committee may not exceed one-third of the total number of members of the Assembly. The Presiding Member of the Assembly may not be a member of the Executive Committee.³⁶ The executive Committee is headed by a District Chief Executive (DCE), who is appointed by the President with the prior approval of not less than two-thirds majority of members of the District Assembly present and voting at the meeting. The Constitution provides that the DCE is responsible for the day-to-day performance of the executive and administrative functions of the District Assembly, and that the DCE is the chief representative of the Government in the district.³⁷ The term of office of the DCE is four years. The DCE may not hold office for more than two consecutive terms.³⁸

The executive committee has five statutory sub-committees³⁹:

- Development planning;
- Social services;
- Works;
- Justice and security;
- Finance and administration;

In addition, the District Assemblies may establish any other sub-committees⁴⁰.

The urban councils, zonal councils, town councils and area councils are composed of representatives from the District Assemblies within whose area they are situated, members from subsidiary institutions called the unit committees, and central government appointees selected by the District Chief Executive on behalf of the President. There are currently in total 1,300 urban, zonal, and town/area councils, whose establishment depends on their size and nature of settlement. Urban councils represent urban settlements of over 15,000 people, and zonal and town councils represent mostly rural settlements with populations between 5,000 to 15,000 people. The unit committees are situated below the sub-metropolitan district councils, urban or zonal councils, town or area councils in the local government structure, and represent the community level. Their designation is associated with demarcated electoral areas throughout Ghana. There are currently approximately 16,000 unit committees in Ghana. Each unit committee electoral area covers settlements of between 500-1,000 people in the rural areas, and approximately 1,500 in the urban areas. Unit committees are partially elected bodies, with membership consisting of ten elected members elected by their constituencies and five government appointees, who are selected by the District Chief Executive with regard to local and national consultation in their selection.⁴¹ The District Assemblies may delegate any of their functions, excluding the power to legislate, levy rates or borrow money, to sub-metropolitan district councils, town, area, zonal or urban councils or unit committees⁴².

34 Local Government Act No. 462 of 1993, Section 17 (2).

35 Constitution of the Republic of Ghana, 1992, Article 251 (1).

36 Local Government Act No. 462 of 1993, Section 19 (2-3).

37 Constitution of the Republic of Ghana, 1992, Article 243; Local Government Act No. 462 of 1993, Section 20.

38 Constitution of the Republic of Ghana, 1992, Article 246 (2).

39 Local Government Act No. 462 of 1993, Section 24 (1)(a-e).

40 Local Government Act No. 462 of 1993, Section 24 (1)(f).

41 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 26-28.

42 Local Government Act No. 462 of 1993, Section 15.

Elections to District Assemblies and corresponding sub-district institutions are organized by the Electoral Commission, on the basis of a non-partisan ballot. However, in Ghana the process has been undermined by open, undisguised promotion of candidates by various political parties, notably the governing parties. Recent evidence suggests that the appointment of the DCE and 30 per cent of the District Assembly members by the President encourages strong partisanship in appointments of subsequent participants in other layers of the District Assemblies, including appointments to the unit committees, and urban, town and area councils.⁴³

According to a recent decentralisation policy review, the central appointment of the DCE who effectively guides the District Assemblies – not as a civil servant, but as a political appointee – ultimately establishes the District Assemblies as an arm of the central government rather than a semi-autonomous layer of local government⁴⁴. The review highlights problems with the functionality of a non-partisan local government within a multi-party democracy at the central government level in Ghana:

The local government system is supposed to operate on a non-partisan basis within a multi-party democratic arrangement for Central Government. While this is feasible under certain circumstances and jurisdictions, in Ghana, the authority of Central Government is so overwhelming that, in the exercise of its appointing prerogatives for DCEs, 30% of members of the DAs and other sub-district institutions, such as Unit Committees, Town, Urban and Zonal Councils, partisanship considerations are becoming more paramount than the claim of stakeholder participation and gender balance.⁴⁵

There are also difficulties to maintain a functioning system of sub-structures of the District Assemblies. For District Assemblies and their sub-structures of sub-metro to town, urban, area and zonal councils and unit committees, hundreds of thousands of people are to be elected, and several thousands appointed by central government through a myriad of central government agents at the local level. For unit committees alone, 160,000 people have to be elected, and another 80,000 appointed by the central government. Thirty percent of the members of all 1,300 urban, zonal, town and area councils are appointed, while the 70% of their members are constituted through a complex rotational selection from among the elected members of the District Assemblies and Unit Committees. The elections held to constitute this complex set have been disappointing in terms of their outcomes. In the elections held in October 2002, ballots could not be cast in nearly 10,000 units due to insufficient number of candidates. A similar trend occurred in the election of 2006, raising a major dilemma for the suitability and sustainability of this political model, since the intermediate urban, zonal and town and area councils that are crucial for planning and delivery of services at the lowest levels are constituted from unit committees. The consequence of the large number of deficient unit committees has been a strong diminution of the middle of the District Assembly hierarchy, because this middle can only be constituted if the base (unit committees) are constituted. Presently more than 50 per cent of the unit committees in Ghana are not constituted.⁴⁶

43 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 28.

44 Joint Government of Ghana and Development Partner Decentralisation Policy Review, iii.

45 Joint Government of Ghana and Development Partner Decentralisation Policy Review, iii.

46 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 28.

5 Remuneration of Political Office-Holders

Article 251 (1) of the Constitution of the Republic of Ghana, 1992, provides that the emoluments of a District Chief Executive (DCE) of a District Assembly are determined by the Parliament and paid out of the Consolidated Fund⁴⁷. Article 176 (1) of the Constitution mandates the establishment of the Consolidated Fund, into which shall be paid:

- (a) all revenues or other moneys raised or received for the purposes of, or on behalf of, the Government; and
- (b) any other moneys raised or received in trust for, or on behalf of, the Government.

This means that the emoluments of the DCEs are not directly dependent on the revenue generation of their respective District Assemblies. In addition to the fact that the DCEs are appointed by the President, also their emoluments are paid by the central government.

Article 251 (2) of the Constitution provides that the emoluments of a Presiding Member of a District Assembly and other members of the Assembly are determined by the District Assembly, and paid out of the Assembly's own revenues.

⁴⁷ Constitution of the Republic of Ghana, 1992, Article 250 (1).

6 Functions and Powers of Local Authorities

There are two competing concepts of decentralisation operating in Ghana; devolution of major political and administrative functions from central government to District Assemblies, and administrative and technical deconcentration of Ministries, Departments and Agencies (MDAs) of the central government which plan and deliver services to communities. Also decentralisation by delegation of functions can be detected.⁴⁸

In the discussions on decentralisation there are different kinds of definitions on different types of decentralisation. Deconcentration is generally considered as the weakest form of decentralisation. In general terms it refers to redistribution of decision making authority and financial and administrative responsibilities among different levels of central government. This can involve distributing responsibilities from the central government officials based in the capital to ones based in regions, districts etc., creating field administrations staffed with central government officials with authority for planning and making routine decisions in line with central government directions and under the supervision and control of central government, or creating local administration under the supervision of the central government.

In general terms delegation refers to the transfer of responsibility for decision making and administration of public functions from central government to semi-autonomous organisations, which are accountable on these functions to the central government.

Devolution is a more comprehensive type of decentralisation, and generally refers to the transfer of authority for decision making, finance and management from central government to local authorities with corporate status and considerable degree of autonomy from the central government. There are some features that are commonly present in devolution. For example, the local authorities have authority to raise their own revenues and to acquire resources to perform public functions, and have clearly recognised geographical boundaries over which they exercise authority.

The thrust underpinning the Local Government Act No. 462 of 1993 is decentralisation by devolution, and not by deconcentration or delegation, but as the Local Government Act does not clearly assign which sector-specific functions should be devolved to the responsibility of the District Assemblies, the MDAs may promote practices of decentralisation by deconcentration and delegation in which the responsibilities for providing services and performing duties remain with the central government. Devolution of administrative functions to the district level has been slower than the deconcentration of power and resources to 22 central government ministerial departments represented at each district.⁴⁹

The MDAs' practices of deconcentration and devolution are also enabled by the fuzziness of the legislative framework in general: one legislation may assign a function to a District Assembly, while another legislation may maintain the same function with the responsibility of the central government. This situation is also made possible by the prescriptions of the Constitution of the Republic of Ghana, 1992. The Constitution seems to aim at decentralisation by devolution as the Constitution provides that

48 Ferrazzi 2006; Joint Government of Ghana and Development Partner Decentralisation Policy Review; Farvacque-Vitkovic et al. 2008.

49 Ferrazzi 2006; Joint Government of Ghana and Development Partner Decentralisation Policy Review; Farvacque-Vitkovic et al. 2008.

the Parliament shall enact laws to ensure that functions, powers and responsibilities are transferred from the central government to local government units and to further decentralisation (see e.g. Articles 240 and 254), but does not clearly prescribe how the laws that are to be enacted to transfer functions from the central government to the local government should define the mode and form of transferring the functions to local government. Thus the Constitution does not provide a clear guidance for enacting national legislation that is supportive of decentralisation by devolution.⁵⁰

The Local Government Act of 1993 provides that the District Assemblies shall exercise political and administrative authority in their respective districts, and provide guidance, give direction to and supervise the other administrative authorities in the district⁵¹. The Local Government Act prescribes that the District Assemblies are responsible for the overall development of the district, and that they must prepare district development plans, and submit them through the Regional Coordinating Council to the National Development Planning Commission for approval. The District Assemblies must also prepare an annual budget of the district related to the approved development plans, and submit it to the Minister responsible for Finance for approval.⁵² Through the approval of the district development plans and budgets the central government can exercise considerable authority over determining the District Assemblies' expenditure and the defining of local development priorities. The National Development Planning Commission was empowered by Act No. 479 of 1994 to ensure that local level development occurs within the context of national development goals. The National Development Planning Commission issues guidelines to the District Assemblies and MDAs on how to prepare development plans of a five-year basis.⁵³ The National Development Planning Commission prescribes the format for the district development plans⁵⁴.

The Local Government provides some functions to the district assemblies. For example, the District Assemblies shall promote and support productive activity and social development in the district, initiate programmes for the development of basic infrastructure and provide municipal works and services in the district, be responsible for the management of human settlements in the district, and perform any other functions provided for under any other enactment⁵⁵. These are broad mandates, and all in all neither the Constitution nor the Local Government Act make distinctions between functions that must be carried out ("mandatory functions") and those that are at the discretion of local government⁵⁶. In Sections 13 (1) and 30 (1) the Local Government Act assigns some more specific functions to District Assemblies such as carrying and executing the provisions of the Registration of Births and Deaths Act of 1963 and provision of transport services if the Minister responsible for Local Government so authorises, but the Local Government Act is silent on the roles and responsibilities of local government in key sector functions.

While some of the functions defined in the Local Government Act seem to imply, that the District Assemblies should provide certain basic services, no new legislations or amendments to existing legislations have been enacted that would remove the provision of these functions from the responsibility of the central government⁵⁷. In addition, the every District Assembly is established with a legislative instrument, which defines its jurisdiction and specifies the functions that it should undertake⁵⁸. There

50 Ferrazzi 2006; Joint Government of Ghana and Development Partner Decentralisation Policy Review.

51 Local Government Act No. 462 of 1993, Section 10 (1).

52 Local Government Act No. 462 of 1993, Section 10 (3)(a).

53 Farvacque et. al. 2008, 14, 25.

54 Local Government Act No. 462 of 1993, Section 47 (1).

55 Local Government Act No. 462 of 1993, Section 10 (3).

56 Ferrazzi 2006, 17, 19.

57 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 14.

58 Local Government Act No. 462 of 1993, Section 3 (2)(c).

are gross overlaps in the assignment of functions between the District Assemblies and MDAs in these legislative instruments and the sector Acts that assign functions to MDAs. Under each legislative instrument for the establishment of District Assemblies, 88 functions are listed as constituting the functions required to be performed by the District Assemblies.⁵⁹ For example, in the legislative instrument establishing the Accra Metropolitan Assembly, L.I. 1615 of 1995, number 1 on the list is:

To promote and safeguard public health and for this purpose the Ministry of Health shall assign Medical Officers of Health, health inspectors and other staff as appropriate...to the Metropolitan Assembly for the proper discharge of this duty;” in function #22: to establish and operate clinics and dressing stations in consultation with the Ministry of Health.⁶⁰

Yet in elaborating the functions under the Ghana Health Service and Teaching Hospitals Act 525 of 1996, the General Health Service (a central government agency) is charged to “...ensure access to health services at the community, sub-district, district and regional levels by providing health services and contracting out service provision to other recognized health care providers.” It is also charged to “...plan, organize and administer comprehensive health services with special emphasis on primary health care.”⁶¹ Therefore the provisions in the legislative instrument establishing the Accra Metropolitan Assembly and the Ghana Health Service and Teaching Hospitals Act are contradictory and do not assign a clear role and responsibilities to the Accra Metropolitan Assembly.

There are similar overlapping prescriptions regarding functions in the education sector. For example, the Ghana Education Service Act No. 506 of 1995 assigns to the District Assemblies duties to build, equip, and maintain all primary, middle and special schools, approval and opening of private primary and middle schools, and responsibility for the postings and transfers of teachers within their area of jurisdiction. However, similar tasks are assigned to the Ghana Education Service under the same Ghana Education Service Act, which stipulates that the Ghana Education Service is responsible for providing and overseeing basic education, senior secondary education, technical education and special education, to registering, supervising and inspecting private pre-tertiary educational institutions, and registering teachers and keeping an up-to-date register of all teachers in the public system.⁶² In practice there is a common perception or working assumption that District Assemblies have the responsibility to build, equip and maintain schools. But it is important to have clarity on who is responsible for the specific functions in the education sector such as recruiting and placing teachers, and details should be placed in sector laws or regulations in order to avoid confusion and overlapping in service provision as well as to avoid reducing of accountability when citizens are not sure who is responsible for delivering the specific services. This applies also to other sectors in which there are overlapping responsibilities and confusion on the roles of the local government and central government.⁶³

The District Assemblies deliver many services, such as pre- and primary education, social welfare, health clinics, cemeteries, museums and libraries, water and sanitation, refuse collection, and transport, but with varying degrees of authority and political responsibility for the service provision⁶⁴.

59 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 15.

60 Cited in Joint Government of Ghana and Development Partner Decentralisation Policy Review, 15.

61 Cited in Joint Government of Ghana and Development Partner Decentralisation Policy Review, 15.

62 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 15–16.

63 Ferrazzi 2006, 21–22.

64 Farvacque et al. 2008; Federation of Canadian Municipalities 2007, 5.

The responsibilities of the sub-district local government structures are to a large extent unclear and they have virtually no personnel or financial resources to perform functions and duties⁶⁵.

The Local Government Act provides that the District Assemblies may make by-laws for the purpose of a function conferred on it by the Local Government Act or any other enactment. The by-laws have to be submitted to the Minister responsible for local government for approval, and the Minister may also delegate the Minister's powers to approve or reject a by-law to the Regional Coordinating Council.⁶⁶

The Local Government Act prescribes that the President may start an investigation on the performance of any function of a District Assembly, and by an executive instrument declare that the District Assembly is in default if it is in the public interest to do so. The President may transfer the function or functions to another body that shall perform the functions on behalf of the District Assembly, and may also dissolve or suspend the District Assembly for such time as the President sees fit.⁶⁷

65 Joint Government of Ghana and Development Partner Decentralisation Policy Review,

66 Local Government Act No. 462 of 1993, Sections 79–80.

67 Local Government Act No. 462 of 1993, Sections 42–43.

7 Financial Resources of Local Authorities

The Constitution of the Republic of Ghana, 1992, provides some provisions on the foundation of the financial resources of the District Assemblies. Article 204 (2) of the Constitution provides that “There shall be established for each local government unit a sound financial base with adequate and reliable sources of revenue”. Section 252 of the Constitution envisages the establishment of the District Assemblies Common Fund, to which should be paid five per cent of the total national revenue, to be distributed among the districts through a formula approved by Parliament. The District Assemblies Common Fund was established with the District Assemblies Common Fund Act No. 455 of 1993. The Act provides that five per cent of the total national revenue is to be allocated to District Assemblies for infrastructure projects. The transfers from the District Assembly Common Fund may only be used to fund projects that are part of the approved development plan of the district, and this usually – but not exclusively – refers to capital expenditures.⁶⁸

The Local Government Act No. 462 of 1993 prescribes ten categories of own source revenues, which in Ghana are called internally generated funds, to the District Assemblies. These taxes, rates, levies, fees and licences are listed in the Sixth Schedule of the Local Government Act. The Minister responsible for local government, in consultation with the Minister responsible for Finance, may amend the Sixth Schedule with a legislative instrument.⁶⁹ The Local Government Act establishes the District Authorities as rating authorities in their respective districts⁷⁰. The Minister responsible for local government may issue guidelines for the making and levying of rates⁷¹. The guidelines for fees, rates licences, permits, rents etc. have not been updated since 1991⁷². The local government finance system in Ghana is quite liberal in terms of the freedom of the District Assemblies to define rates and fees and to open bank accounts⁷³.

The Local Government Act gives the District Authorities power to borrow. An approval of the Minister responsible for local government and the Minister responsible for Finance is required if the loan or overdraft to be raised exceeds 20 million Cedis.⁷⁴ However, the level of borrowing is so low that it can be said that there virtually no municipal loans in Ghana⁷⁵.

Most of the revenues of the District Assemblies consist of transfers. In 2004, the total revenue of District Assemblies was 1,423 billion Cedis (USD 158 million), of which transfers from the central government and donors formed 84 per cent. Only 16 per cent were generated from internal revenues such as rates, fees and land revenues.⁷⁶ In many districts the share of internally generated revenues of the district’s total revenues is minimal. The low level of revenues from rates and licences is mainly the result

68 Farvacque-Vitkovic et al. 2008, 25.

69 Local Government Act No. 462 of 1993, Section 86 (2–3).

70 Local Government Act No. 462 of 1993, Section 94.

71 Local Government Act No. 462 of 1993, Section 100.

72 Joint Government of Ghana and Development Partner Decentralisation Policy Review, 40.

73 Farvacque-Vitkovic et al. 2008, 25.

74 Local Government Act No. 462 of 1993, Section 88.

75 Farvacque-Vitkovic et al. 2008, 25.

76 Farvacque-Vitkovic et al. 2008, 25.

of the low property base because of the marginal amount of legal properties, the method of calculation of the rates and fees, and the inefficient system of tax collection.⁷⁷

As discussed above in Chapter 6, the District Assemblies must prepare an annual budget of the district, and submit it to the Minister responsible for Finance for approval. The central government ministries direct and control the financial administration of the District Assemblies, such as the modalities for preparing budgets, through various Acts and regulations such as the Financial Administration Act 2003 (Act 654) and Financial Administration Regulations, 2004 (Legislative Instrument 1802)⁷⁸.

⁷⁷ Farvacque-Vitkovic et al. 2008, 29.

⁷⁸ Joint Government of Ghana and Development Partner Decentralisation Policy Review, 40–43.

8 Conclusion

This chapter summarises some of the most central issues identified in the present study which relate to the principles of local self-government, which were used as a guiding framework in the study.

Constitutional and legal foundation for local self-government

The Constitution of the Republic of Ghana provides that a District Assembly is the highest political authority in the district, and that the District Assembly has deliberative, legislative and executive powers. The composition, powers and duties of the different types of District Assemblies are prescribed in the Local Government Act No. 462 of 1993.

Concept of local self-government

The Local Government Act provides that there are three kinds of districts in Ghana – districts, municipalities and metropolises. Each of them has an Assembly as the highest political authority in the district: a District Assembly, Municipal Assembly or a Metropolitan Assembly. 70 per cent of the Assembly members are elected, and 30 per cent of the members are appointed by the President. The Assemblies have an executive committee, which is headed by a District Chief Executive who is appointed by the President. The District Chief Executive has significant authority over the affairs of the Assembly, as he or she is by law responsible for the day-to-day performance of the executive and administrative functions of the District Assembly, and is the chief representative of the Government in the district. The appointment of 30 per cent of the members of the Assembly and especially the appointment of the District Chief Executive by the President reduces significantly the scope of local self-government in Ghana.

The District Assemblies deliver many services at the local level, but with varying degrees of authority and responsibility for the service provision. The sector legislations and legislative instruments establishing the District Assemblies provide in many cases overlapping responsibilities to the District Assemblies and to the Ministries, Departments and Agencies of the central government, which creates inefficiencies in local service delivery.

Scope of local self-government

The Local Government Act prescribes to the District Assemblies broad mandates, which imply that they have power to deliver services in key sectors such as health and education. However, the Local Government Act is silent on the specific sector functions, and does not specify which ones should fall under the responsibility of the District Assemblies. In addition, neither the Constitution nor the Local Government Act make distinctions between functions that must be carried out and which functions the District Assemblies may undertake voluntarily if they choose to do so. These factors combined to the above mentioned confusions with the overlapping responsibilities prescribed by different legislations, has enabled the sector ministries to exercise decentralisation mainly by deconcentration, and the devolution of responsibilities of service provision to District Assemblies has had a minor role in the decentralisation processes in Ghana.

The Local Government Act prescribes that the President may start an investigation on the performance of any function of a District Assembly, and by an executive instrument declare that the District Assembly is in default if it is in the public interest to do so. The President may transfer the function or functions to another body who shall perform the functions on behalf of the District Assembly, and may also dissolve or suspend the District Assembly for such time as he or she sees fit.

Conditions under which responsibilities at local level are exercised

The emoluments of the District Chief Executive of a District Assembly are determined by the Parliament and paid out of the Consolidated Fund. The emoluments of a Presiding Member of a District Assembly and other members of the Assembly are determined by the District Assembly, and paid out of the Assembly's own revenues.

Financial resources of local authorities

The Constitution provides that each District Assembly shall have a sound financial base with adequate and reliable sources of revenue. In 2004, 84 per cent of the District Assemblies' total revenues consisted of transfers from the central government and donors. The remaining 16 per cent originated from the District Assemblies own source revenues. The autonomy of the District Assemblies is limited by the fact that they have to submit their annual budgets to the Ministry of Finance for approval.

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Legislations

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Annex 1. Selected Principles of Local Self-Government

The principles selected and defined for a flexible guiding framework of the study:

CE = Council of Europe: European Charter of Local Self-Government

UN-Habitat = UN-Habitat: International Guidelines on Decentralisation and the Strengthening of Local Authorities

1. Constitutional and legal foundation for local self-government:

The principle of local self-government is recognised in domestic legislation, and where practicable in the constitution. (Based on CE Art. 2 & UN-Habitat Part C 1.1.)

2. Concept of local self-government:

1. The concept of a council or an assembly is recognised in domestic legislation.
 - Description of the composition of councils and assemblies: elected and appointed members etc.
2. Local authorities have authority to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
 - Description of the extent of the authority

The above is based on CE Art. 3.1, Art. 3.2. and UN-Habitat Part C1.1. Remarks: The CE Art. 3.1 notion of “substantial share of public affairs” varies even in Europe. UN-Habitat Part C1.1 speaks only of a legally autonomous sub-national entity without defining the concept (the extent of authority and composition of council membership) explicitly.

3. Scope of local self-government:

1. The basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. However, this provision does not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law. (Based on CE Art. 4.1 & cf. UN-Habitat Part C1.2, Part B1.6.)
2. Local authorities have, within the limits of the law, full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. (Based on CE Art 4.2 & cf. UN-Habitat Part C1.5, C2.6.)
3. The principle of subsidiarity: Public responsibilities shall generally be exercised, in preference, by those authorities, which are closest to the citizen. (Based on CE Art. 4.3 & UN-Habitat Part B1.1, B1.5.)
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. (Based on CE Art. 4.4 & cf. UN-Habitat C2.6.)
5. Where powers are delegated to them by a central or regional authority, local authorities are guaranteed discretion in adapting their exercise to local conditions. (Based on CE Art. 4.5 & UN-Habitat Part D2.9.)

4. Conditions under which responsibilities at local level are exercised

1. The conditions of office (material and remunerative) of local political office holders should provide for free exercise of their functions. (Based on CE Art. 7.1, 7.2 & UN-Habitat A2.11.)

5. Financial resources of local authorities:

1. Local authorities are entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. (Based on CE Art. 9.1 & UN-Habitat D2.10.)
2. It is recognised in legislation that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. Local authorities should be guaranteed the resources necessary to exercise powers delegated to them by central or regional governments. (Based on CE Art. 9.2 & UN-Habitat D2.8.)
3. At least part of the financial resources of local authorities derive from local taxes and charges of which, within the limits of the statute, they have the power to determine the rate. (Based on CE Art. 9.3 & cf. UN-Habitat D2.11.)

Annex 2. European Charter of Local Self-Government

European Charter of Local Self-Government
Strasbourg, 15.10.1985

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member States of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.
2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Charter in accordance with Article 15;
- d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;
- e. any notification received in application of the provisions of Article 13;
- f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex 3. International Guidelines on Decentralisation and the Strengthening of Local Authorities

Sections of the UN-Habitat 2007 International Guidelines on Decentralisation and the Strengthening of Local Authorities

A. Governance and democracy at the local level

1. Representative and participatory democracy

1. Political decentralization to the local level is an essential component of democratization, good governance and citizen engagement; it should involve an appropriate combination of representative and participatory democracy.
2. Participation through inclusiveness and empowerment of citizens shall be an underlying principle in decision-making, implementation and follow-up at the local level.
3. Local authorities should recognize the different constituencies within civil society and should strive to ensure that all are involved in the progressive development of their communities and neighbourhoods. Local authorities should have the right to establish and develop partnerships with all actors of civil society, particularly nongovernmental organizations and community-based organizations, and with the private sector and other interested stakeholders.
4. Local authorities should be entitled, either through the constitution or in national legislation, to define appropriate forms of popular participation and civic engagement in decision-making and in fulfilment of their function of community leadership. This may include special provisions for the representation of the socially and economically weaker sections of society, ethnic and gender groups and other minorities.
5. The principle of non-discrimination should apply to all partners and to the collaboration between national and regional governments, local authorities and civil society organizations.
6. Participation of citizens in the policy-making process should be reinforced in status, at all stages, wherever practicable.
7. With a view to consolidating civil engagement, local authorities should strive to adopt new forms of participation such as neighbourhood councils, community councils, e-democracy, participatory budgeting, civil initiatives and referendums in as far as they are applicable in their specific context.
8. The participation of women and the consideration of their needs should be a cardinal principle embedded in all local initiatives.
9. The participation of young people should be encouraged in all local initiatives: develop the school as an important common arena for young people's participation and of the democratic learning process and encourage youth associations; promote "children's council" and "youth council" type experiments at local level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society.

2. Local officials and the exercise of their office

10. Politicians and officials in local authorities should discharge their tasks with a sense of responsibility and accountability to the citizens. At all times they should maintain a high degree of transparency.
11. While local political office should be viewed as a commitment to the common good of society, the material and remunerative conditions of local politicians should guarantee security and good governance in the free exercise of their functions.

12. There should be a code of good conduct that requires public civil servants to act with integrity and avoid any situation that may lead to a conflict of interests. Such a code should be made public when available.
13. Mechanisms should be put in place to allow citizens to reinforce the code.
14. Records and information should be maintained and in principle made publicly available not only to increase the efficiency of local authorities but also to make it possible for citizens to enjoy their full rights and to ensure their participation in local decision-making.

B Powers and responsibilities of local authorities

1. Subsidiarity

1. The principle of subsidiarity constitutes the rationale underlying to the process of decentralization. According to that principle, public responsibilities should be exercised by those elected authorities, which are closest to the citizens.
2. It is recognized that, in many countries, local authorities are dependent on other spheres of government, such as regional or national governments, to carry out important tasks related to social, political and economic development.
3. In many areas powers should be shared or exercised concurrently among different spheres of government. These should not lead to a diminution of local autonomy or prevent the development of local authorities as full partners.
4. Local autonomy aims to allow local authorities to develop to a point where they can be effective partners with other spheres of government and thus contribute fully in development processes.
5. Decisions should be taken at the level appropriate to the type of decision – international, national, regional or local.
6. National, regional and local responsibilities should be differentiated by the constitution or by legislation, in order to clarify the respective powers and to guarantee access to the resources necessary for the decentralized institutions to carry out the functions allocated to them.

2. Incremental action

7. An increase in the functions allocated to local authorities should be accompanied by measures to build up their capacity to exercise those functions.
8. The policy of effective decentralization may be applied in an incremental manner in order to allow for adequate capacity-building.
9. Where decentralization is a new policy, it may be implemented on an experimental basis and the lessons learned may be applied to enshrine this policy in national legislation.
10. National principles relating to decentralization should ensure that the national or regional government may intervene in local government affairs only when the local government fails to fulfil its defined functions.
11. The burden of justifying an intervention should rest with the national or regional government. An independent institution should assess the validity of such intervention.
12. As far as possible, nationally determined standards of local service provision should take into account the principle of subsidiarity when they are being drawn up and should involve consultation with local authorities and their associations.
13. The participation of local authorities in decision-making processes at the regional and national levels should be promoted. Mechanisms for combining bottom up and top down approaches in the provision of national and local services should be established.

C Administrative relations between local authorities and other spheres of government

1. Legislative action

1. Local authorities should be acknowledged in national legislation, and, if possible, in the constitution, as legally autonomous sub-national entities with a positive potential to contribute to national planning and development.
2. National legislation and, if possible, the constitution should determine the manner in which the local authorities are constituted, the nature of their powers, the scope of their authority, responsibilities, duties and functions.
3. Constitutional and legislative provisions for local government organizations may vary depending on whether a State is federal, regionalized or unitary.
4. Legislative provisions and legal texts should clearly articulate the roles and responsibilities of local authorities vis-à-vis higher spheres of government, providing that only those roles and responsibilities beyond their scope and competence should be assigned to another authority.
5. Local authorities should have full responsibility in spheres involving interests of local citizens except in those areas specified by national legislation, which should state what lies outside their competence.

2. Empowerment

6. Local authorities should freely exercise their powers, including those bestowed upon them by national or regional authorities, within the limits defined by legislation. These powers should be full and exclusive, and should not be undermined, limited or impeded by another authority except as provided by law.
7. Other spheres of government should consult local authorities and their associations when preparing, or amending, legislation affecting local authorities.
8. Local authorities and their institutions should be assisted by other spheres of government to determine local policy and strategic frameworks within the parameters set by national policies.
9. Other spheres of government should support initiatives to develop responsive, transparent and accountable instruments necessary for efficient and effective management at a local level.

3. Supervision and oversight

10. The supervision of local authorities should only be exercised in accordance with such procedures and in such cases as provided for by the constitution or by law.
11. That supervision should be confined to a posteriori verification of the legality of local authority acts, and should respect the autonomy of the local authority.
12. The law should specify the conditions - if any - for the suspension of local authorities. In the event that there is a need to suspend or dissolve a local council or to suspend or dismiss local executives, the exercise shall be carried out with due process of law.
13. Following the suspension or dissolution of local councils, or the suspension or dismissal of local executives, the prescription of the law should determine the resumption of their duties in as short a period of time as possible.
14. There should be independent bodies, such as administrative courts, to oversee such suspensions or dissolutions by higher spheres of government, and to which appeal may be made.

D Financial resources and capacities of local authorities

1. Capacities and human resources of local authorities

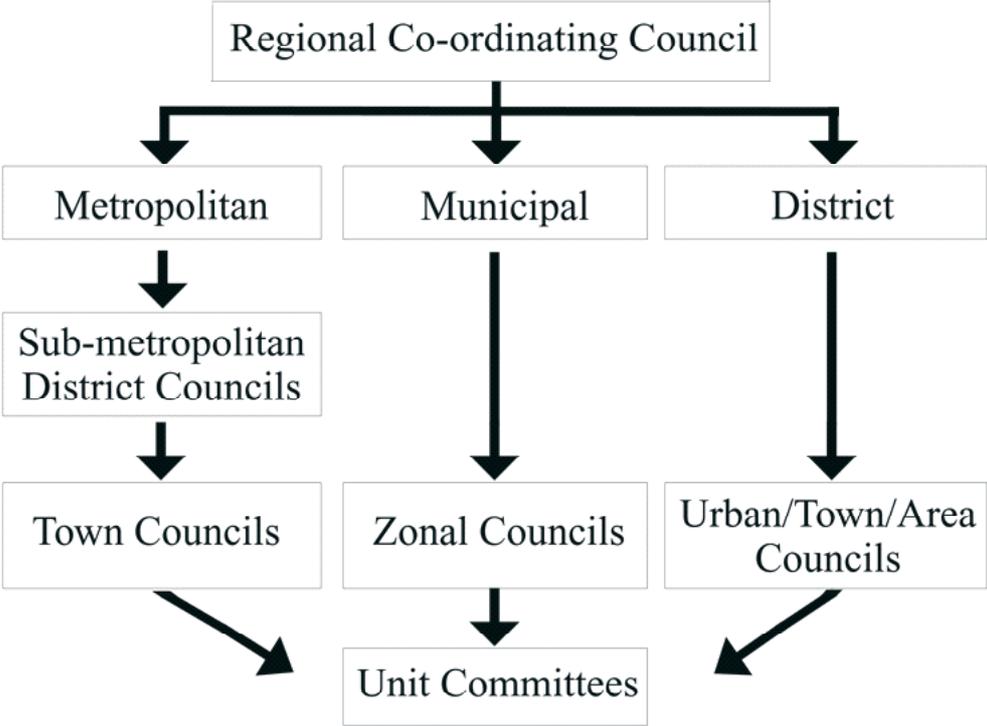
1. Local authorities should be supported by other spheres of government in the development of their administrative, technical and managerial capacities, and of structures, which are responsive, transparent and accountable.
2. Local authorities should be allowed to determine as far as possible their own internal administrative structures, to adapt them to local needs and to ensure effective management.
3. Local authorities should have full responsibility for their own personnel. There should be common standards of qualification and status in the management of such personnel.
4. The service conditions of local government employees, as defined by national legislation, should be such as to permit the recruitment and retention of high-quality staff on the basis of best performance, professional competence and experience and of gender equality, and should exclude any type of discrimination based on religion, language or ethnicity.
5. Adequate training opportunities, remuneration and career prospects should be provided to local government employees in order to enable local authorities to reach a high quality performance in the provision of services to the citizens.
6. Training opportunities should be provided or supported by Governments, in collaboration with local authorities and their associations.

2. Financial resources of local authorities

7. Effective decentralization and local autonomy require appropriate financial autonomy.
8. Local authorities' financial resources should be commensurate with their tasks and responsibilities and ensure financial sustainability and self-reliance. Any transfer or delegation of tasks or responsibilities by the State shall be accompanied by corresponding and adequate financial resources, preferably guaranteed by the constitution or national legislation, and decided upon after consultations between concerned spheres of government on the basis of objective cost assessments.
9. Where central or regional governments delegate powers to them, local authorities should be guaranteed the adequate resources necessary to exercise these powers as well as discretion in adapting the execution of their tasks to local conditions and priorities.
10. Local authorities should have access to a broad variety of financial resources to carry out their tasks and responsibilities. They should be entitled, preferably on the basis of constitutional and/or national legislative guarantees, to adequate resources or transfers, which they may freely use within the framework of their powers.
11. A significant proportion of the financial resources of local authorities should derive from local taxes, fees and charges to cover the costs of services provided by them and for which they have the power to determine the rate, notwithstanding their possible framing (tax brackets) or coordination by legislation.
12. Taxes which local authorities should be entitled to levy, or of which they receive a guaranteed share, should be proportional to their tasks and needs and of a sufficiently general, dynamic and flexible nature to enable them to keep pace with their responsibilities.
13. Local taxes, such as land-based taxes, should preferably be collected by local authorities themselves, provided that they have appropriate capacities and oversight mechanisms in place.

14. Financial sustainability should be ensured through a system of financial equalization, both vertical (between State and local authorities) and horizontal (among local authorities). This should happen especially where the local tax-base is weak or non-existent.
15. Legislation should guarantee the participation of local authorities in framing the rules governing the general apportionment of redistributed resources, including both vertical and horizontal equalizations.
16. As far as possible, financial allocations to local authorities from Governments should respect their priorities and shall not be earmarked for specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
17. Earmarked allocations shall be restricted to cases where there is a need to stimulate the local implementation of national policies, in areas such as environmental protection, social development, health and education.
18. For the purpose of borrowing for capital investment, local authorities should, within guidelines and rules established by Governments and the legislation, have access to national and international capital markets. State supervision and monitoring may however be necessary in countries affected by volatile macro-economic situations.
19. Local authority borrowing should not endanger the fiscal policies designed to ensure financial stability of national Governments.

Annex 4. Local Government Structure



Source: Joint Government of Ghana and Development Partner Decentralisation Review, 2007.

Summary

A common factor to local authorities in the countries studied is that the local authorities are struggling to obtain adequate financial resources to perform their duties and functions.

The situations and frameworks are different in different countries, but the main lines of the challenges faced by local authorities include dependence on intergovernmental transfers and legislative and capacity-related possibilities to generate own source revenues. It is also important to note that within countries there are differences in the abilities of different types of local authorities to generate revenue, for example between richer urban and poorer rural local authorities.

There are large variations between countries in local authorities' dependence on intergovernmental transfers. For example, in South Africa approximately 75 per cent of the municipalities operating revenues originated from the municipalities' own source revenues, while in Kenya the share of the local authorities' own source revenues of the total revenues was approximately 60 per cent, and in Tanzania 6.7 per cent, in their respective fiscal years of 2006–2007. These figures give indications on the local authorities' dependence on central governments and the local authorities' abilities to set their own development priorities, but one has to be careful about making direct comparisons between the countries based on these total figures only. For example, even though the local authorities in South Africa are largely self-financing, there is a structural imbalance between their available local resources and the expenditure functions that are assigned to them. In addition, the share of the central government transfers has grown significantly in recent years in South Africa. Also, the figures do not show the extent of the authority and functions that the local authorities have for example in local service provision in different countries.

There are more clearly and less clearly defined policies or processes of decentralisation taking place in each of the countries. Their implementation is often not easy or straightforward. It is important to examine the many interests as well as the legislative and policy frameworks involved in the decentralisation processes, as even clearly defined official decentralisation policies have been implemented partly in contradictory manners, which is the case for example in Namibia and Tanzania.

Tanzania has adopted a policy of decentralisation by devolution, but the framework for decentralisation has not been sufficient to ensure full coordination with the sector policies, and a number of sector policies and administrative actions still contradict the overall decentralisation objectives. For example, the objective of devolving the authority to recruit (to hire and fire) the staff members of the local authorities from the central government to the district and urban councils has not been adequately achieved by to date.

The decentralisation policy in Namibia aims to decentralise functions from the line ministries to the regional councils and local authorities first by delegation and ultimately by devolution. The line ministries' failure to prepare the processes needed for decentralisation on time, mainly because of unwillingness within the ministries, is noted in the Namibia Vision 2030. The government has also acknowledged that the magnitude and complexity of the decentralisation process has been grossly underestimated since the introduction of the decentralisation policy in 1997.

Also in Ghana one can detect competing concepts of decentralisation: devolution of major political and administrative functions from the central government to the District Assemblies, and administrative and technical deconcentration of Ministries, Departments and Agencies (MDAs) of the central government, which plan and deliver services to communities. Also decentralisation by delegation of functions can be detected. The thrust underpinning the Local Government Act No. 462 of 1993 is decentralisation by devolution, and not by deconcentration or delegation. The current legislative framework in Ghana has made the situation possible. The Local Government Act does not clearly assign which sector-specific functions should be devolved to the responsibility of the District Assemblies. Also, the legislative framework in general is quite fuzzy: one legislation may assign a function to a District Assembly, while another may maintain the same function in the responsibility of the central government. Devolution of administrative functions to the district level has been slower than the deconcentration of power and resources to the 22 central government ministerial departments represented at each district.

The local self-government is evolving, and often relates to changes in the political systems in a larger scale. For example, the new Constitution of Swaziland of 2005 provides for significant reforms of the local government system. The Constitution provides that the Parliament shall within five years of the commencement of the Constitution provide for the establishment of a single country-wide system of local government, which is based on the *tinkhundla* system of government. This would significantly change the current rural-urban dichotomy in the local government system. The Constitution further prescribes on the composition of the councils or committees that “a local government area shall be administered by an elected or appointed, or partly elected and partly appointed council or committee as Parliament may prescribe”. The Constitution also refers to the role of the *tinkhundla* as follows: “units or areas, inspired by a policy of decentralisation of state power, are the engines of development and the central pillars underpinning the political organisation and economic infrastructure of the country through which social services to the different parts of the Swazi community are facilitated and delivered”.

Kenya has not adopted a policy of decentralisation by devolution. The Kenya Local Government Programme (KLGRP) and Local Authority Service Delivery Action Plan (LASDAP) have not significantly increased the number of public responsibilities and services provided by local authorities, but have concentrated on other governance issues such as accountability and participation in service delivery in stead. There are multiple service delivery channels working in parallel in Kenya. This poses challenges to the significance and local residents’ appreciation of local authorities in local service delivery. If the Kenyan constitutional reform process progresses, it might provide a more comprehensive legislative base to create a stronger local self-government in Kenya with clearly specified mandates and means of local authorities.

South Africa has a strong constitutional and legislative base for local self-government. However, local authorities need to protect their interests in the restructuring of local service delivery such as in electricity distribution and municipal roads.