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LOCAL GOVERNMENT AUTONOMY

Introduction

Local autonomy can be defined as the extent to which local governments have discretion in carrying out their obligations. This can never be interpreted as absolute freedom for local governments to take whatever decisions they like. The extent of this autonomy differs from country to country. The following features are important to assess the degree of local autonomy:

Is there protection for the existence of local government?

Does the Constitution (or any other higher law) mention local government and/or instruct Parliament to establish a local government system? Would it be 'illegal' or 'unconstitutional' if there is no system of local government? Many African countries have such general provisions in their constitutions. For example, section 106(1) of Lesotho's Constitution instructs the country's Parliament to establish local authorities.

Is the leadership of local governments locally elected?

Do voters in a local authority have regular opportunities to elect that local government's political leadership, namely the council and/or the local executive? Or is such local leadership appointed from higher up, for example by the President or a national minister? If the local political leadership comprises or is dominated by politicians appointed by the centre, they will be accountable to the centre and not to local voters. This reduces the autonomy of that local government. There are countless variations on this principle around the continent. In South Africa, all local politicians are locally elected. In Egypt, the executive leadership of local governments are appointed by regional governors or the Prime Minister. Local elections must of course be free and fair but it also important that they are conducted regularly. Look at Malawi, for example: it held its first local government elections in 2000, but the councils were then suspended from 2004 until 2014.

Is there protection for local government units, in particular their boundaries?

Does the Constitution (or another higher law) protect local government boundaries? Are there rules to prevent national government from arbitrarily changing boundaries, merging or abolishing local governments? South Africa has been the most explicit in this regard, establishing a Municipal Demarcation Board that determines boundaries, and whose independence is guaranteed in the Constitution.

Are local powers identified and protected?

Does the Constitution (or another higher law) set out local government powers? There are two dimensions, namely:

- Are local matters and responsibilities specified in the Constitution? For example, the Constitution of Zambia contains a list of exclusive local government matters. Or is there a general open-ended power to deal with local matters? Article 189 of the Constitution of Uganda, for example, lists national powers and allocates all remaining powers to local government. Generally, the more specific the powers are, the stronger and more secure is local government's autonomy.
- Are local governments permitted to adopt local policies or by-laws with regard to those matters? If they are not, it means they only implement national or regional laws, which diminishes their autonomy. For example, article 134 of the Constitution of Tunisia provides that local governments have "regulatory power in exercising their mandates".



Are local governments protected against interference with or removal of their powers?

Often, the law will provide that (1) the central (or regional) government may regulate local government and (2) monitor and evaluate their performance. In cases of abject failure or illegality, the powers may even be removed or the leadership dismissed. These frameworks are needed, but can also be abused. The question is thus: are there checks and balances in place to protect local governments against such abuse? (Also see Fact Sheet #7).



Do local governments adopt their own budgets?

Local governments may only spend money if it is authorised in a budget. The budget prioritises scarce resources to respond to local needs. But who decides on those local priorities? Is it the local government itself, or another level of government? Does the local government have the final say over the budget or does it require the prior approval of another level of government? In many African countries, budget autonomy is limited. (see also Fact Sheet # 6). In Egypt, for example, local budgets must be sent for approval to the central government. The same rule applies to Zimbabwe, where the national Minister approves all local government budgets.



Do local governments have access to local revenue?

The more local governments depend on grants from the central government, the more they are accountable to the centre and their autonomy is reduced. No local authority is completely self-sufficient, and grants are necessary. (See Fact Sheet #6.) However, such funding often comes 'with strings attached'. If local governments can levy certain taxes and/or charge fees for services, they can decide for themselves how to use that revenue, and will be more accountable to local residents. This strengthens their autonomy.



Do local governments control their own bureaucracies?

Local politicians cannot do much without officials. (Also see Fact Sheet #7.) Two questions are important in this regard:

- a. Can a local government determine its own organisational structure? Or is this imposed from above?
- b. Does the local government have the power to appoint its own staff? Or are staff members appointed by institutions outside of the local government?



Can local governments turn to the courts if the central government disregards the rules?

Questions 1-8 will be answered in a country's constitution and/or its local government laws. But what happens when the national (or regional) government breaks those rules? Can local government(s) ask a court to determine whether the national government acted lawfully? If they can't, the rules to protect autonomy may ring hollow and the national government will be tempted to break them to centralise power. Furthermore, will the courts entertain such cases and decide on them without fear or favour? And will the national government implement any judgments that rule against them? In South Africa, for example, the courts regularly adjudicate conflicts over these issues, and the government always implement their decisions.

Each country navigates these questions differently, depending on local factors and considerations. (See Fact Sheet #3).

