

Theme Paper

# Local Government in Federal Systems

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## Abstract

The role of local government in federal systems can be looked at from a great variety of viewpoints. For one, local government is the order of government that is nearest to civil society. Thus, local government can use the voluntary sector, including non-governmental organizations (NGOs), better than any other order of government so as to improve its services. A strong role played by the voluntary sector can help to organize a participatory bottom-up approach in local governance. Disadvantaged groups, including women, may benefit therefrom. Local diversity has to be reflected in the composition of local authorities. In its organizational settings, a federation has to leave sufficient room and provide the necessary resources for local governments to work as true units of self-government. Second, this leads to the question how the relationship between the larger orders of government and local government should be organized in a federation. Some federations regard local authorities merely as parts of the constituent states; thus, they recognize only two orders of government: national and state (or provincial). Other federations consider them as a third order of the federal structure. This is not merely a question of legal theory; it may well be a problem of the distribution

of powers and resources. Third, within the organization of a federal system, metropolitan areas and megacities are of particular concern. Here, even a four-tier structure of government can develop. The governance of a megacity is extremely complex and so is the network of actors necessarily involved in its governance.

## 1. Introduction

The role of local government is crucial for federal systems. First, local government is a key interface between civil society and the state. Democracy begins here, and if democratic structures are not established locally, they will be missed elsewhere too. Then, local government has to be integrated into the complex structure of a federal system. Its relationship to the larger regional and national orders of government has to be defined, and it is necessary to establish rules and procedures for its participation in the political decision-making process. A third set of problems arises from the growing trend of urbanization. Megacities, where local government means responsibility for 10 or 20 million citizens, will gain ever more importance globally in the decades to come. Megacity governance in federal systems will be another issue federations will have to cope with in the future.

### 1.1 *Voluntary Sector, Civil Society, and the Enhancement of Democracy through Strong Local Government*

Highly centralized forms of governance have led to a growing realization in many countries that there is a need to decentralize power by creating participatory and responsive local self-governments that emphasize direct democracy and promotion of the role of stakeholders in the development process.

The voluntary sector has also emerged as an important player in strengthening people's institutions. In fact, non-governmental organizations (NGOs) are being increasingly promoted as the panacea for correcting all the inequities and problems encountered by governments in the developing regions of Africa, Asia, and Latin

America and for pursuing rapid economic growth. Economic transition in many countries in these regions has been characterized by a withdrawal of the government from many sectors of the society, thus fostering a civil society sandwiched between government and market, which embraces many types of voluntary organizations regarded as NGOs. The growth of these voluntary organizations is believed to promote citizen involvement and linkages between the political culture and social capital necessary to sustain democracy.

Many governments, impacted by structural adjustment and economic uncertainties, see NGOs as low-cost providers of services they themselves are unable or unwilling to provide their citizens. Even in China and Vietnam, international NGOs work through government institutions to provide services for the people, such as micro-credit schemes for the rural poor in Vietnam and Bangladesh and services for the disabled in China. Further, rapid economic change often redirects or undermines earlier systems of social support, thus increasing the need for additional services for women-headed households and urban slum-dwellers.

Today, the Government of India sees NGOs as a major component of its poverty-alleviation strategy. International development agencies and the global network of international NGOs encourage this emphasis because they believe NGOs are closer to the people and, therefore, more able than an elite patrimonial bureaucracy to determine the types of services needed by people. They argue that interaction with the recipients also fosters participation in solving local problems, which, in turn, empowers local leaders and enhances prospects for local decision-making.

Citizens groups often ask difficult questions, holding governments and corporations to account for their actions and demanding that institutions behave in ways that promote the public good. Civil society groups have succeeded in expanding their domain of policy-making and implementation. Civil society has established its presence in developing a variety of services such as health care, literacy, low-cost housing, natural-resources management, capacity building for income generation, and empowerment of disadvantaged and exploited sections of society.

Various views on civil society converge on one issue. Poverty is

not just the lack of material goods. It is also distance from decision-making and a sense of being devalued that manifests itself as apathy, anger, and a weakening of the civic culture. The role of civil society was particularly recognized by the United Nations' Conference on Development and Environment in 1992. Thereafter, the active presence of civil society continued at all important global international forums, such as the Cairo Population Conference of 1994, the Copenhagen World Summit on Social Development in 1995, and the Beijing Conference on Women 1995, among many others.

NGOs must build on these and other models and work together to increase their own accountability without losing flexibility or their genuine contact with the grassroots. NGOs must raise awareness of people's rights, promote experiential learning, adopt a multidimensional strategic approach, build up stakeholders, promote public education, and engage in policy advocacy through sustained research and intervention at various levels of the demand and supply segments of society.

The new institutional arrangements are geared to a participatory bottom-up approach in which communities exercise control over programme activities at each stage, and government and non-governmental agencies play catalyzing, facilitating, and coordinating roles. The comparative advantage offered by the voluntary sector is that it is much closer to the poorer and the more disadvantaged sections of society; is more motivated and altruistic in its behaviour; can easily stimulate and mobilize community resources; is non-bureaucratic, less formal, and more flexible in its structure and operations; has a multi-sectoral framework; and exhibits a greater potential for innovation.

Modern civil society has issued two declarations of independence: one from the state and the other from the market. Civil society consciously sees itself as a countervailing force against totalitarian tendencies in the state and the market. Such tendencies can produce unacceptable environmental, economic, political, cultural, social, human, and spiritual problems in society.

Civil society needs to advocate for concrete societal reform by institutionalizing its cultural advocacy in the domain of economics and politics. To do this, civil society has to interface with state and

market. The interface between these three forces of society can therefore be viewed as a terrain of opportunity or a terrain of cooptation.

Some of the elements that are necessary to make the relationship between civil society and government work are mutual respect for differences of opinion, parity in negotiations, clear mechanisms of mutual support and accountability, enabling communication protocols, principles of unity and common agenda, and finally a covenant-laying process of critical engagement.

If nations are to realize their full potential and accomplish inclusive growth, the equal participation of vulnerable segments of population in society must be ensured in order to enable the most marginalized citizens' greater access to and control over the resources and benefits of development, so as to promote social justice.

Discrimination against women remains entrenched in many regions of the world. Deep-rooted cultural beliefs and traditional practices deprive women of education, health care, and nutrition. Crime against women is widespread and includes rape, violent abuse, infanticide, child abuse, and ill-treatment of widows. Women are critically underrepresented in all levels of the government and elective offices.

After centuries of subjugation, women must be emancipated and empowered by promoting an inclusive strategy for creating social coalitions in support of parity for women in politics. The quest for gender justice has proved to be the catalyst for revitalizing democracy. Four of the main processes that could lead to women's empowerment are changes in women's

- mobility and social interaction,
- labour patterns,
- access to and control over resources, and
- control over decision-making.

Women should be encouraged to bring their vision and leadership, knowledge and skills, and views and aspirations into the development agenda from the grassroots to the international level. Emphasis must also be given to advocacy of gender-responsive legislation and constitutional revisions to increase women's oppor-

tunities to influence the direction of society and to remove obstacles to women's access to power.

True democracy emphasizes decentralization of governance and devolution of power. Government officials who are accustomed to the top-down model need to be sensitized to the new realities of local self-governance. NGOs have played a very effective role in making people more conscious of their roles and rights. Through processes like micro-planning, special emphasis on weaker sections of the population, participatory research studies and advocacy, people's participation has been greatly enhanced in intervened areas. However, sustained and more aggressive interventions are needed to deepen democratic local self-governance and enhance transparency. Research and policy advocacy has to be promoted on an extensive and sustained basis to improve different aspects of local self-governance. Creative individual and collaborative efforts by civil society and governments to strengthen local self-governance need to be scaled up.

How does such decentralization fit into the discourse on federalism? Clearly the 1993 constitutional amendments on local government transformed India's two-tier federation into one that is supposed to be three-tiered. However, it is one thing to change the law; it is another to transform actual practice. So far, there has been little evidence that the states recognize that local governments are intended to be no longer their creatures, wholly subordinate to state policies. Instead, they are expected to be part of a coordinate system in which each of the three orders of government is responsible to the constitution.

It may be possible for the Union government to bypass state governments and come to the aid of local authorities. This has been done in the United States. But in Canada, a parliamentary federation like India, the attempt by Prime Minister, Pierre Elliott Trudeau, to do so in the 1970s resulted in failure.

Local governments in both urban and rural India, although constitutionally mandated, have a very weak existence in their own right. They are controlled by state governments, which have retained numerous powers. Among them is the power to make rules, to make changes in the content of schedules, to appoint officials,

to dismiss the sarpanch, to cancel resolutions or decisions of panchayats, to dissolve panchayats, and to inspect records and works. Local governments are hence subservient to state government. They therefore violate the basic federal principle that no order of government should be wholly subordinate to another. Further, local governments have no power to legislate, nor have they the capacity to approach the courts to rule upon disputes over the respective constitutional powers of the second and third orders of government. In fact, there is no case law on local government in India as there is in the United States. Although local governments have a constitutional status whose basic features, such as the four innovations mentioned earlier, are not amendable by the state governments, they are unable to function as units of self-government. They are dependent on state governments, which have conceded only political decentralization and not the fiscal or the administrative decentralization of powers and functions to localities.

### ***1.2 The Functioning of Local Governments and their Relationship with Regional and National Governments***

Local self-rule is the oldest form of public rule in the history of humanity. Rural settlements, villages, and even nomadic peoples found forms to organize their community life. These can be understood as forms of local (or communal) self-rule. There is a wide variety of types, from the role of a traditional leader in an African village to an Indian panchayat, a classical Greek polis in ancient times (which many consider as the cradle of democracy), and the management of a modern mega-city with more inhabitants than some medium-sized nations. Most local bodies are multi-purpose municipalities, while others have a specific task (e.g. school districts). But what they all have in common is responsibility for the most immediate needs of their citizens without any other body between them and the individual.

As soon as modern statehood developed, local government as the organizational form of self-rule got a competitor: the state, be it a monarchy, a republic, or whatever form of higher rule claimed

sovereignty over the entire territory and its population. From that moment on, the question came up as to how to solve the inevitable conflict between the ideas of local self-government and the sovereign power of the state. The problem of the relationship between local government and the larger orders of government became part of the permanent public agenda.

This problem is common to almost all countries because local self-government—at least as an idea—is universally accepted. Only city states like Singapore or Monaco are possible exceptions. However, in centralized states, this is only a question of a two-layer government. Federal states are more complicated. They have three orders—local, state/provincial, and the federal—which have to work together. If the federation is also a member of a supra-national organization (e.g. the European Union), an even more complex multi-layer structure prevails.

The impact of such complex structures on local government can be massive. Local government may become the object of two standard-setting authorities. The federal as well as the state government may define tasks and set frameworks for the activities of local government. If we consider the financial aspect, two larger orders of government may be an advantage as local authorities may profit from two different sources of support. However, there is also the risk that disputes between the federal and state governments about which government has responsibility for a certain task or programme may end up generating an unfunded mandate for local government.

As such problems can occur at any time and in any context, it is necessary to establish a procedure or create a forum through which local government can raise its voice vis-à-vis both orders of government. How this can be done is determined by the constitutional setting of a federation.

The older federations do not refer to local government as part of the federal organization (e.g. the United States, Switzerland (until 1999), Canada, and Australia). They consider local government to be a part of the state or provincial order and leave it to the statutory authority of that order. Others, such as Germany and India, recognize and guarantee local self-rule in the federal consti-



tution but without giving local bodies the status of a third order of government, leaving most of the details to the states.

In these cases, the relationship between local governments and the state or provincial government usually poses no structural problem. Because there are direct relations, task determination and standard setting, claims for assistance, and supervision can be handled in a cooperative manner. However, the standing of local government in these processes depends on the framework set by the state. Important items within the state's regulations for local government may include a legal (constitutional) guarantee of local self-rule (including financial autonomy), protection against unfunded mandates, and an effective participation of local government in the task- and standard-setting processes (e.g. in the state legislative procedure). It is equally important to enforce these rules so that there are legally defined limits of state supervision over local government and also legal processes, including access to independent courts.

In systems where the federal state is conceived of as comprising only the federal order and the states or provinces, the former usually has little or no direct relation with local government. The interests, concerns, and needs of the local order are mediated by the states or provinces, which have to act as agents or trustees. Obviously, this construction is somewhat awkward. A trustee should never have a vested interest in the matter at hand. But provincial and local governments do not necessarily have the same interests vis-à-vis the federal government. Local government often claims that the federal government and the constituent states come to an agreement at their expense—the absent third party. Given that local government is excluded from the decision-making process because the federal order refuses direct relations and/or because the constituent states insist on their role as exclusive partners with the federal government while putting their own interests over the interests of their trustee, local government sometimes finds itself in the role of being a victim of disloyalty. Hence, it has to be asked how constituent states can be encouraged to act in good faith when they represent the concerns of local government vis-à-vis the federal government.

A special variation of this problem may occur with respect to

federal grants for programmes administered by local governments. Where direct financial relations between the federal and the local governments are unheard of, federal money for a certain purpose is given to the constituent state even if the respective programme is to be executed by local government. It is then up to the state government to distribute the federal money in an appropriate manner. In this context, it not only has to define the fair share of each of its municipalities but it also has to make sure that the federal grant arrives entirely in the hands of local government where the programme is carried out. Local governments often claim that the states have “sticky fingers” with respect to the federal money the states are supposed to pass on to them.

In federations without direct federal-local relations, the place and role of local governments have become critical with respect to the governance of metropolitan regions. Where local governments have to deal with the challenges of massive conurbations, they often want to become partners at the federal negotiation table. The mayor of Toronto, a conurbation with a budget larger than that of most of the Canadian provinces, might argue that it is inappropriate that he or she is not considered a partner by the Canadian government while the premier of the small province of Prince Edward Island has his or her place at the intergovernmental bargaining table. Behind this insistence at being “at the table” is a quest not only for money and power but also for respect. As these urban governments play a vital role in the social and economic development of the country as a whole, they need more than appropriate funds and powers to meet their increasing responsibilities. They also want to be taken seriously as partners who can speak with their own voice.

Some of the younger federations do not only guarantee local government in their constitutions; they also recognize it as a third order of the federal structure (e.g. Brazil, Mexico, and South Africa). This makes it a lot easier to establish direct relations between local and federal officials, including the flow of federal money to the local authorities. Local government can become a part of intergovernmental relations. It may even get a defined role in the federal legislative process. However, the constitutional status itself does not guarantee that the municipalities deliver better services to their citizens.

Though such a three-order construction within the constitutional setting seems to provide for a less stressful position for local government, some detrimental effects have to be discussed. None of the constitutions providing for a three-order structure goes so far as to create a “third chamber” through which the localities can exercise influence on national legislation. The reason for that may well be that the integration of such a municipal chamber into the legislative procedure would inevitably add to the complexity of the decision-making process. Furthermore, it would be difficult to determine which municipalities should gain such status. If there are procedures or bodies foreseen as forums for local government in the federal arena, their power usually is limited to recommendations or acting on an informal basis. Thus, the question of whether the constitutional setting really is more than legal symbolism comes up.

If local government in fact has a strong position in intergovernmental relations, another problem comes up. The federal government may well be tempted to play local government off against the states. It is rather likely that a three-order structure works in favour of the national government. Thus, it seems to be necessary to include special safeguards for the states in such a system, if a centralist structure is to be avoided. Otherwise, there is a risk that the federal government will take decisions together with some local bodies (which usually will be the big cities) without due consideration for the interests of the rest of the country.

However, in practice, the relation between local government and the state/provincial and federal governments is determined not only by the constitutional setting. The ways in which local government lobbying is organized are equally important. A strong and qualified local government association is needed to represent views and interests in the state and national arenas. Inside local government associations, the problem will inevitably come up that the positions of metropolitan and rural areas, or small and large communities, are not necessarily alike. Party politics may be involved too. This requires a carefully tailored lead association or, if this is not expedient, perhaps several organizations where local bodies with special common structures and interests work together.

### 1.3 *The Governance of Metropolitan Areas, including Megacities, in Federal Systems*

Metropolitan areas are important because of their role as drivers of national economies. At the same time, metropolitan areas demonstrate the growing extent of urban poverty, social polarization, and social exclusion. These social conditions raise questions about social and political stability and the long-term sustainability of economic growth. One of the fundamental themes in the work done in the field of metropolitan government research is the present inadequacy of the governance structures. This is the central issue for looking at metropolitan areas in federal systems. What are the specific challenges for the governance of metropolitan areas that arise in federal systems? The answer lies in multiplying complexities that arise because of the additional order of government and the corresponding need for coordination.

These problems arise in particular with regard to megacities, defined as a metropolitan area with a population above 10 million people. Megacities are a relatively recent phenomenon, as the following table indicates.

**Growth in Number and Size (in million residents) of Megacities**

<i>1950</i>	<i>1975</i>	<i>2001</i>	<i>2015</i>
Number: 1	Number: 5	Number: 17	Number: 21
New York 12.3	Tokyo 19.8	Tokyo 26.5	Tokyo 27.2
	New York 15.9	São Paulo 18.3	Dhaka 22.8
	Shanghai 11.4	Mexico City 18.3	Mumbai 22
	Mexico City 10.7	New York 16.8	São Paulo 21.2
	São Paulo 10.3	Mumbai 16.5	Delhi 20.9
			Mexico City 20.4

From 1950 to 2015, the number of megacities will have grown from 1 to 21. Despite this huge increase, the per cent of the world's population living in megacities still remains small. In 2000, it was estimated that 3.7 per cent of the world's population lived in megacities, and it is predicted that this will rise to 4.7 per cent by 2015.

The development of megacities is clearly linked, at the present time, to urbanization in the southern hemisphere.

Decentralization of responsibilities, resources, and freedom to metropolitan areas is happening in many countries, and this needs to be encouraged. These processes must take place in a coordinated way; decentralization of responsibilities without resources does not work, and decentralization of responsibilities and resources is not effective without increased freedom and autonomy for local governments. Decentralization should include planning and decision-making and not merely implementation. The planning needs to be strategic planning rather than only detailed land-use planning.

Complexity is clearly the characteristic of the governance of metropolitan areas. The national government has interests and policy concerns in relation to metropolitan areas often stemming from the role that metropolitan areas play in terms of the country's economic development. State governments are involved because of their role in areas of service delivery, including social services and health care. In addition, there are a myriad of local municipal governments, as well as a large number of special-purpose local bodies. This metropolitan structure therefore requires both horizontal and vertical coordination among the players, and the combination of great needs and huge numbers of bodies makes for a qualitatively different experience of urban governance. There are often agencies of a variety of kinds at the regional or metropolitan level, therefore involving at least four levels of the state and thus creating, at least *de facto*, a four-tiered structure of government. In addition, governance of the metropolitan area, in particular if it is a megacity, involves a wide variety of organizations, perhaps even multinational organizations, agencies, and networks of civil society, including NGOs and community-based organizations (CBOs).

The necessity of working out cooperative intergovernmental structures and policies is underlined when we look at the major management challenges facing metropolitan areas. These have been described as "improving financial structure and management, providing shelter and basic urban services and infrastructure, improving urban information systems, strengthening the role of the urban

informal sector, and strengthening urban institutional capacities, including the role of municipal governments". Examining each of these, we can see the necessity of involvement and cooperation from national, state, regional, and local governments. The financial question must involve both the national and state governments coming to agreement on what should be the responsibilities of local government and what should be the ways of financing these responsibilities. This cannot be done without agreements between the national and state governments. The provision of shelter and basic urban services and infrastructure again usually involves both the state and national governments, plus non-governmental groups that often play important roles in service delivery. Building good urban information systems requires the shared responsibility of many actors, not only the various orders of government, but also international agencies, international research links, local non-governmental groups, national researchers, and post-secondary education institutions.

Strengthening the role of the urban informal sector involves capacity building in the non-governmental sector, and this capacity-building role needs to involve cooperation between different orders of government. It also involves all levels of the state looking carefully at their regulatory regimes and making sure that their laws, policies, and programmes are not impeding the strengthening of the informal sector. Finally, the strengthening of urban institutional capacities necessarily raises all the issues addressed in Section 2 of the relationship of local governments with the larger orders of government.

Inside a federal system, the sheer weight of a metropolitan area in terms of population and economic power may jeopardize the equilibrium between the various states and local entities. The federal system has to find a balance between the needs of a metropolitan area and the interests of the small (rural) localities. Neither may a metropolis live on the expenses of the rest of the country nor can surrounding communities be allowed to consume the services of a metropolitan area without contributing to payment of the costs. A federal structure may help to ensure that both the metropolitan area and the small local entities are recognized in the public sector and decision-making process. For example, it may be appropriate

to give a metropolitan area the status of a state or province in order to include it in the intergovernmental dialogue. In addition, constituent states formed in the more rural parts of a country may contribute to equilibrium between urban and rural interests.

Even in non-federal countries, there is a growing interest in looking at principles of federalism as a consequence of decentralization and globalization. This has been particularly true for those studying the Chinese case, where *de facto* federalism and quasi-federalism are terms often used to describe current trends. This relates to the point raised at the beginning of this section—the importance of coherent policies of decentralization. Thinking through decentralization policies has increased interest in the principles and practices of federalism as applied to the complex governance of metropolitan areas.

The issue of democratic governance in metropolitan areas involves creating better structures for the participation of the population in the governance processes. This is complicated by the huge numbers of people involved and the dramatic conditions of urban poverty experienced by people living in slums and squatter settlements. Many millions of metropolitan-area residents live in unauthorized settlements in very substandard conditions. Action against poverty remains a principal need.

Local governments should strengthen their connections to NGOs and CBOs. In many instances, there has not been a tradition of horizontal linkages between local government and local civil society; yet creating and/or reinforcing these linkages is an essential step to enhancing the democratic character of metropolitan governance.

Many observers have been particularly interested in the potential impact of an increased role for women in metropolitan governance, both in the ways in which gender equality can be realized in the institutions of metropolitan areas and the impact of the greater inclusion of women on the efficiency and honesty of local institutions. Bringing an increased number of new groups of women into greater political participation enhances the democratic functioning of local institutions and increases the alignment between the needs of the population and the services delivered to them.

In conclusion, it is clear that those interested in the principles of federalism and those interested in the effective and democratic governance of metropolitan areas could profit greatly from increased exchanges. As the earlier table indicates, megacities are becoming an increasingly important form of human settlement and one that requires extremely complex systems of governance. Federal systems can offer important lessons in the governance of complexity.