LOGOV

Structure of Local Government

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Foreword

LoGov aims to form a global research and training network and to provide solutions for local governments in order to address the changing urban-rural interplay and to manage its impacts. As a consortium composed of 10 European and 8 non-European partners, we seek to achieve the following specific objectives:

- to identify, evaluate, compare and share practices in five major local government areas: local responsibilities and public services, local financial arrangements, structure of local government, intergovernmental relations of local governments and people's participation in local decision-making;
- to encourage the effective application of these practices by local governments;
- to strengthen international and intersectoral collaborative research on local government;
- to enhance the skills and career perspectives of the staff exchanged between the project partners.

LoGov's methodological approach relies on a comprehensive comparative analysis that draws on findings from 15 countries or wider regions on six continents, the extensive involvement of local policy-makers through local government associations and a multi- and interdisciplinary approach that is facilitated by the Consortium's expertise in four disciplines: public law, political science, public administration and economics.

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The LoGov consortium is pleased to present this document which summarises the output of the research conducted regarding the identification, evaluation, and comparison of practices in the local government area of local government structure.

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1.1 Changing Local Government Structure in Response to Demographic and Political-historical Changes

Looking back at the post-World War II period, the experiences with structural strategies in response to demographic change in the 16 countries under review are diverse and varied. As might be expected, the tools of inter-municipal collaboration and amalgamation (merging local governments) have been applied in almost all the state structures under review. Not only the means used, the legal and political frameworks and the degree of involvement of the main people concerned - the citizens - differ, but also the results and the relative importance are very different. Some countries, such as Croatia do benefit *a priori* from the legal-political framework and certain incentives favouring mergers, but these have simply not (or too rarely) materialised ("Thematic Introduction" [Croatia]). In other countries this tool has been used for a long time and has enabled a genuine reorganisation of institutional structures. This is for example the case in Switzerland ("Thematic Introduction" [Switzerland]).

Beyond the demographic explosion that humanity has experienced since the end of the Second World War and its impact on state structures, the political-historical context regularly comes back as a factor that has had a determining influence on the relations between urban and rural areas in general and on local government structures in particular.

The first key period in this respect is that of decolonisation. It can be observed that several countries, once their independence was fully recovered, adopted constitutional provisions guaranteeing innovative prerogatives to local governments and structuring local governments in sometimes unprecedented ways. One example is the *panchayati raj* in India which is "a system of rural self-government *that* has been established in all the states of India by the acts of the state legislatures to build a grass root democracy in independent India" ("Thematic Introduction" [India]). South Africa also radically changed its local governance structures as racial segregation was the main component of Apartheid and was based on racial distribution within municipalities. A complete overhaul of the system was then carried out ("Thematic Introduction" [South Africa]).

Another key period is the one directly following the end of the Cold War. In Poland, we witnessed a multiplication of *gminas* (municipalities) from the 1990s onwards as "a manifestation of grassroots social movements in the process of democratisation and restoration of self-government after 1990. Local government in localities was often considered an important value" and municipalities' splitting were very common ("Thematic Introduction" [Poland]). A similar phenomenon can be observed in Croatia, where the strengthening of local governance after independence came as a direct reaction to the ultra-centralisation of powers that the country experienced during the years prior to independence. This certainly also

explains the strong reluctance to amalgamation ("Thematic Introduction" [Croatia]). In the meantime Moldova's attempts to reform the country's political-administrative landscape in 1998 were such a resounding failure that "the 1998 territorial and administrative reform was basically reverted in 2001, given the new political context in the country" ("Thematic Introduction" [Moldova]).

Finally, the financial crisis of 2008 marks a third turning point, since in some countries it has had concrete repercussions on the organisation of state structures, which has encouraged the acceleration of inter-municipal collaboration (and sometimes mergers). This is the case, for example, in Italy, where new legislation facilitates or even forces inter-municipal cooperation, creating at the same time new tensions linked to the distribution of competences between the different government levels ("Thematic Introduction" [Italy]).

The Reasons Behind Amalgamations

In rural areas, the arguments that come up most systematically to justify mergers have been the following: to seize the opportunity to access incentivizing public funds; to use the potential for economies of scale; to rationalize public services and counteract the shortage of specialized personnel with limited financial capacities being one of the major problems faced by rural communities.

In comparison, mergers in urban areas are not only justified by the arguments listed above, but also, and perhaps above all, as a means to unite expanding cities that have extended to surrounding municipalities into a single political entity. This is done by improving spatial planning, public transport, etc. and also aims at improving the interaction between urban and rural areas ("Merging Local Governments to Form the New Municipality of Fribourg" [Switzerland]; "Post-Merger Evaluation – Future- Oriented Organizational Development in the City of Fehring/Styria" [Austria]; "Thematic Introduction" [Croatia]; "The Territorial and Administrative Reform in Albania" [Albania]).

Another important reason behind amalgamation is that it can be a tool to foster social inclusion and solidarity. This question would certainly deserve more attention. In South Africa, mergers were even conceived as a tool to support the unification of different cultures or ethnicities in the post-apartheid era. The same rationale applied to the creation of the SNNPRS in Ethiopia ("Thematic Introduction" [South Africa]; "Amalgamating Five Special Local Governments into a Single Administrative Zone vs Self-Government Rights of Ethnic Groups in SNNPRS" [Ethiopia]).

Achievement (or not) of the Expected Impact of Amalgamations

One of the main obstacles to municipal mergers is undoubtedly citizens' strong sense of identification with their local community which has a direct effect on the chances of success of the political initiatives that aim at merging municipalities. Thus, politicians are often not encouraged in view of real or expected resistance to pursue mergers, especially because when they are or must be submitted to the people they may be voted down ("Thematic Introduction" [Spain]; "Thematic Introduction" [Switzerland]; "Thematic Introduction" [Albania]. To break

this circle, inter-municipal cooperation is often preferred by the people and thus also benefits from greater political support ("Thematic Introduction" [Austria]).

Although it is difficult to evaluate the impact of amalgamations, the experience of Fehring/Syria in Austria demonstrates that the positive effects may outweigh the negative ones, in particular as they improve the quality of administration and provision of municipal services ("Post-Merger Evaluation – Future-oriented Organizational Development in the City of Fehring/Styria" [Austria]). But numerous country reports claim that amalgamations do not bring an obvious economic benefit as regards local governments efficiency and that the economy of scale argument is not demonstrated. The Australian case is a telling example as mergers are said to be based on a purely ideological argument: "[D]espite advanced financial modelling and optimistic projections, there is currently no Australian evidence to support the claims that larger local governments are necessarily more efficient. […] There is more evidence that larger local governments can promote strengthened strategic leadership capacity but this has been difficult to measure and warrants further research." ("Thematic Introduction" [Australia]; see also the Canadian example "Beyond Municipal Amalgamations in Ontario" [Canada]. In the same vein, the expected efficiency gain of an amalgamation of municipalities must also be considered from the angle of the size of the new merged municipality. In Italy for example, it is reported that sometimes "even the merged municipality has faced serious difficulties due to a lack of resources", often when public merger incentive funds are exhausted. "Mergers of Municipalities – A Comparison of Procedures and Their Implications" [Italy]).

Procedures, Incentives and Degree of Participation of the Local Communities Concerned by the Amalgamations

The procedures and the degree of participation of the local communities concerned by the amalgamations differ widely between the countries and often within the countries depending on the political and historical moments and priorities. Yet, we wish to highlight the following three categories, although some countries could easily be classified in all three categories, as some subnational entities have different procedures than others.

1. Participation of the local communities and package of incentives are made available: In the first category we find countries where amalgamations are mainly initiated by citizens themselves, while being encouraged by upper-tier governments that do not only set the appropriate legal framework but also make sure that specific incentives are made available to the municipalities. These incentives may be technical assistance or financial support. Such participatory procedures, however, do not guarantee the success of amalgamation, as, for instance, the recent case of Fribourg in Switzerland shows very clearly ("Merging Local Governments to Form the New Municipality of Fribourg" [Switzerland]; "Post-Merger Evaluation – Future- Oriented Organizational Development in the City of Fehring/Styria" [Austria]; "Thematic Introduction" [Poland].
2. More consultation than participation and little or no incentives: In the second category we find countries where citizens' participation is often limited to consultation and where amalgamations are encouraged by the upper-tier governments that set the legal

framework but do not (or rarely) make additional incentives available. These types of procedures have led to very different results and in many cases amalgamations do not materialise due to a lack of political will and/or citizens' interests ("Mergers of Municipalities – A Comparison of Procedures and Their Implications" [Italy]; "Thematic Introduction" [Croatia]; "Thematic Introduction" [Moldova]; "Thematic Introduction" [Spain]).

3. Little or no consultations and largely top-down: Finally, there are those countries where the top-down approach is privileged and where mergers are above all the result of a major territorial reform decided at the level of the national or sometimes subnational government ("Beyond Municipal Amalgamations in Ontario" [Canada]; Australia, Malaysia, Moldova, "The Territorial and Administrative Reform in Albania" [Albania]; "How Are Amalgamations Planned and Implemented" [South Africa]; "Amalgamating Five Special Local Governments into a Single Administrative Zone Vs Self-Government Rights of Ethnic Groups in SNNPRS" [Ethiopia]; "Amalgamation in New South Wales" [Australia]).

1.2 Umbrella Entities (Districts and Special Purpose Authorities) to Support Small RLGs Regarding Particularly Challenging or Expensive Tasks

The role of umbrella entities in supporting small RLGs is relevant, mainly to overcome the many challenges they face in delivering public services. But another feature that is common to many countries relates to the need for clarifying the role of the umbrella entities whose functions sometimes overlap and create confusion. For example, in Italy the regions play a major role, both constitutionally and in practice, but below them the provinces are also still in place since attempts to abolish them were rejected in a referendum ("Thematic Introduction" [Italy]). In India, many special-purpose agencies deal with specific issues such as electricity, water supply, sewerage, housing, etc. but further analysis would be required to determine whether their competencies do or do not overlap with those of other umbrella entities ("Thematic Introduction" [India]).

1.3 Metropolitan Governance Entities

A hot topic in many countries are metropolitan governance entities. A common trend that can be identified is the difficulty in gaining political consensus for their creation, especially from the subnational governments. In Spain, the legal framework is in place, but no *Autonomous Community* has ever officially granted this status and corresponding competences to any of its major city ("Thematic Introduction" [Spain]). In Poland, only one metropolitan government has been created despite the numerous top-down solutions proposed by the central government. No political consensus was found as to which cities should be included in the reform ("Thematic Introduction" [Poland]).

Another common trend is that once metropolitan governance entities are established, the weight and involvement of peripheral areas in the decision-making process is considerably

reduced. As a consequence, the degree of representation of citizens also significantly decreases. In India, the rapid and somehow uncontrolled urbanization of cities such as Delhi have had dramatic consequences in terms of "rural" self-governance since "the surrounding rural villages have lost their rural self-governance and the practice of conducting elections was neglected" ("Decentralization and Democratic Governance" [India]). In Malaysia, major economic development projects aiming at the creation of modern (and sustainable) metropolises often overrule the competencies of local governments ("Iskandar Development Region" [Malaysia]). In Canada, the metropolitan Toronto that was based since 1954 on a two-tier system differentiating 13 autonomous municipalities was merged in the 1990' into a single-tier, large City of Toronto "in a top-down manner, with relatively little local consultation" and this was very controversial ("Beyond Municipal Amalgamations in Ontario" [Canada]). Finally in Germany, the collaboration between the existing metropoles and their peripheric rural municipalities are not functioning very well, especially as far as promotion of tourism is concerned. RLGs have no choice but to follow the path of inter-municipal cooperation between RLGs in order to promote their rural tourism offer, even though it would be preferable to take advantage of the attractive role of neighbouring metropolises ("Cooperation in the Field of Tourism" [Germany]). In conclusion, this question deserves further analysis as even where the country reports imply that metropolises have some tools to bring urban governments closer to the rural people, no clear-cut answer on its applicability, efficiency and level of satisfaction by the beneficiaries is provided.

1.4 The Splitting of Municipalities

With regard to the splitting of municipalities, the cases of Poland and Ethiopia should be highlighted. A large number of municipalities have been created in the last decades and this trend continues. In order to limit the creation of new *gminas*, Poland has adopted criteria based on fiscal capacity and size that must be met by those territorial units that wish to be recognized as a new municipality. The citizens' revenues of the new *gmina* cannot be lower than the *gmina* with the lowest tax revenues per capita and the total population of the new *gmina* cannot be lower than that in the *gmina* with the smallest population in Poland ("Thematic Introduction" [Poland]). In Ethiopia, the number of local governments increased by a drastic 30% between 2001 and 2013 which demonstrates the general belief throughout the country that decentralised governance should ensure self-governance of ethnic groups and enhance economic development and better access to public services ("The Practice of Local Government Creation (Splitting) in Ethiopia" [Ethiopia]).

1.5 Functions and Forms of Inter-municipal Cooperation (Formal vs. Informal, Imposed vs. Voluntary)

Purely voluntary inter-municipal collaboration (IMC) is typically informal and usually takes the form of discussions that are more or less organised. ("Thematic Introduction" [Austria]). Nevertheless, one of the few cases of highly voluntary inter-municipal collaboration that is

discussed in depth in the country reports takes place in Croatia on the Island of Krk, in the North Adriatic Sea. The report underlines that sometimes, efficient collaboration does not require too many incentives but can rely on voluntary initiatives and a certain degree of formalisation. Where there is a will, there is a way! ("Inter-Municipal Cooperation of the Island of Krk" [Croatia]). This Croatian example comes as a surprise in a country where municipalities are otherwise rather reluctant to engage into inter-municipal collaborations. Another example of voluntary IMC that is discussed in depth is the one of South Tyrol that is also voluntary although "strongly encouraged through financial incentives". Also, the degree of formalisation is rather high compared to other countries. ("Inter-municipal Cooperation Based on a Model Agreement: A Top-Down Approach in South Tyrol" [Italy]).

More generally in Italy, the Decree Law no 138/2011 (converted in Law no 148/2011) compels municipalities with a population of less than 1,000 inhabitants to engage into inter-municipal collaborations. They must carry out their functions in an associative form or else "the prefect of the province, i.e. the representative of the central government, shall give the defaulting municipalities a peremptory deadline within which to act". But interestingly, the Constitutional Court recently considered that forcing small municipalities to cooperatively manage fundamental functions is excessively rigid and does not stand the proportionality test ("Thematic Introduction" [Italy]).

Finally, one function of inter-municipal collaborations (IMC) that is relatively unknown is that they not only serve as a horizontal communication channel between municipalities, but they also can facilitate vertical discussions and negotiations between the municipalities and the subnational authorities. Indeed, in South Africa, Section 16 of the Intergovernmental Relations Framework Act (IGRFA) aims at "promoting and facilitating intergovernmental relations between the province and local governments in the province" ("Thematic Introduction" [South Africa]). In some Swiss cantons, municipal associations also represent the interests of its members vis-à-vis the cantonal authorities.

Factors Facilitating or Impeding Effective Inter-municipal Cooperation?

Apart from rare cases of forced inter-municipal collaborations discussed above, so-called "voluntary" inter-municipal collaborations often result from an existential necessity and are thus quite far from a free choice. The country report on Italy stresses that all rural (or remote) municipalities that engage in such collaborations, aim at assuring a minimum standard of services to their citizens, which is a condition for their survival as local government entities. ("Thematic Introduction" [Italy]). In this context, the case of Argentina is striking too. Although there is no reference to inter-municipal collaborations in the Argentinian legal framework (except for three minor constitutional provisions), municipalities have had no alternatives but to foster inter-municipal collaborations in order to overcome "the transformation of the roles, functions, and spheres of action of local governments in the context of neoliberal economic reforms during the 1990s" ("Thematic Introduction" [Argentina]).

In addition to the functional necessity, inter-municipal collaboration are also facilitated by the fact that they are seen as an appropriate alternative to amalgamations. Spain, which for the

above-mentioned reasons has not gone down the road of amalgamations, has favoured formal inter-municipal agreements that often lead to the establishment of inter-municipal institutions and associations "such as the *mancomunidades* (commonwealths) directly created by the municipalities" ("Thematic Introduction" [Spain]). Thus, various forms of IMCs are used to accomplish economies of scale and rationalization of services and to prevent the centralization of competences.

Among the factors that hinder inter-municipal cooperation, the Austrian report points to "the often long and resource intensive initiation processes, interest conflicts or only the reluctance to give up own structures for joint projects" although both the federal level and the subnational level (the *Länder*) strongly support inter-municipal collaborations ("Thematic Introduction" [Austria]). Other hindering factors are the legislative barriers and the lack of financial support as well as the political history ("Thematic Introduction" [Croatia]; "Thematic Introduction" [Albania]).

Inter-municipal Cooperation Across Boundaries

One country report specifically reports on the possibility of inter-municipal collaboration across subnational boundaries ("Thematic Introduction" [Austria]).

By contrast, no country report mentions international collaboration between municipalities from two different countries although it can be observed in some countries such as parts of Switzerland. This is an issue that could be explored further.

1.6 Cross-cutting Issues Linked to Several LoGov Research Areas

Linked to the Work Package 2 on local financial arrangements, the scarcity of financial means available at the local level has a direct impact on the local government structures. Indeed, many country reports point to the lack of economic and human resources as a major break on the development of more effective inter-municipal cooperation. The lack of financial resources also threatens the autonomy of local government structures and their proper functioning.

The questions of amalgamations as well as inter-municipal collaborations certainly also touch upon issues covered by Work Package 1 on local responsibilities and public services and Work Package 5 on people's participation in local decision-making. Indeed, amalgamations have implications on service delivery, representation and democracy since typically when a council is merged the number of residents one councillor represents increase drastically. According to the Australian country report, the implications of this change for local representation and decision making are currently unknown and would deserve further investigation.

The difficult question of the role, place and legitimacy of metropolitan governments is closely linked to Work Package 4 on intergovernmental relations as their status is not always very clear and creates confusion if not tensions with other existing layers of governments.

1.7 Transversal Topics that Affect all Research Areas

One topic that has not really been mentioned *per se* in the country reports is the consequences of major political and historical changes/crises such as the decolonisation, the end of the apartheid regime, the fall of the Soviet Union, the break-up of Yugoslavia, the financial crisis of 2008 and perhaps the Covid-19 pandemic (but this remains to be seen) on all the working packages and not only on the local government structures alone (although that would be a good topic to start with). This would deserve a more methodical analysis and could be the subject of a comparative article limited to one crisis.

1.8 Conclusion

One area for further research within the LoGov project would be a comprehensive and systematic assessment of the factors determining the success or failure of amalgamations in a comparative way. In this regard, the experiences from Canada, Australia, Austria, Switzerland, Germany and Italy already provide many valuable inputs. It would be interesting to find out whether rural municipalities have to reach a critical size to ensure their sustainability. In addition, although amalgamations have not consistently proved to reach their economic objectives, they may remain a useful tool to foster a sense of solidarity among the citizens of different municipalities. It has indeed been used as a tool for social and cultural unification. How the solidarity argument is discussed and perceived by citizens and politicians as a factor to encourage amalgamations could deserve further analysis with the same being true for IMC.

As regards inter-municipal cooperation, the specific role that metropolises can or should play to foster rural-urban interactions would deserve further analysis. On this matter the country reports from Italy, Austria, Spain, Switzerland, Poland, Croatia, South Africa and Argentina have already provided a solid basis to build on. Moreover, IMC from the perspective of resource management, sustainable development and tourism would be an interesting subject to look at, as experiences from Spain, Argentina, Malaysia, India and Germany have demonstrated.

Finally, the phenomenon of the splitting of municipalities (or de-merging), as in countries like Austria, Poland, Croatia, Ethiopia and Germany, deserves to be analysed in more detail, especially through the political-historical prism that seems to have played in this regard a key role.

2. The Structure of Local Government in Italy

2.1 The System of Local Government in Italy

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Types of Local Governments

In Italy, there are three main types of local governments which are recognized under Article 114 of the Constitution as making up, together with the 20 regions[1] and the State, the Italian Republic. These are the municipalities (*comuni*), 14 metropolitan cities (*città metropolitane*) and 83 provinces (*province*). The basic units of local government throughout the country are the 7,914 municipalities (*comuni*). However, in order to facilitate the social and economic integration of urban agglomerations, there are the metropolitan cities (*città metropolitane*). While their establishment had been discussed time and again at least since the 1950s, fierce resistance, especially from the regions, had made their actual creation impossible. Only the constitutional reform of 2001 introduced the metropolitan cities into the Constitution. Then it took over a decade to clarify how they would actually operate and to overcome resistance from other government levels. The Ordinary Law no 56/2014 ('Delrio Law') finally established the metropolitan cities.[2] The third type of local governments that is recognized under Article 114 as a constituent unit of the Italian Republic are the provinces. They are umbrella entities between the regions and municipalities. Similar to second-tier local governments in other countries the main function of the provinces is the coordination of policies and public services.

Apart from these three main types enshrined in the Constitution, the Legislative Decree no 267/2000 mentioned some more types of local governments. The unions of municipalities (*unioni di comuni*) are composed of two or more municipalities and are an institutional form of cooperation in order to jointly exercise certain functions.[3] A similar rationale is behind specific local government entities for particular geographical areas, namely the mountain communities (*comunità montane*) and the island communities (*comunità isolane*).

Legal Status of Local Governments

According to the above-mentioned Article 114 of the Constitution, '[t]he Republic is composed of the Municipalities, the Provinces, the metropolitan cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their

[1] There are 15 regions with ordinary statute and five regions with special statute, recognized under Article 116 of the Constitution, namely Sardinia, Sicily, Trentino-South Tyrol, Aosta Valley and Friuli-Venezia Giulia.

[2] Giovanni Boggero, 'The Establishment of Metropolitan Cities in Italy: An Advance or a Setback for Italian Regionalism?' (2016) 8 Perspectives on Federalism E-1, E-5.

[3] Italian Constitutional Court, Judgment no 50/2015.

own statutes, powers and functions in accordance with the principles laid down in the Constitution'. Even if this provision seems to suggest that the constituent parts of the Italian Republic are on an equal footing, the Constitutional Court soon emphasized the special role of the state vis-à-vis the other government levels.[4] While Article 114 ensures that the three main types of local government enjoy autonomy within constitutional principles, it does not go any further in regulating them.

Article 117(2)(p), however, determines that national government shall establish the rules regarding the 'electoral legislation, governing bodies and fundamental functions of the municipalities, provinces and metropolitan cities'. The relevant law consolidating pre-existing rules is the above-mentioned Legislative Decree no 267/2000. The regional legislator can only become active in a complementary manner on the basis of the residuary power under Article 117(6). This is true, however, only for the 15 regions with ordinary statute (hereinafter, ordinary regions). The five regions with special statute (hereinafter special regions) are allowed to regulate their local governments in their autonomy statutes (e.g. Article 4(3) and Article 61-65 of the Statute of Trentino-South Tyrol) and, more in details, through ordinary regional legislation.

(A)Symmetry of the Local Government System

There are certain types of local government with special status that take into account different realities in urban and rural areas, like the above-mentioned metropolitan cities, unions of municipalities, mountain communities and island communities. Certain variations follow from Italy's system of asymmetrical regionalism, more concretely, from the different regulatory regimes concerning ordinary regions and each of the five special regions.

Nonetheless, the local government system is quite symmetrical. This is because the system is rooted in ideas of municipal organization from the French Revolution and Napoleonic times. These ideas were supported by the House of Savoy and after their founding of the Kingdom of Italy in 1861 extended to the whole country by enacting the laws of administrative unification in 1865. This explains adherence, in principle, to the French model of uniform municipalities, which are supposed to carry out the same functions irrespective of territorial size, demography, economic power, as well as urban or rural character.

Political and Social Context in Italy

The political situation at the national government level and, to a lesser extent, in the regions has in recent years witnessed profound changes of the party system. At the national level, a coalition government formed by the Five Star Movement and the League came to power in 2018 and was replaced by a coalition between the Five Star Movement and the Social Democratic Party (PD) in 2019. As for the regions, candidates from the League over the last decade have been elected Presidents in Veneto, Lombardy and Friuli-Venezia Giulia, while

[4] Italian Constitutional Court, Judgment no 274/2003.

Brothers of Italy, another right-wing party, took power in the Abruzzo region in 2019. At the local level, there is a similar tendency. When about half of Italy's municipalities were called to vote in 2019, the center-right block led by the League won, from among those with over 15,000 inhabitants, in 75 municipalities (up from 36).

A good indicator for the social and demographic context of local governments is the OECD definition of functional urban areas as composed of a densely inhabited city and a surrounding area (commuting zone) whose labor market is highly integrated with the city. Following this definition, only 30 per cent of Italy's population live in metropolitan areas (more than 500,000 inhabitants), 20 per cent in small- and medium-sized urban agglomerations (50,000 to 500,000 inhabitants), compared to an OECD average of 49 per cent and 18 per cent, respectively.

As for the structure of municipalities, only 144 of them have more than 50,000 inhabitants, while 70 per cent have less than 5,000 inhabitants and are thus, according to the Italian classification, 'small municipalities'. The average population size is 7,653. But this, of course, says little in view of an extremely wide spectrum ranging from Rome's almost 2.9 million inhabitants to 33 in the municipality of Morterone in the Region of Lombardy.

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2.2 The Structure of Local Government in Italy: An Introduction

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When it comes to inter-municipal cooperation and the rationalization of local government, any associative form today goes beyond the mere wish to more efficiently deliver services. Managing local services cooperatively is becoming a condition for the survival of (small or remote) municipalities, not only in Italy. In addition, regional strategies in terms of inter-municipal cooperation are strongly influenced by the different political regional cultures and their legacies of the past.

As for the legal framework, the Italian Constitution specifies the role of the regions as to the number, changes in territorial boundaries and mergers of municipalities. Article 133 of the Constitution says that '[c]hanges in provincial boundaries and the institution of new provinces within a region are regulated by the laws of the Republic, on the initiative of the municipalities, after consultation with the region. The region, after consultation with the populations involved, may establish through its laws new municipalities within its own territory and modify their districts and names.' However, the number and the size of local entities has always been a controversial feature in Italy. As of 1 January 2019, 5,498 out of 7,914 municipalities have less than 5,000 inhabitants (that is 69.5 per cent) and more than 700 have less than 500 inhabitants. This has historical reasons. The practice of establishing a municipality for each territorial community dates back to the 19th century (Administrative Unification Laws 1865).

As second-tier local entities, the provinces in their current form also date back to the years 1859-1865 (with bodies being firstly elected in 1860). Today, their very existence is put into question (apart from the two autonomous provinces of Bolzano/Bozen and Trento that together form the special region Trentino-South Tyrol). Under the most important reform in recent times concerning associative forms of local government, metropolitan cities and provinces, the Ordinary Law no 56/2014 ('Delrio Law'), a province shall no longer be considered as a representative entity, but as a territorial entity of wide area (*area vasta*). In terms of functions, a province should have a coordination role and focus on strategic planning and management issues of the concerned territory. In practice, a province shall represent the interests of the mayors of the municipalities belonging to its territory. The central state aimed to completely abolish the province as a layer of intermediate local entity, but the Constitutional Reform foreseeing the removal of the provinces was voted down in a referendum on 4 December 2016. In practice, only some regions have reduced the number of the provinces and, as a rule, the functions provinces were vested with were either transferred to the regional or to the municipal level. The Constitution in its Article 114 stills reads that 'The Republic is composed of the municipalities, the provinces, the metropolitan cities, the regions and the State. Municipalities, provinces, metropolitan cities, and regions are autonomous entities having their own statutes, powers, and functions (…). Rome is the capital of the Republic. Its status is regulated by State Law.'

Like the provinces, the metropolitan cities are a structural layer in the local government design of Italy that is placed between the municipalities and the regions. They are designed to replace

some of the provinces and, in part, vested with functions like the ones of provinces such as strategic planning and coordination of the concerned territory, also regarding the provision of public services. While the metropolitan cities in the ordinary regions are regulated by the Ordinary Law no 56/2014, for the ones in the special regions different regulations may apply. Metropolitan cities were already introduced by the 2001 constitutional reform (Constitutional Law no 3/2001), but they were only established with the Ordinary Law no 56/2014. As of 01/01/2020, there are 14 metropolitan cities and not all of them are so far fully operational. The organs of the metropolitan cities are neither directly, nor indirectly elected. The main organs of the metropolitan cities are the metropolitan mayor, the metropolitan council, as well as the metropolitan conference comprising the mayors of all municipalities belonging to the metropolitan city. It is worth mentioning that the metropolitan mayor – contrary to the president of the provinces – is not elected by the mayors and the members of the councils of the municipalities in the metropolitan city. As a rule, the mayor of the capital of the former province becomes the metropolitan mayor.

Rome enjoys a special autonomy and is specifically referred to in different laws (for example, the Fiscal Federalism Law no 42/2009). Rome has its own internal by-laws and, in a nutshell, has a twofold organization with an upper level (mayor and appointed councilors) and a lower level with the bodies of the ten municipalities into which Rome is subdivided (mayors and members of the councils). The Mayor of Rome is also the mayor of the Metropolitan City of Rome.

Taking reforms at national and regional level into account, as of 01/01/2020, Italy consists of the following divisions:

- 20 regions (fifteen ordinary and five special ones, with varying degrees of autonomy from one to another):
- 7,904 municipalities;
- 14 metropolitan cities (ranked by population size in decreasing order they are: Rome, Milan, Naples, Turin, Palermo, Bari, Catania, Florence, Bologna, Genoa, Venice, Messina, Reggio Calabria, Cagliari);
- 83 provinces;
- 6 free consortia of municipalities;
- 4 non-administrative units (corresponding to the former provinces of the Friuli-Venezia Giulia region).

Several forms of inter-municipal cooperation complete Italy's administrative territorial organization. They are now analyzed in a more detailed manner.

The challenge of having overall too many and too small municipalities differently affects regions and has led to the elaboration of several reform packages, at national, but also regional level, in recent times, but also earlier on. Two are the solutions envisaged in Italy to address the challenges linked to the need to rationalize the number and size of municipalities due to financial, socio-economic and demographic trends: associative forms of (incentivized) inter-municipal cooperation or mergers of municipalities.

There are three types of associative forms (*forme associative*) of local government: the conventions (*convenzioni*), the consortia (*consorzi*) and the unions of municipalities (*unioni di comuni*). The conventions are agreements between two or more municipalities for the delivery

of a service or the fulfillment of a task (regulated to a certain extent under Article 30 of the Unified Law on Local Entities no 267/2000 and in subsequent legislation).

Municipalities shall form a convention for at least three years. For the exercise of fundamental functions in the form of a convention, Law no 56/2014 establishes a minimum demographic limit of 10,000 inhabitants or of 3,000 inhabitants if the municipalities belonged to or still belong to mountain communities (if the regional legislator that holds exclusive powers on associative forms of local government has not foreseen any exceptions to these parameters due to particular territorial conditions). Conventions in general represent a flexible, adaptable tool as to associative forms of service delivery. They can be of 'closed' type (with a fixed and predetermined number of members) or of 'open' type (with the possibility for others to join at a later stage, prior the consent of all municipalities that cooperate in the convention). Conventions do not foresee the establishment of further bodies. As a rule, one municipality part of the convention is identified as the coordinator of all parties in the convention.

Unlike the conventions, consortia are fully recognized as local entities, with the necessity to be organized in an assembly and a management board (Article 31 of the Unified Law on Local Entities no 267/2000). Municipalities and other entities form a consortium if they intend to manage one or more public services together.

The unions of municipalities are composed of two or more municipalities for the associative exercise of their functions, being also recognized as local entities (Article 32 of the Unified Law on Local Entities no 267/2000), with own by-laws and organs. Unions of municipalities are normally exercising an array of functions and services, unlike consortia. The minimum demographic limits are the same ones as for a convention (with exceptions that can be set by the region). Among the most prominent provisions of Article 32 of the Unified Law on Local Entities no 267/2000, attention should be given to paragraph 5 that states that the resources invested in the personnel of a union of municipalities shall not exceed the sum of staff costs previously incurred by each municipality (that now is part of the union of municipalities). Once fully operational, progressive savings must, instead, be the aim regarding personnel costs. In addition, the role of secretary of the union of municipalities shall be carried out by a secretary of a municipality belonging to the union, thus without incurring in further costs. Unions of municipalities are often viewed – or have so been interpreted by the central government – as a precursor of the merger of municipalities.

Especially from 2009-2010 onwards, austerity legislation not only affected financial intergovernmental relations at the expense of subnational entities, but also structural aspects in local government.

One example are the provisions enshrined in the Decree Law no 78/2010 (converted into Law no 122/2010). On the one side, they, in various forms, heavily impact financial resources available to local government bodies. On the other side they call for new rules as to the associative exercise of administrative functions in the six so-called fundamental competence areas of municipalities (in short, general administration and management; early childhood education and care as well as schooling and schools; local mobility, transport and roads; land management and environmental development; social services). At this stage it shall also be noted that the portfolio of functions to be exercised in an associative form of inter-municipal cooperation has been further defined in details and augmented in subsequent national

legislation (for example, Decree Law no 95/2012, converted in Law no 135/2012). With the exception of single-municipal islands and the enclave municipality of Campione d'Italia, municipalities up to 5,000 inhabitants or municipalities up to 3,000 inhabitants (if they belonged to or still belong to a mountainous community [*comunità montana*]) have to exercise basic functions in an associative form, by a convention or by a union, in a gradual manner starting by jointly exercising three functions. The same function cannot be carried out by more than one associative form.

Another example are the provisions enshrined in Decree Law no 138/2011 (converted in Law no 148/2011). They provide a reduction in the number of members in local government bodies and a merger of administrative functions in the case of small municipalities. Accordingly, municipalities with a population of less than 1,000 inhabitants have to carry out their functions in an associative form. It has to be noted that the possibility of exercising functions in an inter-municipal cooperation has already been prescribed for in 1990 (by the Law no 142/1990). Thus, the new aspect in legislation on associative forms at local government level in the period 2009-2012 lies in its compulsory nature (from which the national legislator again refrained from with regard to certain categories of municipalities in subsequent legislation that modified the legislation and by-laws on associative forms of cooperation at local level).

One of the shortcomings of the first provisions on associative forms of inter-municipal cooperation was the lack of sanctions for entities that did not foresee them at all or for those that would do so beyond the deadlines enshrined in legislation (deadlines that were extended several times and last extended until 1 December 2020 by Decree Law no 8/2020 converted in Law no 40/2020). This lack was filled by Article 14 of Decree Law no 78/2010, which provides that the prefect of the province, the representative of the central state, shall give the defaulting municipalities a peremptory deadline within which to act. Once this deadline has expired, Article 8 of Law no 131/2003 would provide the *commissariamento* (administration by an external commissioner) in line with the provisions laid down in Article 120 of the Constitution; they read as follows: 'The Government can act for bodies of the (…) and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or in the case of grave danger for public safety and security, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders of local authorities. The law shall lay down the procedures to ensure that subsidiary powers are exercised in compliance with the principles of subsidiarity and loyal co-operation.'

Many pieces of the national legislation from the financial-economic crisis onwards do not only offer and impose formulas of associative forms to municipalities, but they also increase conflicts over competences. The formulas are very complex and, most importantly, the implementation of associative forms of inter-municipal cooperation has been desultory from the very beginning. In Italy, the region has exclusive the power on forms of inter-municipal cooperation. Regardless of that, the Constitutional Court has legitimized interference resulting from centrally imposed schemes because of exceptional times and the need of spending reviews. According to the rulings of the Constitutional Court, inter-municipal cooperation is instrumental to the rationalization of public finance and any State's austerity legislation (containing, among others, forced inter-municipal cooperation) is considered legitimate as it falls into the competence 'coordination of public finance' (Article 117(3) of the Constitution),

a concurrent (State-Region) competence. By very extensively interpreting the principles of coordination of public finance, the Constitutional Court nullified the regional space for maneuvering on inter-municipal cooperation (among others, see Constitutional Court judgments no 237/2009, no 68/2011, no 108/2011, no 182/2011; no 77/2013). However, the Constitutional Court most recently has ruled (judgment no 33/2019) that requiring municipalities with less than 5,000 inhabitants (and less than 3,000 inhabitants in case of mountain municipalities) to perform their basic functions cooperatively is unconstitutional, if it does not allow municipalities to demonstrate that the management by means of associative forms does not favor the economies of scale or ameliorate the delivery of public services to the concerned population. According to the Court, forcing small municipalities to cooperatively manage fundamental functions is excessively rigid and does not stand the proportionality test. The rigidity does not allow to consider all those situations in which, due to the geographical location and demographic and socio-environmental issues, the convention or the union of municipalities are not suitable to achieve cost savings.

Regarding the different associative forms of inter-municipal cooperation, the regional governments may provide for (financial) support or any other incentives. In practice, regions do so to a very different extent (favoring one or the other form). Incentives are also provided by central state legislation in the form of contributions and facilitations.

Mergers of municipalities have been encouraged by the national legislator since the 1990s with little success. Between 1995 and 2011 only nine mergers were successful. In the following years more mergers were undertaken (in 2019, 31 mergers for a total of 65 municipalities in seven ordinary and one in a special region), but the solution of merging municipalities remains the proverbial drop in the ocean when it comes to finding solutions to the hyper-fragmentation and rationalization of very small municipalities (so-called *comuni polvere*) in Italy. However, positive examples are to be found in the Italian panorama. For example, in the Autonomous Province of Trento the number of municipalities has been reduced by more than one third through mergers.

At national level, financial incentives are foreseen for the merger of municipalities, and, to very different extent, regions do also establish them. The situation as to incentives is again different in special regions as they regulate the matter of local entities in their respective autonomy statutes and as they also enjoy a great extent of financial autonomy.

The merger of municipalities is a bottom-up process in the sense that a referendum involving the citizens of the affected municipalities is obligatory. As earlier mentioned, Article 133 of the Constitution reads that 'The region, after consultation with the populations involved, may establish through its laws new municipalities within its own territory and modify their districts and names.'). Put simply, if the referendum is positive, the merger is approved by the regional legislation. However, there are many differences (and some innovative approaches) when it comes to the details in the procedures and in the interpretation of the result of the consultative referendum. Regions may apply a 'dirigist' role or be a mere executor of the popular will regarding mergers of municipalities.[5]

[5] See details below in report section 4.3. on Mergers of Municipalities.

Law no 56/2014 ('Delrio Law') provides many facilitating measures for the merger of municipalities (paragraph 116ff). Most importantly, it establishes that in municipalities that are the result of a merger the by-law of the new local authority may lay down special cooperation forms between all municipalities involved in the merger. The by-law of the new local authority may be approved as a provisional one by all municipal councils that initiated the merger before the new municipality is established. In addition, it is foreseen that it is the by-law of the new municipality and no longer regional legislation that lays down appropriate detailed measures that ensure the participation of all the peoples of the former independent local authorities, and the effectiveness of decentralized service provision throughout the new municipal territory.

The Ordinary Law no 56/2014 also expressly speaks of 'merger by incorporation' and of 'aggregations of municipalities by incorporation' in Article 130. However, with regard to the merger *strictu sensu* (which results in the abolition of the existing municipalities and the establishment of a new municipality), the incorporation does not establish a new municipality. It results in the abolition of the incorporated municipality, which formally becomes part of an already existing municipality.

At this stage, it should also be recalled that in order to facilitate the merger of municipalities, Article 15(3) of the Unified Law of Local Entities no 267/2000 provides that the central state shall make special contributions for the ten years from the merger itself. To this end, the rule provides that each year, by an administrative act issued by the Minister of the interior, after hearing the Standing Conference State-Cities and local entities, the modalities of allocation of the contribution shall be defined.

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2.3 Unions of Municipalities in Emilia-Romagna

Elisabeth Alber, *Eurac Research*

Relevance of the Practice

Emilia-Romagna is an interesting case study as the model of inter-municipal cooperation in this region has been characterized by a participatory and proactive (in part 'dirigist') approach, with high programming and social capacity in terms of administration and civil society initiatives that address challenges linked with the urban-rural divide in local government in an effective way. Such an approach ensured the Region of Emilia-Romagna a high success rate when it comes to the implementation of structural reforms in the field of local government. Emilia-Romagna is the region that first developed regional legislation in this matter and does so also today by giving policy preference to associative forms with own bodies (unions of municipalities). This is to favor political views on associative forms that go beyond the joint management of a single task or few tasks.

As of 2018, there were 43 unions of municipalities including a total of 280 municipalities, equal to 84 per cent of the municipalities in Emilia-Romagna. Altogether, they have a population of over 2.5 million inhabitants, equal to 58 per cent of the regional population. If we exclude the population living in the provincial capitals, this value rises to 80 per cent, highlighting a particularly important role in the management of functions and services for families and businesses, also in rural areas. 39 out of 43 unions of municipalities have applied for access to contributions in the regional 'Territorial Reorganization Program 2018-2020' (*Programma di riordino territoriale*).

Description of the Practice

The regional legislator in Emilia-Romagna establishes inter-municipal cooperation as a priority in the regional funding policies and even provides for technical and administrative support to the newly created entity. The first regional law in this field dates back to 1996 (Regional Law no 24/1996 *Norme in materia di riordino territoriale e di sostegno alle Unioni e alle fusioni di comuni* [Norms in the field of territorial reorganization and of support to Unions and Mergers of Municipalities]). In the mentioned law, the regional council was to adopt a program to the change of municipal districts and unions of municipalities, foreseeing financial incentives, while Regional Law no 3/1999 established associations of municipalities that, unlike unions of municipalities, were not specifically referred to in the regional programs regarding territorial reorganization and socio-economic development.

What is interesting from a viewpoint of regional political culture is Article 2 of Regional Law no 3/1999. It regulates the relations between the region and the local entities and refers, among others, to the principles of subsidiarity and loyal cooperation (two years before the Constitutional Reform 2001 'crystallized' these same principles!). Regional Law no 10/2008 provided that all mountain communities should be transformed into unions of municipalities.

The law also established the 'principle of non-overlapping associative forms of cooperation': Accordingly, municipalities cannot join for the associated management of the same functions more than one cooperative form, except for consortia that were obligatory. Also noteworthy are the regional laws no 21/2012 and no 13/2015. They make ample reference to the incentives constituted by the extraordinary contributions directed to territorial strategic planning instruments.

The proactive approach led to the establishment of unions of municipalities all over the territory of the region, thus also specifically addressing the challenges linked to depopulation in rural areas. A comparison with other regions confirms that Emilia Romagna is the region where the diffusion of unions of municipalities has been strongest in Italy, with a differentiated picture when it comes to the functions vested with the unions of municipalities. This comes with advantages and disadvantages: the advantage is that the unions of municipalities have a great say when deciding in which areas to cooperate; the disadvantage is that the scope and size of unions of municipalities vary significantly across the region and coordination is rather difficult. To facilitate coordination and relations with the region, the Regional Observatory of Unions was established (Article 9 of Regional Law no 15/2016): It aims to monitor the effects arising from the joint exercise of functions and service provision in the unions of municipalities. This to, firstly, better assess the concrete impact that associative municipal governance has on citizens, public bodies and businesses, and, secondly, to better support the unions of municipalities in taking advantage of the financial incentives offered in the different regional programs.

Assessment of the Practice

Emilia Romagna's regional policy of encouraging virtuous behavior of the municipalities has been decisive in terms of the effectiveness of multiplication of forms of associative municipal management. The 2018-2020 territorial reorganization program confirms this. In relation to the creation of unions of municipalities, it provides financial and other incentives such as support with legal issues regarding the inconsistencies that exist between national and regional legislation. What stands out in terms of support in the case of Emilia Romagna is a monitoring system concerning the effectiveness of associative management which distinguishes between mature and developing unions and unions that have only just been set up. Taking into account a number of indicators such as staff shared among municipalities involved, strategic functions and services, etc., unification of territorial planning, the region may assess the quite different needs of these unions and provide tailor-made incentives and support with the aim of transforming developing unions into mature ones.[6]

There is broad agreement in academia that in Emilia-Romagna an interventionist approach co-exists well with valuing participation of local entities in deciding on how inter-municipal forms of cooperation should play out in practice. There is, however, also some deficiency to point to. The regional law, following the national law, could not regulate that the bodies of the union of municipalities should be directly elected by the citizens of the municipalities which are part of

[6] Interview with Associate Professor, Department of Legal Studies, University of Bologna (14 May 2021).

the union. The regional legislator did not look for any element balancing this shortcoming, leaving a wide margin of discretion to the by-laws elaborated by the unions of municipalities themselves. They, for their part, did not provide for particular forms of citizen participation. This, thus, prevents the establishment of a mechanism of political accountability of the bodies of the union of municipalities to the citizens that they represent. The fact that the citizen can relate politically to his/her own municipality, but not to the union makes it extremely difficult to hold the union of municipalities accountable for mismanagement and it thus not yet sufficiently favor the creation of an inter-municipal public sphere.

With regard to unions of municipalities in other Italian regions several critical factors for success or failure have been identified.[7] One of them is the composition of these unions which is often seen as too 'variable' with municipalities entering and leaving or some of them joining to cooperate on a number of functions and others on only one. Another detrimental factor has arguably been, for example in the case of Tuscany, a problem of implementation. Whereas local governments with less than 5,000 inhabitants would be under an obligation since 2014 to manage services in an associative form, this has been continuously deferred. The current deadline for these municipalities is December 2021 and it is not unlikely that practical realization will be postponed once more.

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[7] Interview with Sabrina Iommi, Researcher, IRPET Tuscany (11 June 2021).

2.4 Mergers of Municipalities – A Comparison of Procedures and Their Implications

Elisabeth Alber, *Eurac Research*

Relevance of the Practice

The challenge of having too many and too small municipalities affects all of Italy. Mergers are seen as an instrument of rationalization. The process of merging two or more adjacent municipalities is governed by Articles 15 and 16 of Legislative Decree no 267/2000. These Articles refer to Articles 117 and 133 of the Constitution and provide that it is exclusively up to the regions to modify the territorial boundaries of the municipalities and to establish new ones through mergers. The obligation for the regional legislator is to 'hear the populations concerned' (Article 133(2)) before adopting a regional law. The very details of this rule vary from region to region and are in continuous change. Therefore, it is of interest to highlight the most innovative approaches regarding the procedural and interpretative frameworks that the regions opted for and to assess their implications.

Description of the Practice

In Emilia-Romagna, the legislative procedure for the merger of municipalities is regulated by Regional Law no 24/1996, and its numerous amendments. Accordingly, and in addition to the parties entitled to exercise the regional legislative initiative under the region's statute (Law no 13/2005), the legislative initiative for the establishment of a new municipality is exercised by citizens and provincial and municipal councils, in accordance with Article 18 of the regional statute and by the regional government and other subjects authorized according to Article 50 of the regional statute. Municipal councils may also submit a request to the regional government to call for the start of a merger, and the majority of voters living in the concerned municipalities may do so too. If all conditions are properly met, in this case, the regional government submits a draft law to the regional legislator. The referendum is called by the president of the regional council, who decides on the question to be submitted to the popular consultation, specifies a proposed name to be given to the new municipality or a list of names to be submitted to the consultative referendum and defines the territorial scope within which voters are called upon to give their opinion (those voters living in the areas affected by the merger or by a merger by incorporation). The Regional Law no 15/2016 specifies the criteria according to which the regional legislator interprets the will of the people (with a set of highly sophisticated provisions for the different scenarios in the field of municipal mergers, and municipal merges by incorporation). The criteria consider both the overall outcome of the referendum (in relation to all municipalities concerned) and its articulation in each concerned municipality (or part of a municipality that intends to change boundaries). The legislative process for the merger of municipalities does not continue if the votes cast in the majority of the municipalities and those cast overall are against the merger. If there is divergence and

votes cast overall are in favor of the merger, but the votes cast in the majority of municipalities against the merger are equal to or greater than the votes cast in favor, the regional legislator, only after consulting the concerned municipal councils, may proceed towards the approval of the merger of municipalities by regional legislation. This possibility exists also if the overall votes casted are against the merger but the votes in favor of it prevail in the majority of the concerned municipalities. In 2018, however, with the Regulation no 263, the regional assembly committed itself to stop any merger process also if a negative vote prevails only in one municipality, regardless of the result of the overall casted votes. This confirms the participatory rather than 'dirigist' approach Emilia-Romagna increasingly opts for. Put differently, from 2018 onwards, the regional assembly has committed itself to be a mere executor of the popular will regarding mergers. Interestingly, the successful merger of Valsamoggia 2013-2014 – well-known because it involved five municipalities with 30,000 inhabitants – would have never been approved following this new approach.

Tuscany has been experimenting with mergers for many years, often without success (also because some attempts aimed to merge too many municipalities; for example, 'del Casentino' with 13 municipalities). The legislative initiative is vested with those having regional legislative initiative and with two or more neighboring municipalities that are part of the same province and that have expressed their will of merging by means of a joint agreement (in case of top-down forced mergers initiated by the regional council this is not the case). The procedure of merging municipalities can also be initiated by the voters if they represent at least 10 per cent of those entitled to vote in each involved municipality and if they altogether represent at least 15 per cent of the entire electorate that would be called to vote in the referendum. Regional law no 62/2007(V) regulates the consultative referendum and specifies that it is the regional assembly that validates the votes cast by separately taking into consideration the municipalities concerned. There is no explicit provision regarding the parameters of how to interpret the results of the vote. Interestingly, the regional assembly itself in 2016 decided (*risoluzione* no 39/2016) to proceed with the approval of legislation regarding mergers if the majority of votes in all municipalities is in favor or if the yes votes overall equal two thirds of the valid casted votes, as long as in none of the concerned municipalities the percentage of votes contrary to the merger is superior to three quarters of the votes (so-called 'anti-merger clause').

In Lombardy, Regional Law no 29/2016 regulates the merger of municipalities. Two procedures are referred to: the classical one, like the ones described above in the other regions and a simplified one. Taking into account the technical-legal difficulties that were arising throughout the process of the first merger by incorporation in Italy (Gordona and Menarola), the regional legislator has provided for the possibility to undertake the consultative referendum in case of a merger by incorporation before initiating the necessary regional draft law. This possibility allows local administrators to better manage the consultation process and to carefully assess the evaluation of the results. Only afterwards the results of the vote are forwarded to the president of the regional council who then initiates the actual draft law. In general, and unlike the Region Emilia-Romagna, Lombardy is an example of strong contrasts. On the one hand, the region does not provide many incentives and contributions for municipalities newly created from mergers; also, the rule that a merger is implemented only if the votes cast in all the municipalities are in favor, makes mergers less feasible. On the other hand, the introduction

of a simplified procedure does allow municipal councils to keep control and to be the ones that ultimately take the decision regarding mergers.

The Veneto model on mergers of municipalities is interesting to mention, as it introduces a time constraint on the submission of initiatives. Proposals of mergers that have already been rejected cannot be represented for the following three years (Regional Law no 25/1992 (3)). As far as the interpretation of the popular vote is concerned, the rule applies that both the overall votes cast as well as the votes in each involved municipality are to be considered. However, it is noteworthy that the regional council decided to anyway approve the merger process if, in mergers with four or more municipalities, only the votes cast in one municipality were against; the regional council does so by excluding the municipality contrary to the merger from the merger process (Regional Law no 25/1992 (5 bis)) The Veneto Region has opened an innovative road that aims at fully respecting the local vote in the consultation, but the veto of a single municipality in the very end cannot stop the merger of municipalities, but only the participation of the municipality in question to the creation of the new municipality.

Assessment of the Practice

The rationale behind the different regional legislation on the merger of municipalities lies in the different historical legacies and the development of regional political cultures. As the competence in this field falls in the exclusive power of the regions, procedural details and policy preferences are influenced by the way in which regional political elites understand the role of the municipalities as a governance actor in the territory. Indeed, there are some regions more concerned with the will of the population and others mainly focused on the result of the merger. Some observers see this diversity as problematic and suggest inter-regional coordination in identifying common criteria towards a harmonization of rules.[8]

Moreover, the number and types of municipalities vary from region to region, as does the 'ideal' size of a municipality. While a population of 10,000 is considered appropriate in Tuscany, but this ideal may vary from region to region depending on a number of factors like territorial size of municipalities, topography, infrastructure, etc.[9] Currently, the Tuscan Region has the lowest number of municipalities and an average number of inhabitants per municipality significantly higher than the majority of the other analyzed regions. Therefore, it does not make much sense to assess (these) regions by numbers of successful mergers. A study of the procedural aspects linked to the way popular consultation is organized and gets interpreted at regional level is much more interesting. In general, one can notice the following trend: even though mergers (and mergers by incorporation) might be initiated top-down, the policy preference of all described regions is to give the municipalities a say and a veto power. For small and very small municipalities (in peripheral areas) it might still be difficult to get their voices heard, but in presence of highly sophisticated procedural schemes as to the merger of

[8] Interview with Claudia Tubertini, Associate Professor, Department of Legal Studies, University of Bologna (14 May 2021).

[9] Statement by Sabrina Iommi, Economist, IRPET – Istituto Regionale Programmazione economica della Toscana (LoGov Country Workshop, Structure of Local Government, 23 October 2020).

municipalities, small and very small municipalities have more and better possibilities to represent their interests (in consultation processes leading to the merger of municipalities, and in municipal governance once the process is concluded). As for the efficiency and sustainability of amalgamations of very small municipalities, there have indeed been cases in which even the merged municipality has faced serious difficulties due to a lack of resources. Such situations have occurred especially once the financial contributions, which are generally key for continued interest in the merger in the first place,[10] run out.

As for the expected efficiency, regions have followed the approach of letting local population choose and have refrained from opposing a referendum because an amalgamation is supposedly not sustainable.[11] Other observers have even cast doubt on whether a referendum is the appropriate instrument to decide such a controversial issue like a merger because it would risk, especially in small municipalities, to create and reinforce strong polarization within the local community.[12] Instead of this 'hard power' tool, softer and more consensus-oriented mechanisms might be better suited for municipalities in the long run.

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2.5 The Valley Communities (*comunità di valle*) in the Province of Trento

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Relevance of the Practice

Italy is characterized by an extreme territorial fragmentation at the local level. All the more so the problem affects the territory of the Autonomous Province of Trento, which back in 2006 was sub-divided in 217 municipalities (double the number of the neighboring Autonomous Province of Bolzano/South Tyrol), with a population of 502,478 inhabitants. More than 90 per cent of the municipalities had less than 5,000 inhabitants. With the outbreak of the economic crisis, the extreme territorial fragmentation has been targeted as responsible for inefficiency and overspending and different forms of inter-municipal cooperation have been introduced both by the state and the regional authorities, as an instrument of 'spending review' to reach a balanced budget.

On these grounds, the solution of the Autonomous Province of Trento appears as an original answer, aimed at reforming the territorial organization and local governance, on the one hand, and at contributing to the recovery of public finance, on the other hand. This is of particular interest, if one considers the province's topography that is almost entirely mountainous, with the exception of a few small flat areas nearby the main rivers. To avoid additional depopulation there is the need to ensure that all citizens are entitled to a comparable level of services, disregarding the place of residence. However, the necessity to have a consolidated balanced budget taking into account all territorial entities within the provincial territory and the obligation of the province to contribute to both the recovery of the national system of public finance and the respect of EU obligations, have brought about the need to reform territorial organization and local governance within the province.

Description of the Practice

With this twofold purpose in mind, the provincial legislator adopted Law no 3/2006 and soon afterwards – with the outbreak of the economic crisis – introduced significant changes: first, with provincial laws no 15/2009 and no 26/2010, more recently with Law no 12/2014. The latter has substantially revised the governance system, on the one hand, and the territorial administrative structure, on the other. Consequently, over a decade later, the implementation process is still a work in progress and the provincial government is discussing a further reform of the system in place.

The current system provides for a new scheme of territorial administration, in which local entities are forced to exercise certain administrative competences and jointly deliver well-determined public services. To this extent, the provincial territory has been divided in 16 sub-territories named '*Comunità di Valle*' (literally, valley communities). These are local public

entities mandatorily made up of the municipalities located in the territory of reference. The reform basically affects the way administrative functions are exercised and public services are performed. In fact, the communities are responsible for the exercise of almost all administrative functions and public services the territorially-related municipalities are vested with (Trento as the main city represents an exception to this pattern).

In addition, the 2014 reform has provided for an additional form of inter-municipal cooperation. The main reasoning is to consider the scope of the interest involved and the adequate territorial dimension, with a view to reducing public spending and ensuring administrative efficiency. Accordingly, either municipalities under 5,000 inhabitants accept to merge, or they are obliged to exercise additional well-determined functions and services in cooperation with the other municipalities as located in an area delimited by the provincial executives (so-called optimal territorial area). This approach of mergers as a means to avoid inter-municipal cooperation is interesting because in most cases it is exactly the other way round.[13]

The 2014 reform has also reviewed the system of government of the valley communities. Since 2015, the related governing bodies – the president and the council of each community – are only indirectly elected by the respective municipal councils.[14] To compensate the lack of a democratic legitimation, the reform has also introduced strong forms of participatory democracy. As such the decision-making process within the governing bodies of the communities is complemented by a preliminary consultative phase that provides for the direct involvement of the population. Of interest is the fact that this consultative phase is mandatory for the adoption of the most important decisions for the community (enumerated by the provincial law), and is optional for all other decisions, i.e. a participatory phase can be started on request for instance by the municipalities, the community itself or the at least 5 per cent of the residents within the community over the age of sixteen. It is the responsibility of the authority for local participation to decide on that. The authority is an ad hoc institution entrusted with the promotion, implementation and management of the participatory process at both the community and municipal level.

Assessment of the Practice

Also due to the pace of the reforms, the implementation process is still a work in progress and as such it is too early to assess if and to what extent the new system has brought about any improvement in the performance of administrative functions and public services, or any significant savings in terms of public spending. This holds true especially due to the fact that the 2014 reform has substantially changed the way functions are exercised, requiring additional efforts of territorial reorganization. Besides that, the system is rather complex and

[13] Statement by Silvia Bolgherini, Senior Researcher, Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen (LoGov Country Workshop, Structure of Local Government, 23 October 2020).

[14] The prior system provided for a mixed system of direct and indirect election. However, doubts of constitutional legitimacy had emerged, as the Italian Constitution (Art 114) enumerates the territorial entities that make up the Italian Republic, and the Constitutional Court considers the list to be exhaustive. See: Constitutional Court, Judgement no 876/1988 and no 107/1976.

requires strong coordination from the center. Therefore, the challenge to local autonomy is high. However, due to the change of the governing parties at the provincial level (the Lega party has won the provincial elections in 2018) a reform of this system is under discussion. It is far too early to understand if there will be a radical change (as promised during the political campaign) or if the intervention will be limited to minor cosmetic adjustments.

Apart from that, an interesting result has anyway emerged as a side effect of the reform. To bypass the obligation to resort to compulsory forms of inter-municipal cooperation, numerous municipalities have opted to merge. Back in 2006 there were 217 municipalities, while at present there are 175. This result represents a first important step in terms of economic efficiency and spending review, although there is still considerable scope for improvement.

When analyzed against the background of other Italian territories it is remarkable that Trentino's valley communities are quite similar to the *Unioni territoriali intercomunali* (UTI) in the Friuli-Venezia Giulia Region. This suggests that – despite the differences between the Special Regions – there are also similarities. Even if institutions may be called differently in different places, horizontal processes of inter-regional exchange and emulation still give rise to similarities regarding their nature.[15] Some observers caution, however, against the belief that the Trentino experience can be easily transplanted to other Italian territories because the solid bureaucracy in the province enables a top-down policy-making effectiveness that is lacking in other contexts.[16]

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2.6 Inter-municipal Cooperation Based on a Model Agreement: A Top-Down Approach in South Tyrol

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Relevance of the Practice

The issue of how to overcome the pronounced territorial fragmentation of Italian municipalities is of high relevance also to the Autonomous Province of Bolzano/South Tyrol. Of the 118 municipalities in the province, only seven count more than 10,000 inhabitants, while 68 (57,6 per cent) have a population below the mark of 3,000. On average, South Tyrolean municipalities count 4,500 inhabitants.[17] At the same time, local governance faces increased complexity. Citizens expect modern and high quality services that safeguard employment and a high quality of life even in the most peripheral areas. In order to preserve rural areas and prevent depopulation, municipalities have to stay competitive and meet those expectations.[18]

Contrary to the neighboring Autonomous Province of Trento, mergers of municipalities have never been a political option in South Tyrol.[19] Rather, the province displays a tradition of horizontal cooperation between municipalities, with voluntary agreements, consortia, conventions, concessions and unions of municipalities as forms of inter-municipal cooperation (IMC) aimed at tackling the challenges arising from a highly fragmented municipal landscape.[20] In 2017, the Provincial Law no 18/2017 on the Re-Organization of Local Entities conferred a set of new responsibilities to South Tyrolean municipalities. However, numerous municipalities are too small to deliver high-quality performances on the full set of their responsibilities. In particular, they lack the financial means, specialized personnel and infrastructure to do so.[21] Other than reinforcing local self-government, it is therefore another central pillar to the Law on the Re-Organization of Local Entities to encourage practices of horizontal cooperation

[17] If the provincial capital of Bolzano/Bozen, with 108,000 inhabitants by far the largest municipality within the province, is excluded, the average size of South Tyrolean municipalities amounts to 3,700. Istituto provinciale di statistica ASTAT, 'Banca dati "Dati comunali"' (*ASTAT*, 2020) <https://astat.provincia.bz.it/it/banche-dati-comunali.asp>.

[18] Greta Klotz, 'Gemeinden in Südtirol: ein Blick auf ihre vertikalen und horizontalen Kooperationsformen' in Europäisches Zentrum für Föderalismus-Forschung Tübingen (ed), *Jahrbuch des Föderalismus 2019: Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2019) 395.

[19] Günther Pallaver, 'Kooperation statt Fusion. Interkommunale Zusammenarbeit in Südtirol' in Alice Engl, Günther Pallaver and Elisabeth Alber (eds), *Politika 2016. Südtiroler Jahrbuch für Politik* (Politika and Raetia 2016).

[20] Josef Bernhart and Kurt Promberger, 'V Interkommunale Zusammenarbeit in Südtirol' in Peter Biwald, Hans Hack and Klaus Wirth (eds), *Interkommunale Kooperation. Zwischen Tradition und Aufbruch* (Neuer Wissenschaftlicher Verlag 2006) 107.

[21] Bernhart and Promberger, 'V Interkommunale Zusammenarbeit in Südtirol', above, 107; Klotz, 'Gemeinden in Südtirol', above, 393 and 406.

among municipalities in order to increase the quality and efficiency of municipal service provision, as well as to guarantee minimum standards in the provision of local public services.[22]

Description of the Practice

At the outset, it is important to emphasize that IMC in South Tyrol is a broader phenomenon and not limited to the new instruments provided by the above-mentioned Provincial Law of 2017. In fact, municipalities may form corporations with only public capital or private corporations and they also engage in certain informal forums, especially in the essential area of tourism. Some of these promote soft tourism ('Alpine Pearls') or bring together the province's seven biggest cities and towns ('Städtenetzwerk Südtirol City'). Interestingly, such cooperation rather seems to integrate municipalities of similar size and nature and thus to involve little urban-rural collaboration. Moreover, the 2018 Code regarding Local Entities in the Autonomous Region Trentino-South Tyrol (which is composed by both above-mentioned Autonomous Provinces) provides for five instruments of IMC. However, these do not deviate significantly from instruments in other Italian regions.[23] It is rather the 2017 Provincial Law which attempted to create and establish a distinctive new framework of IMC so that it deserves closer attention.

The above-mentioned law makes provisions, on the one hand, for a transfer of additional tasks by provincial legislation in agreement with the Council of Municipalities (*Rat der Gemeinden*)[24] and, on the other hand, for the fulfilment of these tasks within a new framework of IMC. The latter builds on agreements between municipalities on the joint management of services as a main instrument of horizontal cooperation. Collaboration is voluntary, yet strongly encouraged through financial incentives. To this purpose, an amount of EUR 7 million, drawn from regional funds, was allocated by the provincial government for a three-years' time period from 2019 to 2021 and with the possibility of further extension.[25] Financial incentives amount to EUR 25,000 annually per 2,000 inhabitants for each jointly managed service. To be eligible for funding, two municipalities must cooperate in the management of at least two services or, alternatively, at least three municipalities must jointly manage at least one service.[26] In order to obtain funding, cooperation must occur within pre-defined functional and geographical areas and, critically, on the basis of a Model Agreement,[27] a legal template elaborated at and approved by provincial level. South Tyrol therefore relies on a pronounced top-down approach to horizontal cooperation, with the provincial level retaining a strong role in planning, coordinating and

[22] Art 1 of the Provincial Law no 18/2017.

[23] Elena D'Orlando and Francesco Emanuele Grisostolo, 'La disciplina degli enti locali tra uniformità e differenziazione', in Francesco Palermo and Sara Parolari (eds), *Le variabili della specialitá* (ESI 2018) 98f.

[24] For details on the Council of Municipalities of South Tyrol as Facilitator of Local-Subnational Relations, see report section 5.3.

[25] Resolution of the Provincial Government no 961/2019.

[26] Art 1(1) of the Resolution of the Provincial Government no 961/2019.

[27] Resolution of the Provincial Government no 1161/2018 (amended by Resolution no 1349/2018).

monitoring of the cooperative approaches between municipalities, thereby securing a desired level of homogeneity.[28]

The Model Agreement[29] determines the range of possible functional areas for cooperation that include the municipal secretary and secretariat service, the management of taxation and fees, accounting, construction and landscape matters, public works, licenses and trade, demographic services and human resource management (Article 4). This contrasts sharply with a 2012 agreement between the Province and the municipalities in which the latter had pledged to cooperate in terms of services, but in services of their *own* choice. Within these functional areas, three forms of cooperation are admissible (Article 3(1)):

- joint coordination of single municipal services with own personnel and a supra-local senior official;
- one municipality ('competence center') manages certain services on behalf of cooperating municipalities;
- shared use of municipal infrastructure and buildings.

The Model Agreement further requires a periodic dialogue between the mayors of the cooperating municipalities (Article 14) and provides for the creation of a supervisory panel, composed of the mayors and municipal secretaries. The latter's task is to monitor, assess, guide and coordinate the joint management of municipal services and to assist the development and improvement of the cooperation (Article 15).

In order to create a homogenous setting for the joint management of municipal services, cooperation under the Model Agreement is possible only within pre-defined geographical areas, the so-called 'ideal catchment areas' (*Optimale Einzugsgebiete/Ambiti territoriali ottimali*). 25 catchment areas that account for 'homogenous socio-economic and geographical characteristics'[30] were designed by the provincial government in agreement with the Council of Municipalities.[31] Interesting from an urban-rural perspective is the exclusion of eleven South Tyrolean municipalities, which are big in terms of territorial and/or population size, from the ideal catchment areas, among which the provincial capital of Bolzano/Bozen. Cooperation with the excluded municipalities is still possible, but only if the bigger municipalities assume a leading role in the provision of the service in question and if there is no other municipality that has already assumed responsibility over the management of that service on behalf of other local governments in a catchment area. Cooperation with municipalities across several catchment areas are possible in this specific case. However, the leading municipality must deliver the offered service to all the other municipalities within a certain catchment area if need be.[32]

Hence, whether or not a municipality is included in the catchment areas significantly impacts on the context for cooperation. The 2017 framework leaves little room for municipalities that were assigned to a certain catchment area to freely choose the partners for cooperation (top-

[28] Klotz, 'Gemeinden in Südtirol', above, 400; Arts 1, 7 and 8 of the Provincial Law no 18/2017.
[29] Resolution of the Provincial Government no 1161/2018.
[30] Art 7(4) of the Provincial Law no 18/2017.
[31] Resolution of the Provincial Government no 960/2019.
[32] Art 1(2) of the Resolution of the Provincial Government no 961/2019.

down approach). An exclusion from the pre-defined areas leaves more flexibility in the choice of junior partners for cooperation and allows spontaneous bottom-up associations of municipalities across several catchment areas. This greater flexibility comes, however, at the risk of considerably broadening the pool for potential junior partners. The possibility of being required to deliver a service on behalf of all the municipalities within several catchment areas might constitute a disincentive for the eleven excluded municipalities to actively engage in cooperation projects within the new framework.

Assessment of the Practice

As of December 2020, out of the EUR 7 million allocated to projects of cooperation on the basis of the Model Agreement, EUR 4,5 million have been assigned to municipalities presenting a total of 53 requests for funding.[33] The new framework aimed at further incentivizing horizontal cooperation among municipalities and this incentive seems to have worked. Within a year after the opening for requests in December 2019, half of the reserved funds were already assigned. This speaks for a high demand for the new framework, even though it is still a little early for a more in depth assessment of this fairly young practice.

The requests that were so far presented proved to be heterogeneous. While some groups of municipalities take advantage of the full range of functional areas eligible for funding, others limit cooperation to two services. Among the requests for joint management of services presented so far, the municipal secretary, secretariat services, accounting, as well as construction and landscape management rank prominently. The Municipality of Schenna/Scena is a particularly interesting case because it entered into different partnerships for cooperation concerning the management of different services: While the municipal secretary, secretariat services, management of taxation and fees as well as demographic services are jointly managed with the Municipality of Hafling/Avelengo, Schenna/Scena cooperates with Tirol/Tirolo, Riffian/Rifiano and Kuens/Caines on accounting and public works.[34]

The framework rather seems to incentivize small, rural municipalities to jointly manage services. In fact, 40 out of 53 requests (75 per cent) were presented by municipalities with less than 5,000 inhabitants, while 7 (13 per cent) came from municipalities with a population count between 5,000 and 5,500. There has also been a small number of requests for joint service management by two of the bigger municipalities that were not specifically assigned to any of the catchment areas. While the Municipality of Kastelruth/Castelrotto (6,919 inhabitants) presented a single request of limited financial scope, the case of the Municipality of Schlanders/Silandro (6,261 inhabitants) is of greater import. Within the first year of the new framework, a sum of EUR 253,000 was assigned to the municipality for 5 cooperation agreements that include different cooperation partners and span over three distinct catchment areas. When looking at the total amount of funds assigned within the new

[33] Resolutions by the Provincial Government no 1120/2019; 219/2020, 308/2020; 585/2020 and 953/2020.

[34] LPA/JW, 'Über eine Million Euro für die zwischengemeindliche Zusammenarbeit' (*Südtiroler Landesverwaltung*, 1 April 2020) <http://www.provinz.bz.it/news/de/news.asp?art=637221> last accessed 31 July 2020.

framework so far, it must however be underlined that these cooperation initiatives with bigger municipalities are fairly limited in scope, with financial contributions amounting to around EUR 300,000 as compared to the EUR 4.2 million assigned to cooperation agreements initiated by smaller municipalities. As Bolgherini, Casula and Marotta[35] suggest in their study of municipal reactions to functional rescaling in Italy, fear of a loss of identity and autonomy as a result of being dominated by a bigger municipality may be an explanation for the higher resistance of small municipalities to cooperate with bigger neighbors.

One of the main critiques towards the new framework is the top-down approach adopted by the Province in the definition of both the thematic and geographical areas for cooperation.[36] The rigid nature of the Model Agreement is symptomatic for this approach, as it allows cooperation exclusively within the previously established functional areas. To be sure, the thematic list provided by the Agreement is extensive and most likely covers almost all typical areas of collaboration. Yet, the framework lacks a flexibility clause that would enable municipalities to broaden the scope of cooperation beyond the pre-defined functional areas to any areas of *their* choice. At this point, a wider and more flexible thematic framework could reinforce the financial incentives and further increase cooperation among South Tyrolean municipalities.[37]

The Province thus appears to maintain a strong say on matters of IMC and this seems to hold true beyond the thematic scope of cooperation. There appears to be a similar pattern regarding its geographical scope, even though, for example, the exclusion of bigger municipalities from the catchment areas seems to go back to an initiative of the municipalities.[38] Indeed, the South Tyrolean Council of Municipalities, as advisory organ on the provincial level, has been actively involved in the elaboration of the new framework. Article 4 of the Provincial Law no 18/2017 explicitly mandates a decision on the ideal catchment areas in agreement with the council, thereby enabling the municipalities to express their perspective on the matter. As some observers highlight, a (mostly) top-down approach with the provincial government playing a leading role must not be necessarily a negative thing because this often enables more efficient, rationalized cooperation outcomes. In particular, clear top-down indications on the territorial and functional basis for cooperation as well as on the minimum duration may prevent practices of short-term cooperation which are currently widespread in many parts of Italy.[39]

Anyway, the issue what specific criteria are applied for the inclusion of municipalities in the various catchment areas and how they are weighted against each other, ultimately remains unclear. On one hand, there is the vague criterion of socioeconomic and geographical homogeneity of neighboring municipalities. On the other hand, there is the even broader reference to the general principles of subsidiarity, adequacy, differentiation, effectiveness,

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[35] Silvia Bolgherini, Mattia Casula and Mariano Marotta, 'Municipal Reaction to Functional Rescaling in Italy' (2018) 31 The International Journal of Public Sector Management 448, 459.

[36] Klotz, 'Gemeinden in Südtirol', above, 401.

[37] ibid 407.

[38] ibid 401.

[39] Statement by Sabrina Iommi, Economist, IRPET – Istituto Regionale Programmazione economica della Toscana (LoGov Country Workshop, Structure of Local Government, 23 October 2020).

quality, economic efficiency and simplification which are to be realized through cooperation.[40] From an urban-rural perspective, it remains unclear, why some urban municipalities (such as Brixen/Bressanone) are included in a catchment area with smaller, rural municipalities, while others (e.g. Bruneck/Brunico, Merano/Meran or Sterzing/Vipiteno) fall within the list of the eleven left-outs.

In sum and despite the points raised above, the 2017 framework on IMC, with its financial incentives and standardized approach to guarantee uniformity in the provision of municipal services, has proven able to further incentivize horizontal cooperation among South Tyrolean municipalities in the first years since its implementation.[41] It can be viewed as an asset especially for small and rural municipalities in as far as it allows for the creation of synergies, as well as the sharing of expertise, financial and personnel burdens.

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[40] Art 3 of the Provincial Law no 18/2017 on the Re-Organization of Local Entities.

[41] Klotz, 'Gemeinden in Südtirol', above, 407.

Pallaver G, ‘Kooperation statt Fusion. Interkommunale Zusammenarbeit in Südtirol‘ in Alice Engl, Günther Pallaver and Elisabeth Alber (eds), *Politika 2016. Südtiroler Jahrbuch für Politik* (Politika and Raetia 2016)

3. The Structure of Local Government in Germany

3.1 The System of Local Government in Germany

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Types of Local Governments

In Germany, government at the local level is administered through municipalities (*Gemeinden*) as well as second-tier local governments such as counties (*Kreise*). Larger municipalities with more than 100,000 citizens are often assigned the status of independent city or county-free city (*kreisfreie Stadt*); in addition to their municipality responsibilities, these cities also carry out (second-tier) county responsibilities. In some of the German *Länder*, there are even third-tier local governments, for example districts (*Bezirke*) in Bavaria.[42] There are no areas that fall directly under federal or *Länder* rule, as the system of local government extends to the entire territory of the country. However, as jurisdiction over the organizational powers of local authorities lies with each of the 16 *Länder*, 'local government' may come in different shapes. This is particularly true for its internal organization, but may equally be said of its precise powers and responsibilities. Nevertheless, there are several common features of local government.

The German concept of local self-government, as enshrined in Article 28(2) of the Basic Law, implies that local government entities have a general competence (*Allzuständigkeit*) to carry out all responsibilities that are relevant to the local community. Since this general competence is comprehensive, there is, as a result, no such thing as single purpose local governments in Germany. This means that local governments in Germany may, for instance, run public libraries, museums, theaters, opera houses or concert halls, that they can provide airport facilities, energy/water supply, waste/sewage disposal, run hospitals, kindergarten facilities or homes for the elderly. Of course, these vast competences do not go unchecked; local authorities may engage in such activities only within their financial capacity and, in all their activities, local authorities have to abide by the laws and limitations of federal and *Länder* legislation. Nevertheless, contrary to the Anglo-Saxon concept of 'ultra-vires'[43], local authorities do not act illegally if they take measures in areas that do not fall within responsibilities explicitly transferred to them by federal or state legislation. In view of their general competence, they just need not to be empowered specifically to take action at the local level.

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[42] For these and the following considerations see Martin Burgi, 'Federal Republic of Germany' in Nico Steytler (ed), *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press 2009) 140-142.

[43] See Veith Mehde, 'Steering, Supporting, Enabling: The Role of Law in Local Government Reforms' (2006) 28 Law & Policy 164, 165.

Legal Status of Local Governments

The right of local governments to self-government (i.e. to carry out all responsibilities falling within their 'general competence') is constitutionally enshrined at the federal level in Article 28(2) of the Basic Law (BL).[44] This provision reads as follows: 'Within the limits prescribed by law, municipalities shall be guaranteed the right to regulate all local affairs in their own responsibility. Within the limits of their responsibilities as defined by law, associations of municipalities shall equally have the right of self-government according to the laws. The guarantee of self-government shall include the basis of financial autonomy; it shall comprise the right of municipalities to a source of tax revenues that corresponds with the economic ability of the tax debtors (e.g. business tax – *Gewerbesteuer*), and the right to fix the rates at which these sources shall be taxed.' Provisions similar to Article 28(2) BL are also contained in the constitutions of the 16 *Länder* which thus reinforce the constitutional recognition of local authorities and their right to self-government. The constitutional recognition of local government is generally the same for all municipalities, regardless of size or socio-economic importance.

In contrast, the constitutional standing of counties and districts is weaker. Compared to the comprehensive self-government of their constituent municipalities, these second- and third-tier local government entities may not carry out all responsibilities of local importance but are granted the right to self-government only 'within the limits of their responsibilities as defined by law' (Article 28(2) BL).

It is important to stress that Article 28(2) BL as well as the corresponding constitutional provisions at *Länder* level do not grant local autonomy as an absolute right. Local autonomy is only guaranteed in principle, while its precise scope is subject to legislation. Thus, it is the law-makers at federal and *Länder* level that define the precise extent and limitations of local self-government. In practice, the sheer volume of (sometimes very detailed) federal and *Länder* statutes has considerably limited local autonomy. However, as local autonomy is constitutionally guaranteed in principle, local governments are protected by virtue of Article 28(2) BL against excessive and immoderate restrictions of local autonomy and preserves a 'core sphere' (*Kernbereich*) of responsibilities that must remain with municipalities (i.e. finances, local planning, personnel matters, organizational autonomy and the freedom to engage in joint administration with neighboring communities). In addition to that, Article 28(2) BL protects local authorities, to some extent, against the revocation of responsibilities (*Aufgabenentzug*) e.g. by reallocating them at a higher (more centralized) administrative level (*Hochzonung*). As a result, only *very substantial* gains in cost-efficiency, for instance, may justify that responsibilities are taken away from local governments.

[44] See Burgi, *Federal Republic of Germany*, above, 143-146.

(A)Symmetry of the Local Government System

As pointed out, the legal status is primarily the same for all municipalities regardless of their size and socio-economic importance, although larger municipalities (and especially independent cities) have, with no doubt, more political bearing. As a general principle, the German system follows a symmetrical approach towards the legal status of local governments. However, this symmetry of responsibilities de jure can be modified in various ways which may result, de facto, in an asymmetrical allocation of responsibilities.

Local authorities may, for example, agree among themselves to join forces and create joint administrative units to carry out specific responsibilities in forms of what is called inter-municipal cooperation (*interkommunale Zusammenarbeit*). For instance, they may, with regard to capacity and cost-effectiveness, share their resources and establish a joint inter-municipal corporation (*Zweckverband*) which is assigned to take care of sewage and/or waste disposal. Such cooperation is particularly common between smaller municipalities but are equally practiced within larger conurbations and between counties and independent cities.

Because of their size, independent cities are capable of carrying out both municipal and county responsibilities through their city administration as a single unit. In rural areas, by contrast, county responsibilities are carried out by counties along with their constituent (smaller) municipalities. The precise division of duties between counties and their municipalities is laid down in *Länder* statutes and may therefore vary. As a general rule, the allocation of responsibilities depends on the capacities of the individual local unit. This means that for reasons of administrative efficiency, counties will regularly assume the execution of duties that cannot be effectively handled by their constituent municipalities. For instance, hospitals will usually be run at county (or even district) level while minor administrative duties such as citizen registration may remain with the constituent municipalities.

Political and Social Context in Germany

Despite the recent turbulences in the course of the financial and migration crises, the political system established under the Basic Law has proven to be relatively stable. In the overall perspective, two parties, the Christian Democrats (CDU/CSU) and the Social Democrats (SPD) still each win between 20 to 40 per cent of total votes while four smaller parties, the Liberal Free Democrats (FDP), the Greens (*Bündnis 90/Die Grünen*), the Left Party (*Die Linke*) and the Alternative for Germany (AfD), attract between 5 and 20 per cent of all voters. In the East German 'new' *Länder*, *Die Linke* and AfD are usually stronger in elections than in West Germany. On the *Länder* level and on the local level, the landscape of political parties is more diverse. In addition to the aforementioned parties, there are several parties which are particularly active in certain regions and municipalities, taking account of political issues with specific relevance for the respective region or municipality. In Bavaria, for example, the Independent Voters (Freie Wähler) are usually quite strong in the elections – they won 11,6 per cent of the votes during the 2018 elections for the Bavarian *Landtag* and are hence currently part of the Bavarian government, and they are represented in numerous municipal councils.

The spatial distribution of the population still reflects, to a certain extent, the decentralized structure of the Federal Republic of Germany. 27 per cent of the population (i.e. around 22 million people) live in smaller municipalities with 5,000 – 20,000 inhabitants. Another 27 per cent live in medium sized cities (*Mittelstädte*) with 20,000 – 100,000 inhabitants. 31 per cent of the German population live in major cities (*Großstädte*) with more than 100,000 inhabitants. The largest cities with more than 1,000,000 inhabitants each are Berlin (3,700,000), Hamburg (1,890,000), Munich (1,470,000) and Cologne (1,080,000). Of course, many smaller municipalities and medium sized cities are part of a metropolitan area (*Ballungsraum*). Together with Böblingen (50,000), Waiblingen (55,000), Sindelfingen (64,000), Tübingen (89,000), Ludwigsburg (93,000) and Esslingen (93,000), for instance, Reutlingen (115,000), Heilbronn (123,000) and Stuttgart (634,000) as well as all surrounding municipalities form the Stuttgart metropolitan area (total population: 5,300,000). In this perspective, around 77 per cent of the German population nowadays live in metropolitan regions.

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3.2 The Structure of Local Government in Germany: An Introduction

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Local governments in Germany are territorial entities and their existence is therefore based on the territory allocated to them. Territorial reforms like amalgamations are therefore an encroachment on their territorial sovereignty and therefore need to be justified under the right to local self-government (Article 28(2) of the Basic Law [BL]). Detailed regulations on the admissibility of territorial changes can be found in the Local Codes. A distinction must be made between voluntary territorial changes, which can be brought about by public law contracts, and compulsory territorial changes, which require a law. The intensity of the intervention also varies depending on whether it involves the dissolution of local governments (*Auflösung*), the merger of two (or more) local governments into a new local government (*Verschmelzung*), the incorporation of one local government into the territory of the other local government (*Eingemeindung*) or the separation of individual parts of a local government (*Ausgliederung*). Counties are associations of municipalities (*Gemeindeverbände*) in the constitutional sense which is why they also have the right of self-government according to Article 28 (2)(2) BL and changes of territory must be justified beforehand. Territorial reforms at the municipal level take place periodically (in the old *Länder* last until the mid-1970s) or due to historical upheavals (as in the new *Länder*). The political objectives are to improve performance in the interests of the inhabitants and the tasks to be performed. At present, in several *Länder* (Brandenburg, Lower Saxony, Thuringia) the county level in particular is covered by territorial reforms, although some reforms have recently been announced at the municipal level (Mecklenburg-Western Pomerania, Rhineland-Palatinate). Rural local governments (RLGs) rather face mergers or even dissolutions (very rare) while urban local governments' (ULGs') territory can either be expanded through incorporations or on the contrary get separated because the territory (and responsibilities) gets too unmanageable.

Inter-municipal cooperation refers to the coordinated execution of individual administrative responsibilities by the participating local bodies. Cooperation may take the form of setting up another institution (e.g. *Zweckverband*) or it may be carried out by one local government taking over the tasks for one or more other local governments. This is of course more likely to happen between RLGs, while ULGs join (not always balanced) forces with nearby RLGs to improve the urban-rural linkage. The basis for this is the respective *Länder* law. These offer various types of cooperation under public law, regulate the circle of responsibilities that are generally related to cooperation and finally lay down the basic principles of the organization. The right of each local government to cooperate with other local bodies is part of the right to self-government guaranteed by Article 28(2) BL in the form of the sovereignty to cooperate. In view of the demographic development and the growing budget problems, voluntary and compulsory[45] inter-municipal cooperation is likely to increase in the coming years, particularly in rural areas. Even though inter-municipal cooperation represents a shift in responsibility for the performance of responsibilities, German public procurement law has provided an exception

[45] This is an intervention in the guarantee to local self-government that needs to be justified.

for it since 2016 (paragraph 108(6) GWB) that was already confirmed by the European Court of Justice (ECJ) earlier. In the field of public-law forms of inter-municipal cooperation a distinction must be made between the joint inter-municipal corporation (*Zweckverband*) and the public-law agreement (*öffentlich-rechtliche Vereinbarung*). The joint inter-municipal corporation is created by a public law contract between municipalities and/or counties, is institutionalized and thus itself a public territorial entity. This means that it can carry out externally effective actions in place of the otherwise competent member local governments; but it is not included in the warranty area of Article 28(2) BL. On the contrary, a public-law agreement is also concluded through a public-law contract but it arises no new institution. It has the content that one of the participants only assumes individual tasks of the other participants (delegating agreement) or undertakes to perform such tasks for the other participants (mandating agreement).

In particular, to deal especially with urban-rural problems or in conurbations, institutionalized administrative units like *Verband Region Stuttgart* and *Regionalverband Frankfurt/RheinMain* are being set up, but they may also lack the constitutional quality of Article 28(2) BL. They are typically responsible for tasks relating to transport and spatial planning, economic development and landscape design.

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3.3 Broadband Infrastructures

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Relevance of the Practice

Broadband supply is key in a way as it offers the opportunity to mitigate other supply shortages. Fast and stable internet connections are one of the most elementary living, working and production conditions. The development and maintenance of road and rail, but also digital and educational infrastructures is essential for a sustainable development. Some may even go so far as to raise access to broadband networks as a human rights issue, because many other social rights (like education, information, employment or health care) are linked to the access to a reliable, high-quality and affordable broadband connection.[46] One focus of the 'Plan for Germany – Equivalent Living Conditions'[47] is clearly the expansion of broadband infrastructure. Especially in the provision of broadband internet connections, there are serious differences between urban and rural areas in Germany which at the same time has fatal effects on the participation in the digitization process of the economy and society. Broadband expansion is of particular importance because rural areas would lose access to conurbations without it and this would have serious disadvantages as a competitor location. The 'constant dead spot' costs Germany a top place in the latest location ranking of the World Economic Forum (WEF). Because the Federal Republic of Germany is ranked 72nd of all nations worldwide in terms of internet connections and fiber optic cables, Germany is falling from third to seventh place in the Global Competitiveness Report.[48]

Description of the Practice

In the field of telecommunications as part of services of general interest, the state withdrew from the provision of services and limited itself to a mere warranty function which was even elevated to the status of a constitutional norm with Article 87(f) BL. The model of Article 87(f) BL relies on the provision of services by the private sector under state guarantee responsibility for a minimum offer. Although this transfer of responsibility to the private market has led to a more efficient and faster provision of services, this has not been achieved across the board. One legislative instrument to make private sector involvement more attractive is to establish more and more investment incentives under regulatory law. Investment incentives are to be created – in simplified terms – to the extent that companies willing to invest as a reward can

[46] See Andreas Kiefer, '2050: Europe grows through migration: Are we prepared?' in ÖCV und ÖAHB (eds), *Academia Nr. 2/2018: Where we live tomorrow. Save education and broadband the rural area?* <https://academia.or.at/s/Ac_WT_18-2_v3_komprimiert.pdf> 6.

[47] See report section 2.3. on Public Health Care.

[48] 'Global Competitiveness Report 2019: How to End a Lost Decade of Productivity Growth' (World Economic Forum 2019) <https://www.weforum.org/reports/global-competitiveness-report-2019-searching-for-the-win-win-policy-space>, where Hong Kong, the Netherlands, Switzerland and Japan passed by.

obtain facilitations and exemptions with regard to regulatory measures, in particular with regard to access and tariff regulation.

But the main focus in the future to fill the current supply gaps in rural areas will lay on taking action by local authorities themselves. This requires the provision and deployment of considerable financial resources which must ultimately reach local authorities in need of support.[49] Broadband expansion in rural areas is primarily being driven by counties as they have a better overview of current coverage than individual municipalities. Individual municipalities hardly take on this task on their own (it would be possible for ULGs like county-free cities, but they mostly don't lack broadband infrastructure), but work together with other municipalities under the umbrella of inter-municipal cooperation. If even individual counties are too small for this task, amalgamations may come into consideration. However, these are part of general, long-term territorial reforms and not tailored to individual areas of responsibility. On the contrary (or in the short term) counties are as well able to cooperate with each other inter-municipally.

As far as broadband expansion is concerned, three different stages must be distinguished: At first, the passive infrastructure has to be installed (typically empty pipes, 70 – 80 per cent of the total costs, but no revenue yet). The second stage is the network operation (active infrastructure) and the third stage is the provision of the actual telecommunications service. With regard to the organizational structure the local authorities can choose from various options. In the so-called 'profitability gap model' (*Wirtschaftlichkeitslückenmodell*) a network is built and operated by a private provider (stage 1 + 2). The instrument used hereby are state subsidies where this process is financially supported by the local authority which forwards subsidies from state funding programs. The federal and *Länder* governments provide considerable amounts of financial support while the EU has also set up a broadband infrastructure fund.[50] This must of course be done in accordance with European state aid law. With the so-called 'operator model' (*Betreibermodell*) a local authority builds the network (up to the financially weaker parts of the region) and remains the owner, but transfers the network operation to a private actor. The local authority can also decide not only to set up the broadband infrastructure on its own, but also to provide active technology and telecommunications services within the so-called 'full-service provider model' (*Komplettanbietermodell*). In this case the local authority often makes use of the local utilities by extending their offer to include telecommunications services. Of course it has to observe the limits of municipal commercial law, in particular the subsidiarity of local authorities' economic activity anchored in numerous *Länder* as well as public procurement law. Local authorities have two options when choosing the right legal form: it can organize the broadband expansion as part of its general administrative activities or it can outsource it to an independent organization. In turn, it has both public law (e.g. inter-municipal cooperation) and private law legal forms (esp. GmbH) at its disposal. Within the existing models outlined above municipal enterprises are already subsidy recipients or operators if they have been successful

[49] A clear distinction cannot be made between urban and rural areas, but rather between structurally weak and structurally strong municipalities. Of course, there are mainly structurally weak municipalities in rural areas, although there may still be exceptions.

[50] Connecting Europe Broadband Fund (CEBF).

in the respective award procedures. This could involve cooperation between several local authorities but also with private companies within the framework of a public-private partnership. Nevertheless, the state itself must become active and in general the trend must go from pure warranty back to (partial) fulfillment.

In summary, there are three different instruments to advance broadband expansion: Regulation, funding and self-economic action by local authorities.[51] As it is not only a task which can be solved within the local community of one individual municipality, umbrella entities like counties (or even districts) or inter-municipal cooperation must take action.

Assessment of the Practice

A nationwide expansion in rural areas cannot be achieved through private sector involvement alone because the expensive investment is not worthwhile with only a low customer density. Therefore, sovereign support is necessary and the federal state, the *Länder* and the local governments as counties and municipalities must take action.

In order to give a preliminary evaluation of the above-mentioned instruments: Within the profitability gap model the local government has hardly any scope of action and once the network has been set up, the money is lost because the network belongs to the private actor. The operator model offers more scope of action and more financial advantages for the local government. However, disadvantages can also arise here because network operators can only be found for economically interesting parts of the area. As a solution to this dilemma, a more recent consideration is to license the construction and also the network operation in the form of a potential network formed according to objective criteria across several municipal areas within the framework of a concession model (*Konzessionsmodell*).[52] This model needs to be further developed and the current rules on rights-of-way in the telecommunications sector amended. Nevertheless, it offers an opportunity to change the role of local governments and at the same time avoid the disadvantages of existing models.

Broadband expansion raises many different and complex legal issues in the areas of regulation, public procurement and state aid. Although the local governments need considerable financial support, they are also confronted with important issues regarding technical, organizational and legal options. It is a complex field that requires constant development and adaptation in every respect.

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[51] See Matthias Cornils, 'Sicherstellung der technischen Infrastruktur durch Markt und Staat' in Hans-Günter Henneke (ed), *Gleichwertige Lebensverhältnisse bei veränderter Statik des Bundesstaates?* (Boorberg 2019) 181ff.

[52] This proposal comes from Martin Burgi, 'Wirtschaftsverwaltungsrechtliche Instrumente zur Sicherstellung der Versorgung in ländlichen Räumen?' in Hans-Günter Henneke (ed), *Rechtliche Herausforderungen bei der Entwicklung ländlicher Räume* (Boorberg 2017) 217, where he also gives initial consideration to compatibility with European and constitutional law.

—— 'Interkommunale Zusammenarbeit. Definition und Hinweise für die Praxis' (Bayerisches Breitbandzentrum and Bavarian State Ministry of Finance 2014) <https://www.schnelles-internet-in-bayern.de/file/pdf/50/Interkommunale_Zusammenarbeit_-_Definition_und_Hinweise.pdf>

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3.4 Central Water Management – Water Supply and Effluent Disposal

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Relevance of the Practice

Water management refers to the qualitative[53] and quantitative management of water resources, i.e. water supply and effluent disposal. Water is a public good and must therefore be managed permanently and in a way that is in the best public interest. Due to various demographic changes, new challenges are emerging in water management. The change in population structures in rural and urban areas is hereby a significant factor. Demand in urban areas is increasing, while rural areas must try to keep quality standards high for a decreasing number of users. This leads in particular to prognostic uncertainties regarding future demand. In addition, the topic is currently being given special attention, as there are numerous demands for a 'human right to water and sanitation'[54]. The public water supply serves the public good.[55] The provision of drinking water as well as the disposal of sewerage is, in accordance with the division of competences laid down in the Basic Law (BL), the responsibility of the municipalities and other public bodies according to the respective *Länder*-law (see also paras 50(1), 56(1) WHG). This is a self-government task (*Selbstverwaltungsaufgabe*, i.e., a services of general interest) and thus, ultimate responsibility lies within the municipality (first sentence of Article 28(2) BL).[56]

Description of the Practice

First of all, it should be noted that Germany has in general a very high drinking water quality, as tap water is drinkable (almost) everywhere. This may vary only in some regions, because of topographical reasons. The central water management including water supply and effluent disposal is carried out as public service by the municipalities. This service includes five tasks: (i) water extraction and possibly treatment of the raw water; (ii) distribution of drinking water to final consumers (households, trade and industry, public institutions), provision of the domestic water meter; (iii) collection and discharge of waste water and rainwater; (iv) treatment of

[53] This task includes the protection of water resources against pollution and deterioration (particularly with regard to water quality there are strict regulations under European law), see Wolfgang Köck, 'Zur Entwicklung des Rechts der Wasserversorgung und der Abwasserbeseitigung' (2015) ZUR 3, 5ff.

[54] 'The Human Right to Water and Sanitation' (*United Nations*, 29 May 2014) <https://www.un.org/waterforlifedecade/human_right_to_water.shtml> accessed 21 February 2020.

[55] Michael Reinhardt, 'Demografischer Wandel im Wasserrecht – Rechtsrahmen für Daseinsvorsage und Gewässerschutz' (2018) LKV 289, 291.

[56] Köck, 'Zur Entwicklung des Rechts der Wasserversorgung und der Abwasserbeseitigung', above, 8.

waste water and rainwater; and (v) treatment and disposal of sewage sludge.[57] As not every municipality has resources to carry out all tasks independently, different kinds of consolidations occur. The municipalities have the sovereignty to form cooperations (Article 28(2) BL), which makes it possible for different municipalities to operate jointly.

For example, in Bavaria are 2,056 municipalities and 2,350 utilities. Nevertheless, it should be noted that there is currently a tendency towards centralization, at least in terms of organizational law. Municipal mergers (permitted under the general Federal Water Association Act [*Gesetz über Wasser- und Bodenverbände, WVG*] or the respective *Länder*-laws on municipal cooperation) or cooperation in municipal supra-local companies under private law are being established (inter-municipal cooperation [*interkommunale Zusammenarbeit*], see above). Joint inter-municipal corporations (*Zweckverbände*) are set up for this purpose, which in turn transfer the organization to municipal public enterprises (government enterprises; own enterprises) or to private enterprises under private law in the hands of the municipalities (own companies).[58] The public service tasks (see above) in water management can only be transferred to private third parties under strict conditions (Section 56(1)(3) WHG).[59] Even in case of such a transfer, the responsibility of the municipality, in the sense of the material municipal guarantee responsibility, as well as the associated obligation to effectively perform the service, remains intact.[60] In practice, this means that even in the event of a transfer of tasks, the municipality is responsible for monitoring. Principally, this form of performance can therefore also take place across municipal boundaries.

Moreover, public procurement law does not apply to the transfer of concessions in the domestic sphere, i.e. ultimately to the transfer of tasks to another public authority, e.g. in the context of inter-municipal cooperation.[61] Interventions in the competences of other associations can only be possible as extensions of competences through inter-area economic activity by virtue of law and in compliance with the jurisdiction of the Federal Constitutional Court (*Bundesverfassungsgericht*). Moreover, some municipal laws contain opening clauses in favor of inter-territorial economic activities, which, however, always require that the interests of the foreign municipalities are safeguarded.

Summarizing, municipalities have to guarantee water supply and sewage disposal as state task. There is a constitutionally warranty of equal living conditions throughout the federal territory (*Bundesgebiet*) and thus, a nationwide supply and disposal must be ensured. Municipalities can issue statutory regulations requiring residents to be connected to the water system and,

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[57] Karin Rommel and Regina Burr, 'Wasserwirtschaftliche Daten für Stadt und Land' (2018) 9 Statistisches Monatsheft Baden-Württemberg 37 <https://www.statistik-bw.de/Service/Veroeff/Monatshefte/PDF/Beitrag18_09_08.pdf> accessed 10 March 2020>.

[58] Köck, 'Zur Entwicklung des Rechts der Wasserversorgung und der Abwasserbeseitigung', above, 8.

[59] For more details, see Köck, 'Zur Entwicklung des Rechts der Wasserversorgung und der Abwasserbeseitigung', above, 3.

[60] Reinhardt, 'Demografischer Wandel im Wasserrecht', above, 292.

[61] Nicole Weiß, 'Kommunale Wasserversorgung – Ungewissheit über zukünftige [ordnungspolitische] Strukturen' in Ulrich Hösch (ed), *Zeit und Ungewissheit im Recht* (Boorberg 2011) 478ff. For in-house criteria, see, among others, EuGH Rs. C-107/98 v. 18.11.1999 – Teckal; BGH, Az.: I ZR 145/05 (*Kommunalversicherer*) v. 3.7.2008.

in individual cases, allow for equally decentralized solutions.[62] As rural areas are experiencing a significant and worsening population decline, this – among other things – is also leading to more a difficult water management, especially regarding financial aspects. The scope of warranty of water supply and effluent disposal is only valid for those places, which already have a basic suitability for taking up residence. There is no claim to the creation of these conditions. In individual cases, turning away from a comprehensive water supply and effluent disposal system may prove to be permissible – i.e. proportionate due to economic unreasonableness for the municipality. The citizens left behind in rural areas have a high subjective interest in maintaining existing service standards.[63] A complete devaluation of the constitutionally protected property must of course be countervailed with compensatory measures, etc., in accordance with the requirements of the Federal Constitutional Court (*Bundesverfassungsgericht*). Decentralized, new solutions are also possible, especially in the field of effluent disposal law.[64] In doing so, individual planning of demand and, as a result, security of supply must be ensured due to the changing number and structure of customers. For this purpose, a smaller-scale local sewerage disposal system can be agreed upon, including decentralized effluent disposal treatment plants.

However, it remains open how this legal obligation to ensure water supply and effluent disposal will develop in consequence of the ongoing changes. The legislatures and the current legal situation therefore seem willing and able to maintain the supply of drinking water and the disposal of wastewater in rural areas. This is the only way to maintain flexibility of supply in the future.[65] In particular, the cooperation of many small rural local governments (RLGs) in joint inter-municipal corporations is a decisive factor in keeping the burden to be distributed in-between and as little as possible for each.

Assessment of the Practice

Proposals to strengthen competition and the possibility of privatizing water management (water supply and effluent disposal) are regularly brought up in political and legal discussions. Various demands to reform the water management law, especially for liberalization and privatization, arise.[66] Evaluation of these proposals differs widely. In Berlin, the privatization of the utilities in 1999 resulted in such an increase in costs for the end consumer that the privatization was reversed in 2013. In general, the German model of water management is to be assessed positively: from the point of view of quality, environmental factors, and even with regard to the price-performance ratio and general cost aspects. In any case, new concepts for

[62] 'However, central supply and disposal facilities clearly dominate: 99% of households in Germany are connected to the public water supply and 95% of households to sewerage and wastewater treatment facilities.', Köck, 'Zur Entwicklung des Rechts der Wasserversorgung und der Abwasserbeseitigung', above, 7f; further *BMU/UBA* (eds), *Wasserwirtschaft in Deutschland. Teil 1: Grundlagen* (Umweltbundesamt 2010) 86.

[63] Reinhardt, 'Demografischer Wandel im Wasserrecht', above, 293.

[64] ibid 294.

[65] ibid 291.

[66] Martin Burgi, 'Privatisierung der Wasserversorgung und Abwasserbeseitigung' in Reinhard Hendler and others (eds), *Umweltschutz, Wirtschaft und kommunale Selbstverwaltung. 16. Trierer Kolloquium zum Umwelt- und Technikrecht* (Erich Schmidt Verlag 2000, 2001) 101ff; Weiß, 'Kommunale Wasserversorgung', above, 475ff.

rural areas and their problems, especially in the technical and financial management of effluent disposal, should nevertheless be made politically and legally possible. The municipalities will not be able to implement these concepts on their own, but the existing organizational structure in joint inter-municipal corporations is beneficial. In addition to coping with demographic change and corresponding decentralization, another challenge will be dealing with climate change (increasing temperature, groundwater level, quality of water in pipes, removal of rainwater runoff). Moreover, many infrastructures are outdated and therefore in great need of renewal.

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3.5 Cooperation in the Field of Tourism

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Relevance of the Practice

Tourism is a substantial source of income for local governments (LGs), especially for some more rural regions in Germany. At the same time, also big cities like Berlin or Munich gain profit from visitors, spending money within the city.[67] Therefore, furthering tourism is an aim pursued by both urban local governments (ULGs) and rural local governments (RLGs), although the cooperation aspect might be more important for neighboring RLGs due to potential necessity of pooling resources. This follows the general trend that inter-communal cooperation plays a bigger role in rural and peripheral areas, as lack of resources might otherwise limit the scope of measures each LG is able to take. A cooperative approach might also increase the chance of funding by the *Land* or the federal Government. On the other side, also an ULG and neighboring RLGs might gain substantial benefit and profit from cooperation.

Description of the Practice

As outlined in the introduction to the structure of local government in Germany, local municipalities have several possibilities of cooperating with each other. In the field of tourism, cooperation mostly occurs between neighboring communities that want to pool resources to achieve a more significant impact for their advertising and marketing projects.[68] Cooperation between several communities occurs especially in the area of nature-related tourism within the area of those municipalities which tend to be RLGs. The fact that the nature (e.g. a forest or lake) stretches beyond the territory of one municipality makes cooperation the natural way of enabling and furthering tourism.

Such a cooperation could be limited to joint marketing, but might extend to other areas and even encompass the joint operation of public facilities. It can occur in the form of a public corporation (*Kommunalunternehmen*) or under the framework of a private company. For a closer cooperation in the fulfilment of public tasks, the municipalities can establish a joint inter-municipal corporation (*Zweckverband*).[69]

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[67] See the data on revenue created by tourism in 2019 <https://www.muenchen.de/rathaus/wirtschaft/branchen/tourismus.html> accessed 6 June 2020.

[68] Cooperation in the area of tourism also takes place within metropolitan regions (*Metropolregionen*). For a general explanation of such regions under the concept of *Ballungsräume*, see the General Introduction to the System of Local Government in Germany, 4. Political and Social Context in Germany. Metropolitan regions are also discussed in report section 5.3. on the Creation of a Further Third-Tier Administrative Unit.

[69] See for this model of cooperation the General Introduction to the System of Local Government in Germany, 2. Legal Status of Local Governments.

One prominent example of a region with a high amount of tourism is the region of Lake Tegernsee. The municipalities adjacent to the lake established a cooperation in the form of a private company (limited liability company), the Tegernseer Tal Tourismus GmbH.[70] The City of Tegernsee and four smaller municipalities are the sole shareholders of the company.[71] All of the participating communities belong to the same county (*Miesbach*). However, the county comprises many other municipalities and is therefore responsible for a wide range of tasks going beyond tourism in the Tegernsee region. This might explain the municipalities' interest in establishing another form of cooperation that is in a way 'located' between the municipality and the county level. The company's main task is to engage in marketing and advertising activities, both for leisure tourism but also for corporate activities such as seminars or conferences. Additionally, the company supports local projects and runs a free Wi-Fi in certain areas around the lake.

Another, more complex example of cooperation in the area of tourism is taking place in the area of Berchtesgaden, close to the Austro-German border. The Government of Bavaria established a national park (*Nationalpark Berchtesgaden*) there in the 1970s.[72] Whereas the overall responsibility for running the park is not vested with the municipalities, but in accordance with the establishing regulation with the Land and county authorities (a potential overlap with report section 5 on intergovernmental relations), the municipalities in the region still engage in a multi-pillar system of cooperation. The municipalities in the County of Berchtesgaden established three associations mirroring the three historical regions of the county, namely two registered associations (*eingetragener Verein*)[73] and one joint inter-municipal corporation[74], each bringing together different municipalities of the county. The corporation and the Erlebnisregion Berchtesgadener Land – Rupertiwinkel – e.V are in turn shareholders of a joint county-wide marketing agency established as a limited liability company.[75] As the City of Bad Reichenhall is the third shareholder,[76] all regions are represented among the company's shareholders. Similarly to the one in the Lake Tegernsee region, the company is in charge of marketing the region, whereas the associations established by the municipalities make up another layer of cooperation, distinguishing the Berchtesgaden model from the one employed for the Tegernsee region. Most importantly, the associations are not

[70] For further information, see <http://www.tegernseer-tal-tourismus.de/> accessed 3 June 2020.

[71] 'Gesellschafter' (*Der Tegernsee*) <http://www.tegernseer-tal-tourismus.de/unternehmen/gesellschafter-organe/> accessed 3 June 2020.

[72] See for the history 'Aufgaben des Nationalparks Berchtesgaden' (Nationalparkverwaltung Berchtesgaden, 2020) <https://www.nationalpark-berchtesgaden.bayern.de/nationalpark/aufgaben/index.htm> accessed 20 March 2020.

[73] The Kur & Verkehrsverein Bad Reichenhall / Bayerisch Gmain e.V., see <http://www.kvv-badreichenhall.de>, and the Erlebnisregion Berchtesgadener Land – Rupertiwinkel – e.V (no individual website).

[74] The Zweckverband Tourismusregion Berchtesgaden – Königssee, <https://www.zv-berchtesgaden.de> both accessed 3 June 2020.

[75] The Berchtesgadener Land Tourismus GmbH, see <https://www.berchtesgaden.de/kontakt-team> accessed 30 April 2020.

[76] ibid.

merely meant to facilitate the activities of the LGs as shareholders, but have their own set of tasks, e.g. the collection of a tourist tax (*Kurtaxe*)[77] or the management of facilities.[78]

Assessment of the Practice

The area of tourism shows that cooperation between LGs can be an effective and efficient tool to lower costs while maximizing effort. Of course, tourism might be especially prone to cooperation, especially when the sights or spots attracting tourists stretch beyond the boundaries of one RLG, making cooperation the logical consequence. Besides the natural circumstances speaking in favor of cooperation, one could make the argument that cooperation is a 'must' for the RLGs while it is a choice for ULGs, as the financial rewards are much more likely to be substantially felt (and needed) by RLGs. Joint investments also have the potential to make the area more attractive for tourism. When speaking of rewards, one must also keep in mind the aspect of burden-sharing. If LGs jointly operate e.g. a public spa, each individual municipality will feel a lack of visitors less. Thereby, such cooperation can especially serve to support smaller and financially less powerful municipalities. All these aspects might make the area interesting for field research, as there is a lot of history of cooperation and different models of cooperation that maybe do not exist in other areas of governmental cooperation. However, especially a multi-layer system like the one in the Berchtesgaden region can also lead to controversies or an alleged lack of effective representation.[79]

In general, cooperation in the field of tourism is more prevalent among RLGs. This is exemplified also by looking at metropolitan cooperation. In this field, cooperation relating to tourism is not always the main priority. In some metropolitan regions, e.g. Munich, there seems to be no (explicit) cooperation in the area of tourism. To the contrary, advertising for activities in the region is done independently both by the city[80] and the respective RLGs.[81] Local cooperation is encouraged by the legal framework itself by setting out different means of cooperation like the joint inter-municipal corporation. These enable municipalities to fulfill tasks more effectively and at lower personnel expenditure, but do not alter the allocation of

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[77] The statute (*Satzung*) enabling the joint inter-municipal corporation to collect this tax is accessible at <https://www.zv-berchtesgaden.de/component/phocadownload/category/1-meldewesen.html?download=1:satzung-fuer-die-erhebung-des-kurbeitrages-stand-juli-2018> accessed 3 June 2020.

[78] See for further tasks e.g. <https://www.zv-berchtesgaden.de/service-infos/ansprechpartner.html> accessed 3 June 2020.

[51] e.g. one municipality left the above-mentioned Erlebnisregion Berchtesgadener Land – Rupertiwinkel – e.V, c.f. 'Diskussionen um "Erlebnisregion BGL"' (*PnP.de*, 10 March 2017) <https://www.pnp.de/lokales/berchtesgadener-land/Diskussionen-um-Erlebnisregion-BGL-2430082.html>. There are also general complaints about the association: 'Landkreis tritt nicht aus Erlebnisregion aus' (*BGland24.de*, 31 October 2018) <https://www.bgland24.de/bgland/region-bad-reichenhall/landkreis-berchtesgadener-land-ort77362/berchtesgadener-land-kreistag-lehnt-austritt-verein-erlebnisregion-berchtesgadener-land-ev-bgl24-10412835.html> both accessed 3 June 2020.

[80] 'Impressum' (*einfach München*) <https://www.muenchen.travel/wichtige-links/impressum> accessed 3 June 2020.

[81] e.g. Tegernsee <https://www.tegernsee.com/> accessed 3 June 2020.

the respective competences (as it is usually in the interest of municipalities to retain their competences).[82]

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4. The Structure of Local Government in Spain

4.1 The System of Local Government in Spain

Francisco Velasco Caballero, *Instituto de Derecho Local, Universidad Autónoma de Madrid*

Types of Local Government

The Spanish Constitution assigns public authority to four levels of government: the central state, autonomous communities, provinces and municipalities. Spain consists of 17 autonomous communities, two autonomous cities (Ceuta and Melilla), and two types of local bodies: 50 provinces and 8,131 municipalities.

The Constitution includes two principles regarding local government: the right to 'local autonomy' from all public authorities including the state legislature, and legislative powers over local government given to the central state and autonomous communities. The constitutional recognition of a right to local autonomy (Article 137 of the Constitution [CE]) implies that the municipalities and provinces are not merely internal divisions of the autonomous communities, but part of the state as a whole. The Constitutional Court has ruled that the guarantee of local autonomy 'does not ensure specific contents or spheres of authority established and fixed once and for all, but rather the preservation of an institution in terms that are recognizable for the image that society has of such institution in each time and place' (Ruling of the Constitutional Court [STC] 32/1981). Local autonomy is contrary to any hierarchical position of the local governments under the state or the autonomous communities.

Legal Status of Local Governments

The legal system of local government falls under the concurrent jurisdiction of the state and the autonomous communities. The state has the power to establish the 'basis of the legal system of the public administrations'. On the other hand, the statutes of autonomy confer to the autonomous communities complementary powers over local government. In interpreting the Constitution together with the statutes of autonomy, the Constitutional Court has concluded that the Spanish local system has a 'two-fold nature'. The state is responsible for the 'fundamental' regulations while the autonomous communities are responsible for the 'non-fundamental' or so-called 'development' regulations (STC 214/1989, FJ 4). When regulating the local government system, both state and autonomous communities' laws must respect local autonomy, as directly guaranteed by Article 137 of the Constitution. But the Constitution does not specify what this local autonomy shall consists of, since it limits itself to a vague connection between local autonomy and 'matters of local interest', without specifying what these are. Consequently, both state and autonomous communities' laws have a wide margin for regulating the functions and organization of local governments.

The current fundamental regulations of the state on local government are primarily found in two Acts repeatedly amended: Law of the Basis of the Local System (LBRL) of 1985, and a Royal Legislative Decree of 2004, which approves the Restated Text of the Local Tax Authorities Act (LHL). This far, the state has interpreted its own 'fundamental' powers broadly, limiting the legislative and executive powers of the autonomous communities. The amendment of several statutes of autonomy since 2006 has not changed this situation.

Generally speaking, Spain's current local government system includes very limited state and autonomous community supervision or control on municipal and provincial activity. The Constitutional Court has ruled that the local autonomy guaranteed by Article 137 excludes these governmental controls to a great extent (STC 4/1981). In the absence of such controls, only courts are ordinarily responsible for oversight of the administrative activity of local councils. The LBRL replaces state and regional controls on local governments with a complex system of intergovernmental relations based on the idea of full respect for the powers of local institutions and the principle of cooperation. Basically, the LBRL establishes legal instruments to prevent conflicts between state and autonomous communities on one hand, and local authorities on the other while obliging local governments to share information with other government levels. To prevent or resolve conflicts of authority, the law promotes the 'free cooperation' of public administrations, either in the form of agreements or by participation in collaborative bodies, and by encouraging local level administrations to participate in the decision-making processes.

On this legal basis, the Spanish local government system has overall functioned satisfactorily since 1985. Local government is thoroughly democratized and has been receptive to new forms of participatory democracy. The elimination of controls from the upper-level territories has resulted in significant improvements to local public services, despite some cases of corruption in urban planning.

(A)Symmetry of the Local Government System

The Spanish local government system is very uniform and symmetrical due to the approaches of both the central state and most autonomous communities: the central state has established a common two-tier system with few variations for all Spain; and the autonomous communities have introduced very few particularities for the local government of their territory.

First, the state maintains a structure of local government that, to a large extent, was defined in 1833. That is, each village, town or city is a municipality. And the whole territory of Spain is divided into 50 provinces which currently (not originally) act as the second level of local government. Every municipality is integrated in a province.

Second, regional particularities within the 17 autonomous communities are scarce. It has been said before that each autonomous community has legislative power to develop the state basic legislation on local government. But since the state basic legislation is in fact very intense and extensive, and imposes a local government scheme made up of municipalities and provinces, the possibilities of innovation for any autonomous community are quite limited. Particular institutions have appeared especially in Catalonia and Aragon, which add a third level of

government: the townships (*comarcas*). Also, in the areas of some large cities such as Barcelona, Madrid, Vigo or Valencia there are some metropolitan government structures, normally focused on the management of very specific municipal services. The metropolitan area of Madrid does not have its own government structure because that space is occupied by the regional government (the Autonomous Community of Madrid).

Political and Social Context in Spain

Local politics is largely symmetrical to national and regional ones. National or regional parties also act at the local level. And this limits the effective autonomy of local politicians, even though they are elected locally. Currently, after the municipal elections of May 2019, most municipalities have leftist governments, although many of them are minoritarian. Some very important cities, such as Madrid, Malaga or Zaragoza, have conservative municipal governments.

Provincial governments are indirectly elected, by the councilors of the municipalities in each province. In that indirect election the political parties have great power. In this way, provincial governments normally reproduce municipal political majorities.

Beyond the local level, the general political situation shows common features to many other European countries: strong polarization of politics and absence of clear majorities. This has led to the current – and for the first time since 1978 – coalition government, between the traditional center-left Social Democratic Party (PSOE) and a new radical left-wing party (Unidas Podemos).

The general social and political situation is marked by two circumstances. A national economy that, although formally recovered from the great crisis of 2008, still shows very high unemployment rates (around 15 per cent of the active population), and where income inequalities dramatically increase. The second major social and political concern is the territorial integrity of Spain. Since approximately 2010 a very strong independence movement has emerged in Catalonia, which is one of the richest regions in Spain. This secessionist movement has the support of approximately 50 per cent of the population of the region.

More than 80 per cent of the 8,131 Spanish municipalities are very small having less than 5,000 inhabitants. Given the technical and economic incapacity of these municipalities, in many tasks they are replaced by the 50 provinces, which show a remarkable financial capacity. In some autonomous communities such as Catalonia or Aragon there are, in addition to the provinces, other intermediate supra-municipal local entities.

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4.2 The Structure of Local Government in Spain: An Introduction

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The number of local governments (municipalities) in Spain has slightly increased (around 0.2 per cent) along the last 40 years, since the first municipal elections of the democratic period took place. There are currently 8,131 municipalities but the reform for municipal consolidation (amalgamation) is not a salient issue in the political agenda in Spain. Although various attempts have been made in recent decades to encourage municipal mergers, all of them have failed. This explains why this option is not at the top of the current political agenda. In this failure, the strong identity factor proper to the municipalities in Spain has played a salient role.

Figure 1: Municipalities in Spain.

More than 80 per cent of the 8,131 Spanish municipalities have a very small size in terms of population, counting less than 5,000 inhabitants. In terms of population, 61 per cent of all municipalities in Spain have less than 1,000 inhabitants who account for only just over 3 per cent of the entire population of the country. In front of them, those with between 10,000 and 100,000 inhabitants (8.5 per cent of the total) and those of more than 100,000 (0.75 per cent) concentrate 80 per cent of the entire Spanish population (40 per cent each group). Given the technical and economic limitations of the small municipalities to provide services

autonomously, they are replaced or supplemented by the 50 provinces, which present a remarkable financial capacity.

Figure 2: Provinces in Spain.

In this context, inter-municipal cooperation plays a crucial role in local governance. It is usually based on inter-municipal agreements, which are bilateral or multilateral, and often lead to the establishment of inter-municipal institutions and associations, such as the *mancomunidades* (commonwealths) directly created by the municipalities. Inter-municipal cooperation is used in all its forms to profit from economies of scale effects and to prevent centralization of competences. Most Spanish municipalities cooperate in the field of water supply and treatment of waste water, as well as in garbage collection and waste disposal and many others, especially those of small sizes, in other services such as social policies.

Spain is a country with a high degree of urbanization, but concentrated in a very small territory. Despite the evidence of the metropolitanization process, the Spanish political/legal system has not responded to this phenomenon. The creation of metropolitan areas' governments or formal coordination agreements is a responsibility of the autonomous communities that, in general, have decided not to promote their establishment. In fact, Catalonia as well as Galicia and Valencia show reluctance and ambiguity when facing the creation of strong metropolitan governments in, respectively, the cities of Barcelona, Vigo and Valencia.

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4.3 The Role of Provinces for the Provision of Services by Small Rural Local Governments

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Relevance of the Practice

Provincial government can be considered a key piece of Spanish local government. Even from an organizational point of view, it could be considered as a territorial power structure characteristic of Spanish administrative law. Currently, the debate on the province revolves around the organization of the second level of local government. By definition, the first level of local government is the municipal level. But most Spanish municipalities cannot effectively exert the powers conferred to them by law due to a lack of human and financial resources. That makes it necessary a second tier of local government to assist small municipalities in carrying out their responsibilities. Otherwise, many of the municipal powers could not be carried out at all or should have to be exerted by the corresponding autonomous community. And this would have a deep impact on local autonomy.

The study of this practice is relevant for the LoGov-researchers as it will allow them to identify and discuss:

- some factors of success or failure of the role of provinces in the Spanish local government structure;
- the extent to which the provinces increase or decrease the centralization of power;
- if provinces or autonomous communities compete or even threaten the legitimacy or autonomy of municipalities;
- the impact of the provinces on the municipalities' actions, especially with regard to those with a population of less than 20.000 inhabitants (rural areas).

Description of the Practice

Article 137 of the Spanish Constitution recognizes the autonomy of municipalities and provinces and defines them as a territorial division of the state. In order to guarantee municipal autonomy, the Constitution also guarantees provincial autonomy and provides differentiated treatment for both institutions. By guaranteeing provincial autonomy, the Constitution is also guaranteeing the autonomy of the small municipalities assisted and supplemented by the respective province. In this sense, provincial autonomy is instrumental to municipal autonomy.

Since their creation with the Constitution of Cadiz of 1812 and the Royal Decree of 30 November 1833, the provinces are rooted in Spanish society and have performed different

functions: they are a type of local entity; a constituency in the electoral system; a territorial division for the fulfilment of the activities of the state; an entity with initiative in the process of creating the autonomous communities; and they participate in governance and service delivery. According to Basic Law no 7/1985, all provinces are ruled by a council, an executive body and a president. The members of the council are not directly elected, but designated by the councilors of all municipalities which make up each province. The core function of the provinces is to assist and supplement the small municipalities (of less than 20.000 inhabitants) although they can also provide high scale local services, such as urban waste treatment.

Provinces are often accused of having been the cornerstone of the territorial organization of a unitary, centralized and uniform state. On the other hand, it is also argued that they are unnecessary, because sometimes they involve duplication of services, thereby increasing public spending. Such a duplication certainly arises in big cities, where provinces and municipalities develop symmetric policies and programs, such as touristic promotion and cultural events. On the contrary, duplication of roles is rare in rural areas.

Provinces, have responsibilities to coordinate the horizontal cooperation among municipalities. They also assist to municipalities and therefore play a key role in the effective implementation of the principle of subsidiarity. This has a decisive impact on the distribution of powers between the autonomous communities and local governments: not every supramunicipal issue lies within the responsibility of the autonomous communities, but can continue to belong to the municipalities if the province helps the small municipalities provide their services.

Assessment of the Practice

The provinces have provided fundamental assistance to small municipalities, have sought to optimize available resources, and have invested in municipal and provincial projects and infrastructure. Most infrastructures or facilities in small villages and towns are financed or directly executed by the provinces. The provincial assistance to municipalities has increased since the approval of Law no 27/2013, of December 27, on the Rationalization and Sustainability of the Local Administration. Moreover, in current pandemic times the provincial assistance to municipalities has also been remarkable, mainly focused on boosting the local economy.

Therefore, the constitutional and legal provinces' objectives seem to have been partially met. Besides this, the relevant provincial role does not affect or undermine municipal autonomy, as provinces rarely deliver services or promote activities not previously demanded by the municipal governments. This said, a common opinion among local professionals and experts is that provinces are really useful and efficient in rural areas, and not so much when performing in big urban areas.

In order to fulfill its constitutional role more adequately, the provinces could require an institutional reform focused on internal rationalization, transparency, effectiveness and efficiency, and a more precise definition of their competences, which should be primary

(competences). The potential overlapping of provincial government's actions with structures of inter-municipal cooperation remains an issue to be tackled more in-depth. It would be also advisable to overcome the system of indirect election of provincial councils, currently in the hands of political parties and not on citizens (voters), as this causes alienation and ignorance on part of the citizens. Furthermore, a more adequate definition of the electoral body is necessary. None of these advisable improvements are in the current political agenda.

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4.4 The Counties (*comarcas*) in Aragon and Catalonia

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Relevance of the Practice

The Spanish Constitution lays down municipalities and provinces as the two most important levels of local government. But it also allows the existence of groupings of municipalities different from the provinces. Especially in the regions of Aragon and Catalonia, the whole regional territory is divided into a network of counties (*comarcas*) asymmetrically overlapped with that of the provinces. Both the province and the county (*comarca*) are local entities with a second-degree democratic legitimacy. The creation of counties (*comarcas*) is legally more flexible than that of the provinces since it takes place under a legislative decision of the regional parliament. In this decision, it is possible to take into account criteria specifically aimed at a more balanced development of relations between rural and urban territories. In Aragon there are 3 provinces and 33 counties. In Catalonia there are 4 provinces and more than 40 counties.

Description of the Practice

The Spanish Constitution allows the existence of groupings of municipalities other than the provinces. Some of the fundamental laws creating the regions and the legal provisions of the central state regarding the foundations of local government in Spain specifically provide the creation of counties (*comarcas*), which can up to a certain extent replace the provinces in much of their powers. This form of municipal grouping has been developed especially in Aragon and Catalonia. In Catalonia, for instance, the regional law of the local government provides that the counties (*comarcas*) group together municipalities with common social, cultural, and historical characteristics and that are located in a territory geographically relevant for the structuring relations of economic activity. This allows us to think that these groupings of municipalities can adequately serve a more balanced development of relations between rural and urban territories.

The executive and legislative branches of the region and the municipalities are involved in the creation of the county (*comarca*). The municipalities and the executive of the region have a right of initiative for the relevant procedure. The laws of the autonomous communities determine the creation procedure and the territorial scope of the counties, the composition and operation of their governing bodies, as well as the powers and economic resources assigned to them (Article 42(3) of the Law on the Basis of the Local System, LBRL of 1985).

If the initiative has been exercised by the regional executive, a certain number of municipalities have a veto right. Article 42 LBRL establishes that the county cannot be created if two-fifths of the Municipalities that should be grouped in it expressly oppose it, provided that, in this case, such Municipalities represent at least half of the electoral roll of the corresponding territory.

The most interesting purpose of the analysis of this practice is probably to examine whether it is more suitable than the province to adequately integrate rural and urban territories in a better urban-rural interplay.

The (asymmetric) overlap of provinces and counties obviously results in a redistribution of local responsibilities and public services (report section 2), local financial arrangements (report section 3), and the shape of intergovernmental relations of local government (report section 5).

The regional power to largely establish the criteria which have to be taken into account in order to divide the regional territory into counties (*comarcas*) allows the regions to pay attention to their own actual territorial particularities when making that decision. That is not possible in relation to the division of the regional territory into provinces, because this decision is attributed to the central state, which will have to take into account the national interests and its own administrative ones when making it.

Assessment of the Practice

This relevant practice focuses specifically on the question regarding whether the county (*comarca*) in Aragon and Catalonia is a more effective and efficient type of local organization than the province to fit the necessities of a fair urban-rural interplay.

Frequently, both in political and economic fields, the counties (*comarcas*) of Aragon and Catalonia have been criticized for their supposed overlap with the provinces, and for their high operating cost, concerning the scarce services they provide. However, no empirical and analytical study has yet been carried out on the real usefulness and efficiency of the different *comarcas*. Some sector-oriented studies point to a favorable assessment in some specific subjects, such as waste management, environmental protection, and school busing between small municipalities within the same *comarca*.

According to an extended opinion of practitioners consistent with some empirical data, the *comarcas* are not currently playing a relevant role in local government. Compared to the provinces also acting in Catalonia and Aragon, the counties (comarcas) play a conspicuous secondary role. Provinces have solidly guaranteed sources of financing. That is not the case of the counties. The counties certainly carry out some important services for the balance between rural and urban areas: school busing, social services, selective waste collection, etc. But the relatively high costs derived from maintaining the organizational structure of the (numerous) counties raise doubts about their efficiency. There does not seem to be any precise economic analysis in relation to this issue. It might be possible to draw the conclusion that the relevant public services carried out by the county could indeed be provided more efficiently through cooperation between municipalities or through organizational changes within the provinces.

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4.5 Exploring Sub-Municipal Units of Government in Rural Local Governments

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Relevance of the Practice

By definition, the first level of local government is the municipal level. However, beyond municipalities, there is a rich variety of multipurpose local entities that have been much less studied by academia. Both above and below the municipal level of government, a densely populated world of institutions (e.g. provincial, inter-municipal, district) is also in charge of providing services and addressing public demands.

Among them, sub-municipal units stand as a fascinating face of local democracy to look at, for two reasons. Firstly, due to their potential for accomplishing one of the core values of local government, citizens' participation and involvement. And secondly, because they embody two contrasting realities of self-government, with their distinctive traits, logics, and trajectories: the oldest—rural parishes—and the newest—urban districts. EATIMs (entities of a territorial area smaller than a municipality) and districts are both organizational structures placed below municipal governments. However, they have distinctive origins and logic and express specific answers to different circumstances. While the first is mainly found in rural areas and is the consequence of historically rooted institutions that have evolved up to the present without much change, the second emerged recently to give an answer to the functioning of big cities trying to put local democracy closer to citizens by decentralizing tasks and implementing citizens' participation mechanisms.

The study of this practice is of great relevance as it will allow them to identify and discuss:

- some factors of success or failure of the role the sub-municipal units of government in the Spanish local structure;
- the extent to which the institutions increase or decrease the decentralization/ deconcentration of power;
- if the sub-municipal units have implications on the legitimacy or autonomy of municipalities;
- impact of sub-municipal units in the municipalities' actions;
- the contrast of sub-municipal units in big and small municipalities, especially, in rural areas.

Description of the Practice

According to the Law no 7/1985 on the Basis of the Local System, the regulation of these entities is a responsibility of the autonomous communities (the regions of Spain) and, thus, 13

out of 17 autonomous communities have developed a distinctive legal framework. Certainly, some of them have been especially active in this field, but still, the contents of the regulations have a common basis.

The general regulation of EATIM can be found in the Law no 7/1985, which awarded them the consideration of local entities. However, although they are distinct and autonomous local entities, their legal and real self-government is quite limited. First, because each city council decides the functional scope of the EATIMs; and second, because their autonomy is not guaranteed by the Constitution, but only by laws.

Special attention should be given to the last broad reform of the Local Government Act that entered into force in 2014 and included some changes in this matter. In the context of a severe economic crisis and according to the guidelines of European institutions, the Spanish Parliament approved a set of laws designed to restrict public expenditures and control public debt. Even though local finances presented favorable indicators, the majority of Spanish local entities were in the eye of the storm and therefore some of the measures included in the texts aimed to reduce the number of bodies or organizations and erode the capacities of those remaining. EATIMs were affected by these measures in several ways: decrease in income, limitation of expending capacity, reduction of competences, and tougher requirements in creating new EATIMs.

In Spain, districts have been part of the cities' functioning for decades (e.g. Madrid, Barcelona, Bilbao, Valencia), since the start of democratic town halls in the late 1970s. But municipalities with districts increased in the first years of the current century when the 2003 reform of the Local Government Act—the so-called Measures for the Modernization of Local Government—made them compulsory in large urban agglomerations to facilitate citizens' participation.

National legislation sets general guidelines that municipalities have to follow in setting up districts. They are included in the Local Government Act, Law no 7/1985, and in the Royal Decree no 2568/1986. The national legal framework is quite general and does not go into detail. It just allows municipalities to set territorial bodies for the deconcentrated 'management in order to facilitate citizens' participation in local issues management, according to the organization, tasks, and functions each municipality decides' (Section 24(1) Law no 7/1985). The link between this report section 4 on local government structure and the other report sections of this country report shall be scrutinized by the researchers. Mainly, the impact on service delivery (report section 2), financial arrangements (report section 3) and intergovernmental relations (report section 5).

Assessment of the Practice

Exploring sub-municipal units of government in Spain requires one to travel to two contrasting worlds: to the very small municipalities in rural areas, that delegate some functions to even smaller units (parishes, communities); and to the large and very large cities, that by means of internal subdivisions (districts) try to find a way to improve effectiveness and make citizens' participation doable.

The trip to the small municipalities is a trip to past and tradition and, particularly, a trip to the north of the country, where most of the EATIM are concentrated. These units were already present in the nineteenth century and even now they are still known by their old designations: *concejos, pedanías, parroquias*, *aldeas*. These smaller entities have their own governing body, whose members are designated by the municipal council. They do not participate in the election of the provincial government, nor in the municipal council on which they depend. There is a strong sense of identity or belonging of the citizens with respect to the sub-municipal units. In general terms, rural sub-municipal units of government are an effective alternative to the creation of new rural municipalities with low functional capacity. In this sense, although they are often inefficient units, they do not have a viable institutional alternative.

The trip to the big cities is a trip to the future, to the attempt of meeting the challenges urban areas pose from a democratic perspective. Through the introduction of districts, local governments in urban agglomerations try to put in place a vehicle of citizens' participation while adapting services to the specific needs of each neighborhood and improving on efficiency, effectiveness, transparency, and proximity. In legal terms and notwithstanding the diversity of urban districts, the contemporary creation of districts qualifies as administrative deconcentration to improve citizens´ participation and efficiency in the provision of municipal services. The central bodies of the municipal councils coordinate the districts in order to achieve unity of action along the whole city. Sub-municipal districts have been largely promoted in large cities since 2003 and nowadays are well assessed by citizens.

Notwithstanding the general usefulness of both rural and urban sub-municipal units of local government, some reforms should be tackled, mainly referred to their democratic legitimacy and their managerial capacity.

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5. The Structure of Local Government in Switzerland

5.1 The System of Local Government in Switzerland

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Types of Local Governments

The Swiss model of federalism, based on the principle of subsidiarity, is structured in three layers of political representation, i.e. the Confederation (national government), the cantons and the municipalities. The Constitution of the Swiss Confederation, however, focuses on two layers only, the national and cantonal. In its Article 1 it not only lists the official 26 cantons but also gives them constitutive effect. In Article 3 it sets the rules for the power-sharing arrangements between the Confederation and the cantons: 'The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.' However, one must bear in mind that the term 'competent' would be more appropriate than 'sovereign' to describe the power vested in the cantons. In fact, the cantons have competence on all the tasks and duties that do not fall on the Confederation. But they nevertheless remain subdued to the Confederation, as the majority of the other cantons can impose their will on a canton via a revision of the Swiss Constitution. Indeed, according to the Article 48(a) of the Swiss Constitution, at the request of interested cantons, the Confederation may declare intercantonal agreements to be generally binding or require cantons to participate in intercantonal agreements in the following fields:

- the execution of criminal penalties and measures;
- school education in the matters specified in Article 62(4);
- cantonal institutions of higher education;
- cultural institutions of supra-regional importance; e. waste management;
- waste water treatment;
- urban transport;
- advanced medical science and specialist clinics;
- institutions for the rehabilitation and care of invalids.

The Federal Constitution does not attribute any competence to regulate local government to the national government. The municipalities are therefore created by and subjected to cantonal regulation. Thus, each canton defines the status and the competences of its municipalities in its cantonal constitution and legislation. We therefore differentiate 26 systems of municipalities corresponding to each of the 26 Swiss cantons. Still, one can identify five main types of municipalities:

- the classical political municipalities which are called *commune* in French, *comune* in Italian and *Gemeinde*, *Ortsgemeinde* or *Einwohnergemeinde* in German depending on the cantons. They are the basic general-purpose type of municipality;

- the so-called *bourgeoise* municipalities that have survived from the Middle Age in some cantons. When in 1798 the Helvetic Republic is proclaimed; the cantons are put on an equal footing and the inhabitants of the Swiss territory receive the Swiss citizenship. The original bourgeois do not agree to share the communal properties (lands, forests, etc.) with the new *bourgeoise*. Thus, the *bourgeoise* municipalities keep the control over the communal properties and the political municipalities guarantee the political rights to the new *bourgeoise*. As of today, in the cantons where such *bourgeoise* municipalities remain, they are mainly land owners and service providers (for example retirement houses, subsidized apartments, young offenders' facilities, etc.);
- the ecclesiastical community is the territorial division that is attached to a church and that is often called parish (*paroisse* in French). They are a single-purpose body;
- the so-called scholar commune *commune scolaire* is also a single-purpose body that deals with the school system on a certain territory within the limits assigned by the canton and that does not automatically match with the political municipality. For example, the school program remains a cantonal competence but the decision to build the school or to organize the carriage of school pupils is, to a large extent, delegated to the scholar municipalities;[83]
- other types of municipalities that exist in some cantons.

Finally, one must add that the majority of the Swiss cantons have put in place an intermediary political level between the cantons and the municipalities called the district *(district* in French, *Bezirk, Verwaltungsregion, Verwaltungskreis, Wahlkreis, Amtei* or *Amt* in German, *distretto* in Italian). Out of the 26 cantons, only six do not have such a subdivision. These districts are very different from each other but they usually correspond to a group of municipalities. Again, the cantons hold the primary competence regarding their internal organization and scope.

Legal Status of Local Governments

The constitution framework that prevailed until 1999 did not mention municipalities, unless incidentally. Only the adoption of a new constitution that year ensured that local autonomy was granted constitutional protection.[84] Article 50 reads as follows: (i) 'The autonomy of the communes is guaranteed in accordance with cantonal law.'; (ii) 'The Confederation shall take account in its activities of the possible consequences for the communes.'; (iii) 'In doing so, it shall take account of the special position of the cities and urban areas as well as the mountain regions.'

The effect of the new provision is limited. The extent of local autonomy remains in the hands of the cantons ('in accordance with cantonal law') and each of them thus continues to autonomously define its internal governance system. Only as far as cantonal law provides for municipal autonomy, it is guaranteed by the Federal Constitution. Consequently, municipal autonomy is justiciable and the Federal Supreme Court hears disputes concerning violations of it (Article 189(1)(e)). When it does so, it refers to the cantonal constitution and the cantonal

[83] Nicolas Schmitt, *Local Government in Switzerland: Organisation and Competences* (forthcoming).
[84] Schmitt, *Local Government in Switzerland*, above.

legislative framework to determine the scope of local autonomy and decide whether the canton has impinged on it or not.

If the Article 50(2) of the Constitution constrains the Confederation, while fulfilling its tasks (e.g. military, national highways), to be considerate of municipalities, it does not confer additional jurisdiction on the Confederation. Essentially, this constitutional provision aims at fostering vertical cooperation between the three institutional levels of the Swiss federal structure but without bypassing the intermediary level, the cantons. The article refers specifically to the urban-rural divide and explicitly compels the national government to take account of the special priorities and needs of cities and urban areas on the one hand and mountain regions on the other hand. Among the concrete initiatives, the Tripartite Conference can be mentioned. It will be discussed at length further in the Country Report.

(A)Symmetry of the Local Government System

As mentioned above, there are 26 systems of local government corresponding to the 26 Swiss cantons. Thus, there are considerable differences regarding the rules that apply to urban local governments (ULGs) and rural local governments (RLGs), etc. For example, the Canton of Zürich has granted a special status to the cities of Zürich and Winterthur. Most cantons, however, are based on a symmetric system and allocate the same tasks and responsibilities to all municipalities, irrespective of their size.

Despite of the wide variety of cantonal local government arrangements, some common features can be identified. Schmitt demonstrates that all municipalities are run by an executive council of five to ten members who are elected by the citizens and who are compelled to take decisions on a collegial basis.[85] While they traditionally are not paid for their work, the elected members of municipalities' councils in the ULGs tend to be professionals.

As regards legislative power, small municipalities (not to say RLGs) have citizens' assemblies that meet regularly to pass new laws and/or to elect the executive council members and other authorities. On the contrary, some cantons have compelled larger municipalities (ULGs) to create a parliament, i.e. an elected legislative body *representing* the citizens. As Schmitt notes, the Canton of Fribourg has adopted the Law on the Municipalities (*Loi sur les communes* in French) that requires eight specific municipalities to set up such a parliament while municipalities with over 600 inhabitants are only invited to do so.[86] Smaller municipalities can keep their citizens' assemblies.

Finally, Schmitt puts a light on an interesting paradox: while municipalities still enjoy a large set of competencies and have the right to collect taxes (and set the tax rates), judicial power is not granted to the municipalities. In fact, the lowest judicial level is, in some cantons, the district's judge. Once again, one must look carefully at all the 26 cantonal organizations in order

[85] Schmitt, *Local Government in Switzerland*, above.
[86] ibid.

to grasp the subtleties of the local government systems that make Swiss federalism so complex.[87]

Political and Social Context in Switzerland

If the prominent role and the many responsibilities conferred to the municipalities have long been praised and recognized as a key factor for the success of the Swiss political model, one must note that they tend to lose their luster. In fact, the degree of autonomy enjoyed by the municipalities decreases due to the increasing requirements (land use planning, environmental protection, social aid, waste management, etc.) from the Confederation, the cantons and, to some extent, the people themselves. The democratic pressure (complexity of the legal frameworks, over technical policy fields, procedural overload, etc.) on the municipalities is difficult to manage, especially for non-professional elected representatives and somehow encourages the centralization of the decision-making power and the pooling of local tasks and duties at a superior level.

In the last 30 years, Switzerland has thus witnessed a strong acceleration of the number of amalgamations of its municipalities. From more than 3,200 municipalities in 1999, the number has dropped to approximately 2,200 municipalities in 2018. While the rural municipalities tend to merge, it can be observed that urban municipalities tend instead to agglomerate[88] via different types of inter-municipal agreements. In any case, cantons and municipalities follow their own path with little interference from the national government. Today, approximately two thirds of the Swiss population is concentrated in the cities' centers [89]or agglomerations.

According to 2017 data, the 2,212 Swiss municipalities are relatively small, with 1,060 inhabitants on average, but very different in size. The smallest is Corippo with 12 permanent inhabitants and, like many others, spreads on less than 1 km². The largest in terms of territory is Scuol with 438.62 km² and the most populated is Zurich with 400,000 inhabitants. Many municipalities being unable to cope with the organizational requirements of today's life (school facilities, firefighter's service, water sanitation, etc.) and finding it difficult to recruit personnel, a strong process of merging local authorities has begun some sixty years ago and has accelerated in the last thirty years.

The four main coalition parties, namely the FDP. The Liberals, the Christian Democratic People's Party, the Social Democratic Party and the Swiss People's Party are all represented at the Federal level and in almost all the 26 cantons. Interestingly, in the urban cities, the traditional political parties are well organized and represented while in the smaller rural

[87] ibid.

[88] According to the Federal Office of Statistics, the agglomeration can be defined as follows: An agglomeration is a group of municipalities with a total of more than 20,000 inhabitants (incl. overnight stays in converted hotels). It consists of a dense center and usually a crown. The delimitation of the crown is based on the intensity of the commuter flows.

[89] According to the Federal Office of Statistics, the city-center can be defined as follows: The municipality which, among the central municipalities of an agglomeration, has the highest number of HENs (= sum of inhabitants, work places and overnight stays in converted hotels) is considered as a city-center. In some cases, it is possible for an agglomeration to have several central cities.

municipalities, political parties are less active. The peculiarity of small municipalities where every citizen knows each other means that people vote first for a specific candidate rather than for the parties.

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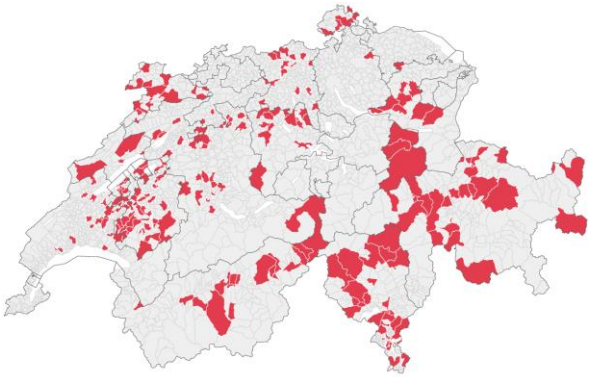
5.2 The Structure of Local Government in Switzerland: An Introduction

Eva Maria Belser, **Flavien Felder** and **Bernhard Altermatt**, *IFF Institute of Federalism, University of Fribourg*

The number of local governments in Switzerland has decreased massively during the last two decades. When the federation in 1848 came into being, it was composed of 25 cantons and 3,203 communes. Three hundred of them disappeared through amalgamation until 2000 (one hundred of them because of a profound structural reform in the Canton of Thurgau). Then, the local government landscape began to change massively. In 2012, the number of municipalities decreased to 2,495, and in 2018, the number went down to 2,222. Currently, a few hundred municipalities are in the process of amalgamation or consider doing so. This process amounts to a total reduction of about one third of communes/municipalities and characterizes an overarching tendency in Switzerland's structure of local government.

The process of mergers is driven either by the communes themselves (bottom-up) or by the cantons (top-down). The Confederation has no competence to interfere with local government structures, or to plan, implement or prevent mergers from taking place.



Fusionierte Gemeinden in der Schweiz 2001–2014
Quelle: Studie Studerus/Schaltegger, 2016

While some cantons have massively reduced the number of communes, others have not. The great variance between cantons are not due to demographic differences but to different legal regimes and also political cultures. One group of cantons allows for mandatory mergers of communes (but rarely uses the mechanism), a second group financially incentivizes mergers, and a third group leaves the initiative entirely to the communes. The graph to the right illustrates that the process has been unequally distributed across the whole country. Mergers most frequently take place in cantons offering support and financial benefits to interested communes. Major territorial restructuring has taken place in highly fragmented and partly rural cantons, such as Glarus, Ticino, Fribourg/Freiburg, Graubünden/Grischun/Grigioni, and Vaud, smaller ones in most cantons.

Mergers equally occur in rural and urban settings but follow completely different motives. In rural environments, they typically respond to financial constraints, difficulties to find adequate personnel and to deliver increasingly complex local services. In urban areas, mergers serve to bring cities, which have grown into spreading agglomerations with surrounding communes, into one political entity and to improve planning and urban development on a scale corresponding to the social and structural reality. However, numerous planned mergers have failed, mostly due to popular refusal driven by strong local identities or financial considerations.

Because of rapid urbanization and the very different and flexible approaches of cantons to this phenomenon, differences of communes within cantons and between cantons are increasing in many ways. The largest commune of Switzerland, the City of Zurich, has more than 400,000 inhabitants, the smallest one, Corippo in the Canton of Ticino (currently merging with neighboring communes), only 14. In the mountainous Canton of Graubünden/Grischun/Grigioni, more than half of the now 128 communes are populated by less than 1,000 people; in the urban Canton of Basel-City, there are only three communes, one of them a very small municipality. The great differences amongst the communes, with respect to population, area, as well as human and financial resources, are a challenge to the symmetric structure of federal Switzerland.

Inter-municipal cooperation plays a crucial role. It is usually based on inter-municipal treaties, which are bilateral or multilateral, and often lead to the establishment of inter-municipal institutions and associations. While the democratic deficit of these structures is often deplored, communes confirm that inter-municipal cooperation is becoming increasingly important. It is practiced in order to profit from scale effects and to prevent further centralization of competences at the cantonal level. Most Swiss communes cooperate in the field of population protection, fire services, health services, education, water and sewage as well as waste disposal; more than half of all communes seek partnerships in the field of social aid and assistance to the elderly as well.

To the surprise of most observers, recent research has questioned the efficiency of communal mergers in certain respects. Researchers have been able to show that the process of merging municipalities itself is costly and, in most cases, does not immediately produce the expected cost-saving effects. This is presumably because many merging communes have already strongly cooperated before their union and realized the cost-saving potential before merging. The research results question whether cantons should continue to strongly incentivize amalgamations or not.[90]

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5.3 How the Agglomeration of Fribourg-Freiburg Created (and Buried) a Fourth Tier of Government

Eva Maria Belser and **Bernhard Altermatt**, *IFF Institute of Federalism, University of Fribourg*

Relevance of the Practice

The process of creating the formally constituted Agglomeration of Fribourg was legally made possible with the adoption by the Canton of Fribourg, in 1995, of the innovative Law on Agglomerations (LAgg) that allowed for the creation of a fourth tier of government. Following years of increasing collaboration in areas of common interest, a group of 10 municipalities, recognizing the need for more cooperation, agreed to formalize their collaboration and to delegate their competences in the following fields: regional planning including mobility; economic promotion; promotion of tourism and of cultural activities. Aiming at a sustainable development and a mutual understanding, the institution of the politically constituted Agglomeration also promotes Fribourg's regional bilingualism insofar as it includes the bilingual capital-city, one German-speaking commune and the majority of the city's French-speaking neighboring municipalities.

Nine of the ten united communes in the Agglomeration of Fribourg also participate (with additional municipalities) in a merging process which has taken up speed and is heading for a consultative vote among the population in 2021. It would be highly interesting to develop on this example and compare it with other similar examples of communes cooperating in inter-communal structures or formal agglomerations and engaged in parallel merging processes.

The study of this practice is relevant for the LoGov researchers as it will allow to identify and discuss:

- factors of success or failure of communal mergers and agglomerations;
- the set of rules of inclusion/exclusion of members, in particular rural municipalities;
- the extent to which the processes reinforce or decrease the centralization of power;
- if agglomerations compete or even threaten the legitimacy of communes and cantons;
- if agglomeration processes concern only the urban areas or if there are examples in rural areas.

Description of the Practice

Originally, the citizens of five municipalities (Belfaux, Corminboeuf, Marly, Villars-sur-Glâne and Fribourg) required, in 1999, the creation of the agglomeration of Fribourg encompassing the City of Fribourg and the other four neighboring municipalities. In reaction to this formal request, the Canton of Fribourg initiated the idea of opening the circle to five other municipalities that also were in direct connection with the capital City of Fribourg. A consensus was reached and the decision was taken: the process of creating the agglomeration of Fribourg

would take onboard not 5 but 10 municipalities (Grolley, Granges-Paccot, Düdingen, Tafers and Givisiez joined the initial group).

For 6 years, between 2002 and 2008, the constitutive assembly drafted the articles of association of this yet to create new political institution. In the meantime, the project raised the interest of other municipalities while others decided to withdraw from the process. The constitutive assembly integrated Avry and Matran in 2008 and accepted the withdrawing of Grolley in 2007 and Tafers in 2008. As of today (2021), the geographic composition and the political dimension of the agglomeration of Fribourg has remained unchanged.

Figure 3: The agglomeration of Fribourg.[91]

Once the constitutive assembly had finalized the statutes of the new Agglomeration, the citizens of each municipality were invited, on 1 June 2018, to vote on their adoption. 72.5 per cent of the voters approved them while one municipality out of ten rejected them.[92]

Assessment of the Practice

Since its entry into force, the Agglomeration of Fribourg has sought to optimize the resources available and has invested in projects and infrastructures that serve the whole region instead of single municipalities. In doing so, the participating communes have adopted three so-called 'agglomeration projects' and have received financial support from the Confederation through the national Agglomeration Policy.

The objectives seem to have been partially met. As a forum aiming at bringing municipalities closer and fostering cooperation in specific areas of public policy (such as culture), the

[91] Graph taken from the website of the agglomeration of Frigbourg, <agglo-fr.ch/de>.

[92] Agglomération de Fribourg, 'Naissance de l'Agglomération de Fribourg' (*agglo*) <https://www.agglo-fr.ch/>.

Agglomeration of Fribourg can certainly be seen as a success. Nevertheless, more complex and top-ranking projects such as favoring so-called «slow mobility» and extending public transportation have moved on more slowly. In addition, the institutional structure and the limited size of the agglomeration are subject to political discussions. Specifically, the Canton of Fribourg has adapted the governing legislation (Law on Agglomerations) in order to include a greater number of structurally linked communes. This adaptation will necessitate a major reform of the Agglomeration's institutional design, including with respect to its democratic governance guaranteed, thus far, by an autonomous layer of executive and legislative bodies.

Furthermore, the Canton of Fribourg has long encouraged the full merger of the municipalities involved in the agglomeration with the City of Fribourg in order to create a larger urban center[93]. With the aim of fostering the merging process and enlarging the agglomeration with the absorption of additional, more rural, municipalities, the cantonal parliament has decided in 2020 to modify the Law on Agglomeration (LAgg) which since 1 January, 2021 is no longer a fourth tier of government but a traditional inter-municipal association. Thus, both the incentives of the federal authorities (via the national Agglomeration Policy) and the incentives of the cantonal authorities (via the promotion of communal mergers) have put the Agglomeration of Fribourg under institutional, structural and procedural pressure.

It remains to be seen whether this dynamic will continue if the Confederation does no longer support the Agglomeration of Fribourg unless it complies with the broader territorial definition included in its national Agglomeration Policy and when the mergers of all (or some) of the participating municipalities will change the basic institutional make-up of the agglomeration.

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Federal Statistical Office, 'Swiss Official Commune Register' <https://www.bfs.admin.ch/bfs/fr/home/bases-statistiques/agvch.html>

[93] The consultation vote that took place in September 2021 in 9 municipalities was very clear with the population of 6 out of 9 municipalities that soundly rejected the merger project.

5.4 Merging of Local Governments to Form the New Municipality of Fribourg

Lawrence Zünd, Flavien Felder and **Bernhard Altermatt**, *IFF Institute of Federalism, University of Fribourg*

Relevance of the Practice

Regardless of their size, municipalities face challenges that go beyond their municipal borders, for instance in the fields of mobility, economic development or water management. This is why municipalities in Switzerland have woven a complex network of inter-municipal collaborations (associations of municipalities, inter-municipal agreements or the Agglomeration of Fribourg described above). One reason that led to the creation of the politically constituted Agglomeration of Fribourg was that it would – at least temporarily – serve as a body of cooperation until the merger of the participating communes in a new municipality 'Grand Fribourg' became reality.

The Agglomeration of Fribourg has enabled progress in the areas of mobility, land development and management, culture, tourism and the economy. Its capacity for action was however considered by many as limited by the institutional design which effectively inserted a fully constituted fourth layer into the classic decentralized Swiss state structure of three tiers (federal state, cantons, communes), while other communal competences remained within the autonomous governance of each single commune. Proponents of a full merger argue that uniting the municipalities would remove the disadvantages of this double-limitation, strengthen governance, accelerate the capacity of public authorities to act, avoid the often long and tedious decision-making processes, increase transparency and ensure a faster implementation of political decisions.

Due to the fact that the municipalities are the smallest administrative and political units in Switzerland, the municipality final decision on merging or not with neighboring communes is generally in the hands of the municipalities respectively its population or voting citizens. Local populations remain in most cases very attached to their municipal identity. Hence, every merger needs to be well negotiated and justified in order for it not to be rejected by the local population in the final vote (happening most often either by way of a citizens' assembly or a vote at the poll).

The study of this practice focuses on a merger between urban and peri-urban municipalities. It is complementary to the merger between rural municipalities which are also incentivized in Switzerland, highlighting the differences in needs and objectives depending on the rural/urban condition. This study is relevant for the LoGov researchers as it will allow them to identify and discuss:

- some factors of success / failure of municipal mergers;
- the negotiation processes between reluctant municipalities with different needs and objectives (rural/urban);

- the extent to which the phenomenon increases or decreases the centralization of power;
- the non-centralization of services after a merger in order to avoid creating center-periphery/rural-urban disparities.

Description of the Practice

The merger project in the 'Grand Fribourg' area aims to unite the municipalities of Avry, Belfaux, Corminboeuf, Fribourg, Givisiez, Granges-Paccot, Marly, Matran and Villars-sur-Glâne. With more than 75,000 inhabitants, the merged City of Fribourg would become the ninth most populated municipality in Switzerland, behind Zurich, Geneva, Basel, Lausanne, Bern, Winterthur, Lucerne and St-Gallen. This would allow the Municipality of Fribourg to be one of the ten Swiss municipalities regularly consulted by the Federal Council and the Federal Administration.[94] In addition, Fribourg would be the biggest bilingual municipality in Switzerland in terms of population.

According to the proponents of the merger, the concept of merger contains strong measures in favor of mobility, employment and protection of minorities. By improving infrastructure and public transportation, an important aim of the merger is to increase the connectivity between rural/urban areas and improve their integration into a well-functioning peri-urban space. For instance, one affirmed objective is to ensure that any user is connected to any point of the urban network in less than fifteen minutes by 2026, with a bus every 7.5 minutes anywhere on the territory of the merged municipality. Coordinated land-use and town-planning should enable more sensible densification, increase biodiversity and bring urban and rural areas closer together.[95]

Originally, nine municipalities expressed their willingness to participate in the process. In January 2017, the municipal councils of Corminboeuf, Givisiez, Friborg and Marly asked the Council of State (executive) of the canton to initiate the merger process. The cantonal government consulted with the other municipalities in the perimeter of the Agglomeration of Fribourg (s. above) and included those that expressed their interest in joining the project (Avry, Belfaux, Granges-Paccot, Matran, Villars-sur-Glâne). The municipalities of Pierrafortscha, Grolley, Neyruz and La Sonnaz, which also had expressed their interest but which were not members of the Agglomeration of Fribourg, obtained an observer status in the Constitutive Assembly of Grand Fribourg.

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[94] Art 2(1). The consultation procedure has the aim of allowing the cantons, political parties and interested groups to participate in the shaping of opinion and the decision-making process of the Confederation.
Art 2(2). It is intended to provide information on material accuracy, feasibility of implementation and public acceptance of a federal project. (Federal Act on the Consultation Procedure, unofficial translation available on <https://www.admin.ch/opc/en/classified-compilation/20032737/index.html>).

[95] For further details on the proposed investment measures, the allocation of the 320 million francs, as well as examples of financial assistances in other cantons, please see the report of the Council of State of the Canton of Fribourg: <https://www.fr.ch/sites/default/files/2020-01/fr_de_RGC_2017-DIAF-9.pdf>.

At this stage, the precise modalities of the merger were not decided, but only the general goal of a future merger.[96] Once the principle had been accepted by all municipalities (by way of a decision by the communal executive or legislative body), a directly elected constitutive assembly drew up a merger agreement including basic decisions on services, infrastructures, political and administrative organization, taxes etc. The merger project, validated in January 2020, described in detail the services, organization and the financial framework proposed for the new municipality resulting of the merger. Due to the complexity of the merger in 'Grand Fribourg', a consultative vote was planned for September 2021. It was believed to serve as the basis for deciding which communes would withdraw of the process and which would continue to work on the merger project. The proponents of the merger process consider that is not be considered as imposed from the top for several reasons: First, the initial kick-off to the process came from the communes themselves; second, the smaller municipalities were well represented in the constitutive assembly (26 of the 36 delegates came from periphery/rural municipalities, the rest from the center-town); and third, every commune can withdraw after the consultative vote.

Surprisingly, the results of the consultative vote that took place on 26 September 2021 were very clear with only three out of nine municipalities voting in favor of the merger project. It is not clear what will happen to the 'Grand Fribourg' merger project. Only time will tell. Among the various options, a merger of three communes is still possible, although unlikely. A strengthening of the existing agglomeration (which has meanwhile become a simple association of municipalities) is more likely but will have to expand geographically and include additional rural municipalities. In any case, the road to the merger of the peri-urban municipalities with the urban municipalities is still long and full of pitfalls.

[96] The Federal Constitution does not address the process of merging between municipalities. The process of fusion is defined by the constitution of the cantons. The cantonal constitution of every canton contains its own version of this law, aiming, on the one hand, at encouraging the fusion of municipalities, and on the other hand, at regulating step by step the process of fusion. Even if all cantons have their own specific procedure that might slightly vary, all follow a similar trend which is: a) the proposition of a merger; b) the approval of the merger principle; c) the elaboration of the merger agreement; d) the approval of the merger agreement (vote and ratification). For further details, see the laws on the fusion of municipalities in the constitutions of different cantons.
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Canton of Vaud:
<https://prestations.vd.ch/pub/blv-publication/actes/consolide/175.61?key=1595944132530&id=65ba423d-0032-4454-9440-8f9961118399>;
<https://www.vd.ch/fileadmin/user_upload/themes/territoire/communes/fusions/fusion_guide/Guide_entier_fusions_version_juillet_2019.pdf>
Canton of Neuchâtel:
<https://www.ne.ch/autorites/DFS/SCOM/Pages/Fusion_reforme_structures_des_communes.aspx>
Canton of Bern:
<https://www.jgk.be.ch/jgk/fr/index/gemeinden/gemeinden/gemeindereformen/fusion/ratgeber_fuer_gemeindefusionen.html>.

Assessment of the Practice

The planned merger of Fribourg with its neighboring communes (which also cooperate with the center-city in the Agglomeration of Fribourg) has met with certain resistances.[97] After the election of a constitutive merging-assembly in 2016, the nine participating municipalities have drafted a preliminary convention which was rejected by the majority of the municipalities in September 2021. As it appears, the processes of direct-democratic decision-making are playing a specific role in this example of Swiss reform of local governance.

The case of the merger in 'Grand Fribourg' shows:

- the difficulty of balancing the interests of very different communes (urban and peri-urban) in a common process;
- the challenge of instituting a constructive dialogue on procedural and material aspects of the merger (how do we decide? and what do we decide? e.g. what tax-rate do we envision?);
- the particular situation of a clearly dominating center-town in relation to its surrounding communes which also vary in size, financial capacity and structural composition;
- the limited influence of regional and cantonal authorities on the process of negotiating a merger on the communal level (financial incentives can only help up to a certain point where questions of local identity and material interests take precedence again);
- the particular importance of democratic decision-making which can bring legitimacy to a merging process, but can also become a factor slowing it down or stopping it altogether.

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Law on the Encouragement of Fusions of Communes (LEFC) of 9 December 2010, RSF 141.1.1 <https://bdlf.fr.ch/app/fr/texts_of_law/141.1.1>

[97] 'Accueil' (*fusion-non*, undated) <http://www.fusion-non.ch> ; 'L'heure des hausses d'impôts a sonné' (La Liberté, 15 February 2013) <https://www.laliberte.ch/news/regions/l-heure-des-hausses-d-impots-a-sonne-28145>; 'Fusions de communes' (fusionite.ch, undated) <https://www.fusionite.ch>.

Federal Act on the Consultation Procedure of 18 March 2015, 172.061 <https://www.admin.ch/opc/en/classified-compilation/20032737/index.html>

Law on the Fusion of Communes of 23 September 2016, Canton of Geneva B612 <https://www.ge.ch/legislation/rsg/f/s/rsg_B6_12.html>

Council of State of the Canton of Fribourg, 'Rapport 2017-DIAF-9 du Conseil d'Etat au Grand Conseil sur la demande de contribution financière complémentaire formulée par l'assemblée constitutive en vue de la fusion du Grand Fribourg' (2019) <https://www.fr.ch/sites/default/files/2020-01/fr_de_RGC_2017-DIAF-9.pdf>

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5.5 Merging of Local Governments: The Rural Municipalities of the Val-de-Travers, Neuchâtel

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Relevance of the Practice

In Switzerland, the municipality is the closest political and administrative unit of the federal system. While it is the municipality that ensures the proper functioning of the direct democracy, the municipalities are not protected by the federal law. It is in fact each and every canton that develops its own specific legal framework regarding its municipalities.

The Canton of Neuchâtel had not experienced any mergers of municipalities during the 20th century since the Municipality of La Coudre joined the City of Neuchâtel on January 1, 1930. However, from 2000 to 2019 the canton has seen the number of its municipalities fall by 50 per cent since, from 62 to 31. Two important mergers occurred in the mountainous valleys of the canton, namely the creation on 1 January, 2009, of the Val-de-Travers and Val-de-Ruz. Both had an undeniable ripple effect by sparking other projects, as they brought together a very large number of municipalities merged in a single operation.[98]

The study of this practice focuses on a merger between mainly rural and mountainous municipalities and, by comparing it to the merger of urban/peri-urban municipalities in an additional practice, it will highlight the differences in needs and objectives aimed at depending on their rural/mountainous/urban condition. The study of this practice is relevant for the LoGov researchers as it will allow them to identify and discuss:

- some factors of success of the merger after an unsuccessful attempt;
- the negotiation processes between municipalities with different needs and objectives (rural/urban);
- the extent to which the phenomenon increases or decreases the centralization of power;
- the non-centralization of services after a merger in order to avoid creating a center-periphery/rural-urban disparity.

Description of the Practice

The Canton of Neuchâtel, in its new Constitution of September 24, 2000, guarantees the existence of municipalities by providing that no merger of municipalities can take place without

[98] 'La commune pionnière de Val-de-Travers (NE) fête ses dix ans' (*swissinfo.ch*, 2 August 2019) <https://www.swissinfo.ch/fre/la-commune-pionnière-de-val-de-travers--ne--fête-ses-dix-ans/45136454>.

the consent of all the concerned municipalities and encourages the merger of municipalities.[99] On December 3, 2001, the Grand Council adopted the law on the municipal aid fund (LFAC) in order to encourage inter-municipal collaboration and mergers of municipalities by means of incentive measures. On March 29, 2006, the Grand Council adopted a decree authorizing the Council of State to use the remainder of the fund intended for municipal structural reforms, amounting to 20 million francs, to grant aid for mergers or other forms of collaboration between the municipalities.[100]

This situation, a canton supporting municipalities to merge combined to an important inflow of capital now available to support eventual mergers, has led many municipalities to consider the reform of their structures and merge. After a first unsuccessful trial that aimed at merging eleven municipalities, nine municipalities of the Val-de-Travers (namely the municipalities of Môtiers, Couvet, Travers, Noiraigue, Boveresse, Fleurier, Buttes, Saint-Sulpice and Les Bayards) adopted on September 13, 2007, their merger agreement. The General Councils of every municipality then endorsed this agreement on December 10, 2007, and followed by the population of the nine municipalities, which accepted the merger by referendum on February 24, 2008.

Assessment of the Practice

The Municipality of Val-de-Travers has acquired an important dimension in the Canton of Neuchâtel that the former municipalities did not have. According to the Council of State, the structural gains from the merger have made it possible to reduce the overall level of local taxation and to develop new services (reception structures, youth center, learning center, networking of parents and commuters active in the municipality). Supporter of the merger, the Council of State considers that it improved equity in an increasingly interconnected territory and enabled the creation of a common living space through the adoption of harmonized rules and taxes, the abolition of inter-municipal structures, the control gained back by the new municipality over tasks formerly entrusted to external or inter-municipal structures and finally the professionalization of structures making it possible to better cope with the growing complexity of municipal affairs. For the supporters of the merger, merging municipalities, when it is done following a real social project and not only mechanically, makes it possible to support the canton's prosperity. A last observation is that this successful merger has favored merger projects in many other areas of the canton, around the City of Neuchâtel, in the Entre-

[99] Art 91(1) The existence of the municipalities and their territory are guaranteed.
(2) The state encourages mergers of municipalities.
(3) However, no merger or division of municipalities, nor any cession of territory from one municipality to another, can take place without the consent of the affected municipalities.
Translated by author, Constitution of Neuchâtel available in French, <http://rsn.ne.ch/DATA/program/books/rsne/htm/101.htm>.

[100] Council of State of the Canton of Neuchâtel, 'Rapport du Conseil d'Etat au Grand Conseil à l'appui d'un projet de décret soumettant au vote du peuple l'initiative législative populaire cantonale "L'or de la BNS pour l'avenir et l'innovation"' (Report to the Grand Council, 4 July 2007) <https://www.ne.ch/autorites/GC/objets/Documents/Rapports/2007/07024_CE.pdf>.

deux -Lacs, in La Béroche, in Rochefort / BrotDessous, in the Mountains and on the West Coast.[101]

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Law on the Municipal Aid Fund (LFAC) of 3 December 2001, RSN 17241 <http://rsn.ne.ch/DATA/program/books/rsne/htm/17241.htm>

Application regulations for the Law on the Assistance Fund for Municipalities (RALFAC NE), RSN 172410 <http://rsn.ne.ch/DATA/program/books/rsne/htm/172410.htm>

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6. The Structure of Local Government in Austria

6.1 The System of Local Government in Austria

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Types of Local Governments

The Austrian Constitution defines Austria as a federal state formed by nine *Länder*. These are further divided into districts (*Bezirke*), administrative units executing tasks for both the *Länder* and the national government, where no statutory city exists. There are, however, 15 statutory cities (*Statutarstädte*) with a special statute, combining the authority and responsibilities of a municipality and a district. Municipalities (*Gemeinden*) are granted the right to self-government as independent administrative bodies in their sphere of competence by Article 116 of the Austrian Constitution. In sum, the three relevant levels of government are the central government, *Länder* and municipal level with some exceptions such as statutory cities which are assigned responsibilities from district level as well as the Capital City of Vienna, which is a municipality and a *Land* at the same time.

Legal Status of Local Governments

The Austrian Constitution of 1920 entrenches and protects municipalities not only as local administrative units but also as institutions of self-government (Article 116(1)). However, Articles 115–20 of the Constitution also extensively predetermine the organization of municipalities, their powers and intergovernmental relations. This tight national constitutional regime reduces the complementary power of the *Länder* under Article 115(2) of the Constitution to autonomously regulate local government through their own laws (*Gemeindeordnungen*) which results in a tendency towards uniformity.

As for their responsibilities, municipalities may only act lawfully on the basis of competences that are expressly conferred upon them and circumscribed by either national or *Land* legislation. However, this legislation *must* make them responsible for 'all matters that exclusively or preponderantly concern the local community' and are 'suited to performance by the community within its local boundaries' (Article 118(2) of the Austrian Constitution). Whether national and *Land* legislators observe this rule is checked by the Constitutional Court.

The own autonomous competences of municipalities on this basis, which exist in addition to the competences delegated from the national or *Land* government, include, in particular, the following areas: traffic and transport; gas, water and electricity supply; waste collection; sewage disposal; kindergarten, parts of education; elderly care; cemeteries; and cultural and sport facilities are all within the competences of municipal administration. For providing these public services, municipalities manage their own budget independently and can own assets of

all kind and operate economic enterprises. A major share of municipal budgets comes from intragovernmental transfers, which is a complex system of re-distribution of revenues across all levels of government.

(A)Symmetry of the Local Government System

The distribution of powers is uniform for all municipalities and therefore fails to take into account differences between bigger urban and smaller rural local governments. The Austrian Constitution adheres to the 'principle of the abstract uniform municipality', as enshrined already in 1920. This means that, with the exceptions of the above-mentioned statutory cities and the capital Vienna,[102] all municipalities enjoy, also regarding their competences, equal legal status irrespective of variations in territorial size, population or economic and administrative capacities.

Performing the same tasks as big municipalities can be challenging for Austria's smaller municipalities. The latter are the majority, as 55 per cent of 2,096 municipalities (in 2018) have less than 2,000 inhabitants and 88 per cent have less than 5,000 residents. Thus, Article 116(a) of the Austrian Constitution lays down the possibility for inter-municipal cooperation in the form of local authority associations (*Gemeindeverband*) to manage certain areas of responsibility such as water supply or waste management (single-purpose associations). Since 2011, the founding of multi-purpose associations (*Mehrzweckverband*) between municipalities is possible in order to go beyond coordination and centralize public service provision such as regional planning, economic development or welfare services. Even though it is legally possible, such multi-purpose associations are not very common.

Another form of cooperation is the possibility of municipalities merging into an institutionalized regional authority, the 'territorial municipality' (*Gebietsgemeinde*), as foreseen by Article 120 of the Constitution. The territorial municipality offers the possibility of bundling and/or controlling as many tasks as possible on a regional level, while at the same time maintaining decentralized provision of services by the individual local communities. The preservation of the local identity is guaranteed by own local mayors and municipal councils. However, this form of territorial merger (as opposed to amalgamations) is considered 'dead law', as it has never been put into practice.[103]

Political and Social Context in Austria

The two major parties, the conservative Austrian People's Party and the Social Democratic Party of Austria have historically shared the parliamentary majority, with the right-wing

[102] Vienna has different competences because it is at the same time a municipality and one of the nine *Länder* (Arts 108-112 of the Constitution).

[103] Thomas Prorok and others, 'Struktur, Steuerung und Finanzierung von kommunalen Aufgaben in Stadtregionen' (KDZ 2013) <https://www.kdz.eu/de/content/struktur-steuerung-und-finanzierung-von-kommunalen-aufgaben-stadtregionen> accessed 31 January 2020.

Austrian Freedom Party ranging on third place with a significant share of votes since the 1990s. Other smaller parties are the Green Party and the liberal NEOS party. All mentioned parties are currently represented in different levels of government with different majorities. On the local level, apart from local independent candidate lists, the majority of municipalities are still split between the People's Party and the Social Democrats. This is also reflected in the organization of municipal associations, one being the Austrian Association of Municipalities (*Gemeindebund*), which is typically associated with the conservative party and smaller rural municipalities, and the Austrian Association of Cities and Towns (*Städtebund*), being organizationally closer to the Social Democrats and representative of larger cities.[104] However, this differentiation should be seen in a more historical context, as many municipalities and cities are members of both associations.

As of 2018, 52 per cent of Austria's population lived in municipalities with less than 10,000 inhabitants and 48 per cent in only 86 larger towns and cities, with Vienna alone having 21 per cent of the Austrian population.

As in many countries, urban and rural areas in Austria face different social problems and demographic challenges. Regarding poverty and social exclusion, for example, residents of Austria's urban areas are more at risk than their rural counterparts because of more single parents' households and more households with no or little income.[105] On the other hand, rural areas are confronted with out-migration especially of young people, women and highly educated people to cities. This has significant long-term effects on economic development, as well as the provision of health care and elderly care services.[106]

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[104] The representation through either one of these associations is constitutionally regulated in Art 115(3) of the Constitution.

[105] Österreichischer Städtebund, 'Österreichs Städte in Zahlen' (2017) 42.

[106] Bundesministerium für Land- und Forstwirtschaft, Nachhaltigkeit und Wasserwirtschaft, 'Masterplan ländlicher Raum' (BMLFUW 2017).

Österreichischer Städtebund, 'Österreichs Städte in Zahlen' (2017) <https://www.kdz.eu/de/content/%C3%B6sterreichs-st%C3%A4dte-zahlen-2017>

Prorok T and others, 'Struktur, Steuerung und Finanzierung von kommunalen Aufgaben in Stadtregionen' (KDZ 2013) <https://www.kdz.eu/de/content/struktur-steuerung-und-finanzierung-von-kommunalen-aufgaben-stadtregionen>

6.2 The Structure of Local Government in Austria: An Introduction

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Like in many other European countries, the first efforts to merge municipalities in Austria started in the 1960s. While the municipal structures in the western *Länder* of Austria (Vorarlberg, Tirol, Salzburg and Upper-Austria) were already organized in larger units, Lower Austria, Burgenland, Styria and, to some extent Carinthia, were characterized by small-scale municipalities.

Thus, in Lower Austria the number of municipalities decreased from 1,652 municipalities in the year 1965 to 573 municipalities as of now. In Burgenland the amalgamation process started in 1971 by merging the 319 municipalities into 138. Due to later municipal separations, the number of today is 171. With the municipal structural reform in Carinthia in 1973 the number of municipalities was reduced from 242 to 121 municipalities. Again due to some later municipal separations Carinthia today has 132 municipalities. The most recent municipal structural reform in Austria took place from 2010 to 2015 in Styria. The number of municipalities decreased from 542 to 287. This reform also affected the Styrian districts by reducing their number from 17 to 13.

Similar to Switzerland, amalgamations in Austria are driven either by the municipalities themselves (bottom-up) or by the *Länder* (top-down). The process of the most recent structural reform in Styria was driven by the *Land*. Accompanying measures, direct involvement of the affected municipalities through participation and financial incentives were intended to ensure that the amalgamations of municipalities proposed by the *Land* were voluntary. Due to strong resistance of numerous municipalities, the structural reform needed in the end both voluntary and coercive mergers.

However, from the current 2,100 municipalities in Austria only about 70 municipalities have a population of more than 10,000 inhabitants. From the 8.8 million inhabitants in Austria one third of the population lives in the metropolitan area of Vienna.[107] Hence, Austria has a very fragmented and small-structured municipal landscape.

One reason for the reluctance to territorial reforms in Austria is the clear preference for inter-municipal cooperation. While there is no political program for amalgamations in Austria, the federal government, the *Länder* and the local government associations support the further development of inter-municipal cooperation.

Since 2011 the constitutional law to strengthen the powers of municipalities[108] significantly enlarges the rights of municipalities to establish inter-municipal associations, even across *Länder* borders, primarily to increase service efficiency not only in their own competences, but

[107] KDZ, 'Stadtregion Wien' (*stadtregionen.at*, 2019) <https://www.stadtregionen.at/wien> accessed 11 November 2019.

[108] See 60. Bundesverfassungsgesetz: Änderung des Bundes-Verfassungsgesetzes zur Stärkung der Rechte der Gemeinden [Federal Constitutional Law on the Strengthening of the Rights of Municipalities], GP XXIV GABR 1213 AB 1313 S. 112. BR: AB 8526 S. 799.).

also in transferred competences. Its implementation was accelerated as a result of the financial crisis and existing budget restrictions aimed to reduce costs by a reorganization of local public services and a new way of managing local and regional authorities' payrolls. Moreover, *Länder* programs to encourage local authorities to modernize their services and to use innovative approaches have been also introduced. Currently all *Länder* provide incentives for inter-municipal cooperation, some of them even tie their transfer payments (in the financial equalization) to municipalities to inter-municipal cooperation. And the present program of the federal government (2020-2024)[109] promotes to abolish the VAT for inter-municipal cooperation to facilitate co-operations and make them more attractive.

Inter-municipal cooperation in Austria has a long tradition and is based on the principle of voluntariness. Nonetheless, the cooperativeness of municipalities is still rather weak. The often long and resource intensive initiation processes, interest conflicts or only the reluctance to give up own structures for joint projects still hinders inter-municipal cooperation.

In general, all municipal tasks or services in Austria, with the legal competence being anchored in the Federal Constitution, can be carried out inter-municipally. Limitations apply only to the legal form of cooperation: e.g. governing powers cannot be carried out by a private company (municipal housing inspectorate, municipal registry of births, marriages and deaths, municipal taxes etc.).

The main inter-municipal cooperation fields in Austria are:

- supply and disposal (e.g. water and waste);
- regional development and tourism;
- sports and leisure infrastructure (public swimming pools, sport halls, event centers etc.)
- social services (social welfare associations, retirement homes etc.);
- education (kinder garden, elementary and middle schools, residential accommodation for pupils);
- particular governing powers areas (municipal housing inspectorate, municipal registry of births, marriages and deaths etc.);
- internal administrative services like procurement, accounting etc.

In the past decade, inter-municipal cooperation in location development (business parks, business location etc.) has become more and more important, while fire-services cooperation is still very limited.

Support for inter-municipal cooperation differs from one *Land* to another *Land* in terms of both financial means and non-monetary services. Normally the establishment and management of inter-municipal cooperation are funded by the *Länder*, while cooperation itself or investments are usually not subsidized.

The form of cooperation depends on the tasks and duties. It ranges from informal and non- or little institutionalized cooperation to strong and highly institutionalized cooperation. For

[109] See 'Aus Verantwortung für Österreich. Regierungsprogramm 2020–2024' (Bundeskanzleramt Österreich 2020) 11.

certain municipal tasks, the legal form of local authority association (*Gemeindeverbände*) is mandatory. [110] Scope and tasks are defined by the laws of the Austrian *Länder.*

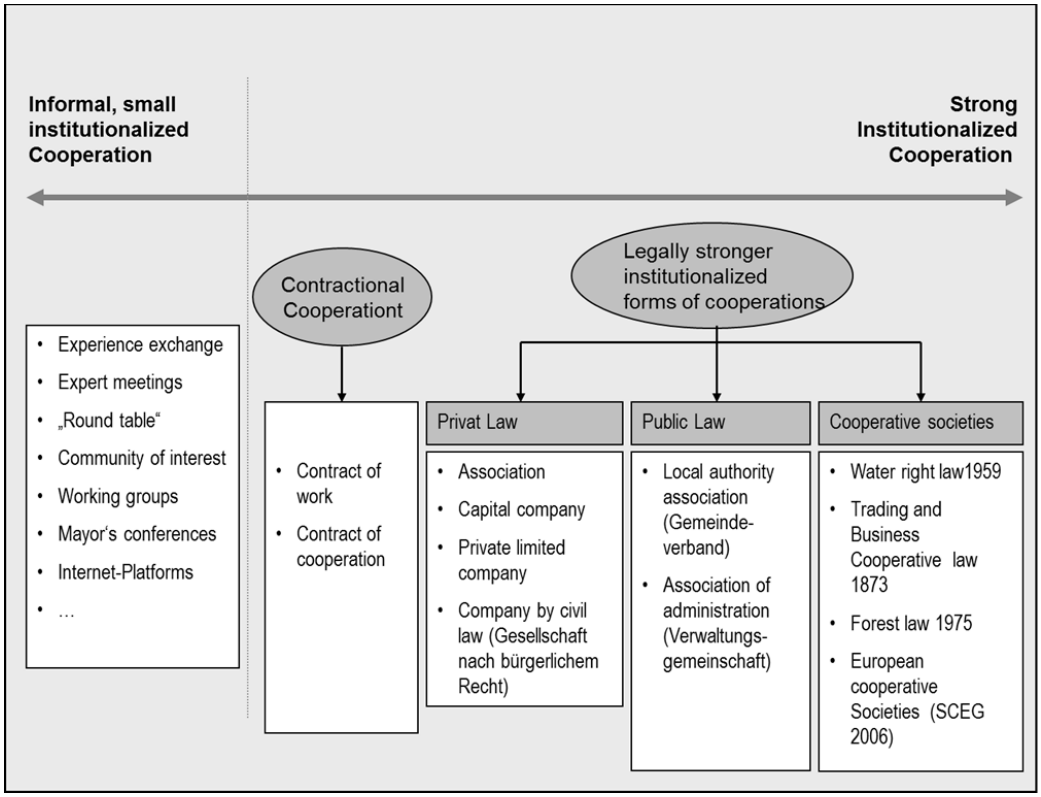

Figure 4: Forms of Cooperation in Austria.[111]

Inter-municipal cooperation in the framework of an association is possible for a wide range of cooperations, except for governing power services and for profit.

The administrative association can be seen as the typical model for inter-municipal cooperation, since only municipalities can cooperate in this legal form. Involvement of other legal partners is unlawful. It can be used for either specific services or for all municipal services. The administrative association is neither a public corporation nor a commercial company and therefore not liable for corporation tax unless the association provides private services of general interest, which then will be subject to VAT (value added tax).

The local authority association *(Gemeindeverband)* is a public corporation and is laid down in the Constitution (Article 116(a)).[112] They are led by elected bodies, in general by the mayor of one member municipality. There is no limitation of the purpose. Since 2011 and as already

[110] Cases where cooperation may be imposed by the legislation concern, for example, waste-management associations.

[111] See Klaus Wirth and Markus Matschek, 'Interkommunale Zusammenarbeit. Möglichkeiten, Grenzen und aktueller Entwicklungsbedarf' (2005) 71 ÖGZ 8.

[112] The Federal Constitutional Law (Art 116(a)) provides that municipalities may join together – by agreement or by law – to form 'Local Authority Associations' (*Gemeindeverbände*) to deal with common specific matters within their own sphere of competences. The Local Authority Association may be voluntary as well as mandatory. In the first case the approval of the supervisory authority is necessary. This approval must be given under certain conditions specified in the Federal Constitutional Law.

mentioned before, cross-border municipal cooperation between the Austrian *Länder,* as well as multi-purpose municipal cooperation are possible. Unlike administrative associations, the local authority takes over the services of the member municipalities as a separate body and with its own responsibilities. It is particularly suitable for tasks that require high investments or for politically sensitive areas. Setting up a municipal corporation is no more difficult than setting up a private company.

Involving private partners, the limited liability company (*GesmbH*) is the most common legal form in Austria for inter-municipal cooperation.

Cooperative societies (*Genossenschaften*) have a long tradition in Austria, but only in the field of housing, water supply, and forestry. This legal form has not yet been used for inter-municipal cooperation in Austria.

The federal level in Austria cannot interfere in local government structures since local self-government is safeguarded by the Constitution (Article 116ff). Nevertheless, with the Austrian Conference on Spatial Planning (ÖROK)[113], founded in 1971 and established by the federal government, the *Länder* and the municipalities spatial development is coordinated at the national level. Thus, the ÖROK plays a crucial role in promoting and developing structural reform approaches.[114] In this context urban regions (*Stadtregionen*) in Austria have gained importance and relevance over the last decade through certain ÖROK initiatives: the current Austrian Spatial Development Concept (ÖREK 2011)[115] and the partnership 'Cooperation Platform Urban Regions'[116] with the recommendation 'For an Austrian Policy for Urban Regions'[117] and the roadmap for implementing the 'Austrian Agenda Urban Regions'[118] not only successfully established the topic in the public discussion but also gave a boost to the development of urban regions in Austria. A crucial role in promoting urban regions in Austria is played by the Austrian Association of Cities and Towns which not only had the lead of the before mentioned partnership 'Cooperation Platform Urban Regions' but also established the

[113] See Österreichische Raumordnungskonferenz ÖROK, 'Austrian Conference on Spatial Planning. ÖROK' (*ÖROK*, 2020) <https://www.oerok.gv.at/english-summary/> accessed 11 November 2019.

[114] The current ÖROK project 'Fostering Regional Governance' aims at sounding out new approaches for strengthening sustainable integrated development in functional areas.

[115] See Österreichische Raumordnungskonferenz ÖROK, 'Österreichisches Raumentwicklungskonzept OREK 2011' (*ÖROK*, 2020) <https://www.oerok.gv.at/?id=224> accessed 2 August 2019.

[116] See Österreichische Raumordnungskonferenz ÖROK, 'OREK-Partnerschaft "Kooperationsplattform Stadtregion"' (*ÖROK*, 2020) <https://www.oerok.gv.at/raum-region/oesterreichisches-raumentwicklungskonzept/oerek-2011/oerek-partnerschaften/abgeschlossene-partnerschaften/kooperationsplattform-stadtregion.html> accessed 2 August 2019.

[117] See Österreichische Raumordnungskonferenz ÖROK, 'ÖROK-Empfehlung Nr. 55 "Für eine Stadtregionspolitik in Österreich"' (2017) <https://www.oerok.gv.at/fileadmin/Bilder/2.Reiter-Raum_u._Region/5.Empfehlungen/OEROK-Empfehlung_Nr._55_angenommen_HP.pdf> accessed 2 August 2019.

[118] See Österreichisches Raumentwicklungskonzept ÖREK, 'Roadmap zur Umsetzung der "Agenda Stadtregionen in Österreich"' (ÖREK 2017) <https://www.stadtregionen.at/uploads/files/RoadmapAgendaStadtregionen_FINAL.pdf> accessed 2 August 2019.

'Annual Forum of Austrian Urban Regions'[119] and the platform <www.stadtregionen.at> for active urban regions in Austria in terms of joint planning and implementation. Nevertheless, urban region initiatives often depend on the pioneering spirit and commitment of single stakeholders since they are commonly formalized only by inter-municipal agreements with a low degree of institutionalization.

Finding viable solutions for integrated and sustainable regional development both for urban local governments (ULGs) and rural local governments (RLGs) cooperation without introducing new levels of government has been the objective of the current ÖROK project 'Strengthening regional governance'. The project results (status quo, impulses and perspectives) are summarized in the ÖROK study 'Die regionale Handlungsebene stärken: Status, Impulse & Perspektiven'.[120]

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[119] See '6. Österreichischer Stadtregionstag 2018 in Wels' (*Österreichischer Städtebund*, 10 October 2018) <https://www.staedtebund.gv.at/services/veranstaltungsergebnisse/veranstaltungsergebnisse-details/artikel/6-oesterreichischer-stadtregionstag-2018-in-wels/> accessed 2 August 2019.

[120] Österreichische Raumordnungskonferenz (ÖROK), ´Die regionale Handlungsebene stärken – Status, Impulse und Perspektiven´ (paper series no 208, ÖROK 2020) <https://www.oerok.gv.at/fileadmin/user_upload/OEROK_SR_NR._208_2020_Reg_HE_online-Version.pdf>.

6.3 Inter-Municipal Development Process 'Lienzer Talboden' Future Space

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Relevance of the Practice

The 'Lienzer Talboden future space'[121] is a good example for urban-rural cooperation between 15 communities in a challenging geographical and topographical area situated in the Austrian alpine space on the border to Italy. It is aimed at working together to shape the future development and positioning of this area, as a competitive business and residential location in Tyrol. The 'Lienzer Talboden future space' includes one urban local government (ULG) and 14 rural local governments (RLGs).

Description of the Practice

Competitive Business and Residential Location in Tyrol as an Impetus for Development across the Region

In 2013, the 15 communities of Ainet, Amlach, Assling, Dölsach, Gaimberg, Iselsberg-Stronach, Lavant, Leisach, Lienz, Nikolsdorf, Nußdorf-Debant, Oberlienz, Schlaiten, Thurn and Tristach devised a joint strategic development process with the aim of achieving close urban-rural collaboration on infrastructure issues, settlement policy, business development and administrative cooperation. The external approach is focused on the area's positioning as a focal point and trigger in the functional interconnected region including Upper Carinthia and the Pustertal valley in South Tyrol. The advantages and benefits of this strategic urban-rural design bring an increase in efficiency, effectiveness and agglomeration effects. The 15 communities in the 'Lienzer Talboden' encompass an area of 471 km², 28,000 inhabitants, a working population of around 18,000 and a high concentration of infrastructure, leisure and educational facilities, forming a social and commercial center in this inter-regional, inter-connected area. Its proximity to the border of South Tyrol/Italy highlight the special significance and responsibility of the 'Lienzer Talboden future space' as a focal point of infrastructure, momentum and innovation for the development of the surrounding region.

Process – A spatial and thematically integrated approach to the development of 15 communities

Following the launch event in 2013, a comprehensive review of the strengths and development potential at an intra-regional level was carried out as part of a multi-stage development

[121] See KDZ, 'Zukunftrsraum Lienzer Talboden' *(stadtregionen.at*, 2019) <https://www.stadtregionen.at/lienz> accessed 7 November 2019.

process, moderated and supervised by the Institute for Location, Regional and Municipal Development (ISK). Another step raised the question of 'where do we want to and how can we collaborate closely in the future as the 'Lienzer Talboden future space', establishing and adapting the fields of activity for future collaboration between the 15 communities based on this and defining concrete measures.

Since May 2015, the result of this has been a proposal from the committees of the 'Planungsverband 36' planning association for an 'integrated location and business development concept' for the 'Lienzer Talboden future space' which represents a conceptual basis for implementing measures during the ongoing LEADER period. The mayors of the 'Planungsverband 36' association are working together on nine fields of activity – business development and area management, tourist destination and infrastructure development, collective transport policy, specialization in the education sector, administrative cooperation, joint management of sport and leisure facilities and coordinated cross-community energy policy measures - with each accomplishment reinforcing the inter-municipal cooperation between the 15 communities.

The spatially integrated approach for the 'Lienzer Talboden future space' will be defined in relation to neighboring regions as open and not territorially restricted. There is the potential to implement another step towards spatial cooperation in the spirit of the European Grouping of Territorial Cooperation (EGTC)[122] through the urban-rural cooperation with Spittal an der Drau, Hermagor (Upper Carinthia) and Bruneck (South Tyrol/Italy) and to develop a strategic network for cross-border collaboration.

Regional Governance, Independent Development – From Conventional Management to Regional Conferences

Based on the experiences of the mayors and administrative bodies that political-administrative management, trust and understanding and transparency and tolerance represent key success factors in inter-municipal collaboration which extend beyond territorial community borders, the heads of the planning association for the development of the urban-rural collaboration as elected body devised and successfully applied a multi-stage regional governance approach with closed-session meetings, workshops, educational excursions, formal association meetings, organizational consultations and decisions by the relevant communities (executive board and municipal council) through new information tools such as the 'regional conferences' as a discussion and consultation forum for the representatives of the 15 member communities. The development process will be formally supported by the 'Planungsverband 36, Lienz und Umgebung' association – a municipal association established in accordance with the Tyrolean Spatial Planning Law. The whole process is financed by the 'Planungsverband 36' and the 'Lienz und Umgebung' association through membership fees of the municipalities, with EU funding through Interreg and LEADER and with financial support of the Land Tyrol. Furthermore, the City of Lienz is providing human resources (personnel) to managing the process.

According to the European Union definition, the term 'governance' can be understood as follows: '(…) rules, processes and behavior that affect the way in which powers are exercised at

[122] European Grouping of Territorial Cooperation (EGTC), tool for cross-border cooperation and collaboration.

European level, particularly as regards openness, participation, accountability and coherence (…)'.[123] At the level of the planning association, this means in particular that regional experiences and conditions must be taken into account in the development of political suggestions. In order to apply this approach to the 'Planungsverband 36, Lienz und Umgebung', a regional governance structure was developed for the 'Lienzer Talboden future space' as part of the inter-municipal development process, focusing both on a bottom-up and top-down principle and which can subsequently be expanded to a multi-level governance system, enabling the 'Planungsverband 36, Lienz und Umgebung' association to position itself in strategic and organizational terms as a transnational organizational unit and therefore making the location of these 15 communities more attractive and competitive. The following overview presents the regional governance approach of the 'Lienzer Talboden future space'.

The regional governance approach of the 'Lienzer Talboden future space' involves a regional conference at the top-down principle level to which all local councilors will be invited to find out more about the project and regional developments, so that they can then reach unanimous decisions in the respective council meetings, wherever possible. The mayor conference level includes both association committee and association meetings. During these meetings, recommendations from the working groups will be discussed in regards to the following courses of action in the projects which were collectively devised during the initial phase of the inter-municipal development process and decided upon by the 'Planungsverband 36, Lienz und Umgebung'. To conclude, the development process combines and applies formal (*Gemeindeverband*) and informal (round tables, conferences etc.) cooperation forms and tools. However, it has been for the first time that an inter-municipal cooperation has become a registered trademark ('Zukunftsraum Lienzer Talboden') which facilitates both marketing and communication.

[123] Commission of the European Communities, 'European Governance A White Paper' COM(2001) 428, 1.

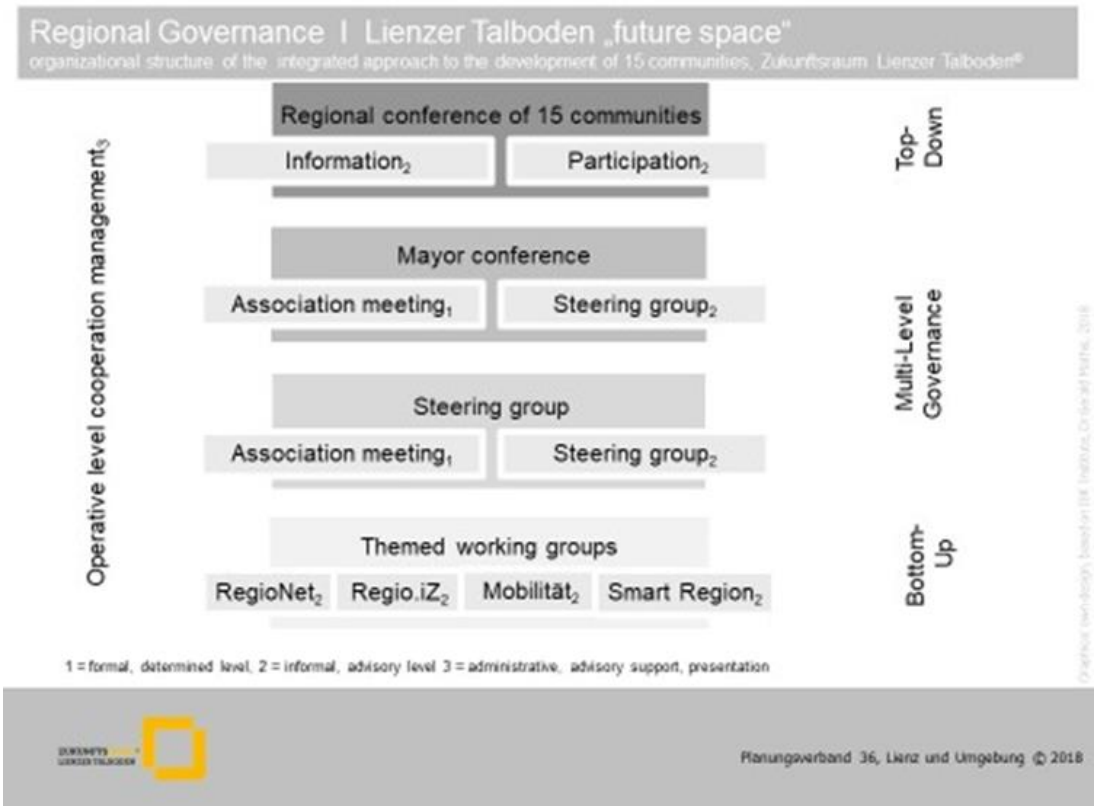

Figure 5: Regional Governance 'Lienzer Talboden future space'[124]

Assessment of the Practice

In the tradition of inter-municipal cooperation in Austria the example of 'Lienzer Talboden future space' on the one hand contributes to reinforcing the inter-municipal cooperation between 15 municipalities in a challenging topographical Austrian area. On the other hand, it meets the relatively new approach in Austria to further developing and strengthening functional areas[125]. This is also in line with the increasing importance of functional areas and Macro regions (e.g. Alpine Space) in the EU-context. With its governance approach and the wide range of cooperation fields this example furthermore relates to all other report sections of the Austrian Country Report.

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[124] Planungsverband 36, 'Lienz und Umgebung' (2018).

[125] See Österreichische Raumordnungskonferenz ÖROK, 'Kooperationsplattform Stadtregionen' (*ÖROK*, 2020) <https://www.oerok.gv.at/raum/themen/stadtregionen>; —— 'Regionale Handlungsebene stärken' (*ÖROK*, 2020) <https://www.oerok.gv.at/raum/themen/weitere-themen/regionale-handlungsebene> accessed 20 November 2019.

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6.4 Administrative Association in Building Law: Region Vorderland

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Relevance of the Practice

Building law is a highly complex legislation, which the local level governments are responsible for. Each of the *Länder* have their own legislation, which is equally implemented by all municipalities within the respective *Land*. It covers building procedures and negotiations as well as regional and spatial planning. Therefore, high technical and legal expertise is needed to provide quality consulting for citizens and legal certainty for the municipal government. Rural local governments (RLGs) particularly struggle to attract employees with such expertise. Due to small organizational structures and limited number of civil servants in RLGs, responsible individuals for building law cannot solely focus their work on this field, but also typically cover other working tasks. This is where the administrative association as a model for inter-municipal cooperation has proven to be a solution for facilitating the execution of building law for RLGs, but also urban local governments (ULGs) who have a central location within such clusters.

Description of the Practice

In 2002, the first analyses into the possibilities and advantages of inter-municipal cooperation in the field of building law and building rights administration were made and subsequently implemented three years later. The Land Vorarlberg in general pioneered in the conceptualization of this form of cooperation, based on one field of expertise, in Austria. In the region Vorderland, now the largest building law association in Vorarlberg, twelve municipalities with a total of 32,000 inhabitants are working together on a voluntary basis since 2005 in the form of an administrative association (*Verwaltungsgemeinschaft*). The goals are to achieve high quality legal services, improve customer orientation and implementing a modern organization while maintaining individual municipal autonomy. Further advantages of this joint administration are a uniform law enforcement and thus a higher degree of legal security, improved technical support for builders, strengthening the region, applying the same conditions for all builders and the inter-municipal approach to spatial planning issues.[126]

The building law administrative association is responsible for all agendas of building law, water and sewer connections, house number assignment and building and apartment registration etc. The form of administrative association allows the mayor to remain the building authority of First Instance, but the head of the building law administrative association is empowered to make decisions and decrees in the name of the mayor.

[126] Peter Bußjäger, Florian Hornsteiner and Georg Keuschnigg, *Interkommunale Zusammenarbeit in Vorarlberg: Strukturen und Möglichkeiten – eine Praxisanalyse* (Institut für Föderalismus 2016).

Currently the association in the region Vorderland has four employees working for the twelve municipalities and process 700 building procedures annually.[127]

Assessment of the Practice

The administrative association as a form of cooperation is particularly appealing to municipalities. For one the legal form is quite simple to establish as it does not form an own legal identity. The municipalities are connected to this legal agreement in the form of membership to the association. There is no transfer of competences and the independence of the municipality, its rights and obligations and the responsibilities of the mayor are therefore not affected. Thus, this is an attractive form for safeguarding the municipal autonomy. Furthermore, through the pooling of tasks which are uniform for all municipalities, in this case building law, higher professionalization, efficiency and relieving of human resources is possible.

The achievement of these benefits in the region Vorderland were confirmed by the Regional Court of Audit, who analyzed all building law administrative associations in Vorarlberg.[128] In the region Vorderland the size of municipalities ranges from the smallest administration with less than 500 inhabitants and a middle-sized city with almost 12,000 inhabitants. Especially the smaller municipalities are benefitting through the legal and technical experts that are now solely focusing on building law procedures. This expertise not only facilitates the administration of RLGs but also the mayors, often part-time in such small villages, as they are liable for the administrative decisions.

The cooperation turned out to be such a success and exceeded the expectations of the members of the association. At the beginning there were only nine members, which then grew to twelve. Currently, the association is exploring the possibilities if other tasks can be integrated into the administrative association and they are reaching out the City of Feldkirch, with more than 30,000 inhabitants one of the larger cities of Vorarlberg, to include them in the association. ULGs can also benefit from such associations as building law is the first step towards joint regional and spatial planning, thus taking a regional approach in long term strategic development. Ongoing project development for the region Vorderland and at least six other building law administrative associations in Vorarlberg show that municipalities of all sizes are open to developing and implementing this form of cooperation. At the moment 40 per cent of municipalities in Vorarlberg and 60 per cent of very small municipalities (under 1,000 inhabitants) are cooperating in this form.[129] This is also supported and incentivized by the Government of Vorarlberg, who provides funding for development costs (e.g. concept creation, process support, consultancy from experts, moderation), investment costs for jointly financed construction projects, personnel and material costs for the ongoing operation of new cooperations (start-up funding) and amalgamations. The possible funding amount is 50 per cent for development costs and between 20 and 45 per cent of investment costs. In the case

[127] Verein Region Vorderland-Feldkirch, <https://www.vorderland.com> accessed 24 July 2020.
[128] Court of Audit of the Land Vorarlberg, 'Baurechtsverwaltungen in Vorarlberg' (Audit Report 2016).
[129] ibid.

of start-up funding for new cooperations, a flat rate is determined for expected personnel and material expenses.

To conclude, the administrative association in building law and in other municipal areas (e.g. registry offices) has become a very common form of cooperation in many other regions across Austria and is always regulated on the *Länder* level. Region Vorderland, however, was a pioneer in this field and the development of closer forms of cooperation is ongoing.

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6.5 Post-Merger Evaluation: Future-Oriented Organizational Development in the City of Fehring/Styria

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Relevance of the Practice

The Styrian amalgamation process that was based on the Styrian Local Government Structural Reform Act (StGsrG)[130] reduced the Styrian number of municipalities from originally 542 in 2010 to 287 municipalities in 2015. With the slogan 'Stronger municipalities - bigger opportunities' this reform aimed at securing and strengthening the Styrian municipalities by increasing their efficiency and thereby making them both more resilient and sustainable. Before the Styrian local government structural reform, more than one third of all Austrian municipalities with less than 1,000 inhabitants were Styrian municipalities; after the structural reform, the figure was only 3.6 per cent. The average number of inhabitants per municipality has risen from 1,754 to 3,293 and the number of municipalities with more than 10,000 inhabitants has increased from 5 to 15 as a result of the reform.[131] The reform not only focused on more efficient service provision and solving capacity problems of rural local governments (RLGs), but also targeted small and medium-sized urban local governments (ULGs), in particular those with a drastic population decline. With the objective of better coordinating spatial planning and transport policy the reform furthermore has contributed to improving the urban-rural interplay. By delivering more efficient services the amalgamation practice of the City of Fehring contributes to report section 2 on local responsibilities and section 3 on local finances.

Description of the Practice

The formerly autonomous municipalities of Fehring (2,996 inhabitants), Hatzendorf (1,751 inhabitants), Hohenbrugg-Weinberg (973 inhabitants), Johnsdorf-Brunn (808 inhabitants) and Pertlstein (810 inhabitants) were merged to the City of Fehring with a total of 7,338 inhabitants.

Although in the course of the amalgamation certain administrative units of the former municipalities have been merged, small administrative units such as the citizen service office (*Bürgerservice*) continued to exist at that time in each municipality due to the fact that maintaining a citizen service office in each municipality was a conditio sine qua non for the amalgamation.

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[130] Styrian Local Government Structural Reform Act (StGsrG, *Steiermärkisches Gemeindestrukturreformgesetz*), LGBl. no 31/2014.

[131] For further details, see <https://www.gemeindestrukturreform.steiermark.at> accessed 18 November 2020.

Therefore, the City of Fehring carried out an administrative development process in order to be able to provide its services more efficiently and within effective structures.

In 2019, the municipal council of Fehring initiated an administrative development process that focused in particular on reflecting on and further optimizing the existing administration with its decentralized units based on administrative, economic and, above all, service-oriented considerations. The overall objective was to avoid cutbacks in the citizen service. Working groups were set up to achieve both an improved citizen service and an optimized administrative organization with fewer locations.

The municipal administration was restructured and concentrated in two locations. The dislocated administrative locations were closed and converted to a kindergarten, a municipal center and a commercial property. The employees were integrated into the organization at the two remaining locations according to their personal wishes and qualifications. To compensate the closure of the former citizen service offices, mobile services were set up for the population offering the same range of citizen services as at the main site.

Assessment of the Practice

The practice of Fehring shows that a successful merger is a long-term process that is not completed with the amalgamation of local governments. Although the step of reorganization due to the amalgamation was challenging, the process succeeded in better and enlarged services for the citizens, not at least through the new mobile citizen service. As part of the development process, all employees furthermore agreed on a common service charter. The jointly developed service proposals are intended to secure and further improve the public service quality in Fehring.

However, such far-reaching changes are only possible if everyone works together and is committed to support the necessary (especially staff) changes. With the overall very positive experience and the involvement of management, staff representatives and politics in the process the practice of Fehring could be a role model for other amalgamated local governments.

Looking back, Carina Kreiner, head of the municipal office, noted that the reorganization of the administration in the merged Municipality of Fehring has been very helpful in enabling quick action, especially during the Covid-19 pandemic. With regard to the relation of Fehring with Feldbach, the closest urban city, or with Graz, the capital city of Styria, the stronger and more efficient government structure of Fehring has had no impact so far.

Municipal mergers are usually projected as reasonable and functional, since positive effects are said to outweigh the negative (e.g. improvement of the quality of administration and provision of municipal services). However, it is difficult to evaluate such mergers in retrospect. While the effects of a merger can be evaluated quite well at the level of a single municipality, which can then be put in relation to the overarching goals, as mentioned above, this task is more demanding at the level of an entire federal state. Municipal mergers are also difficult to compare with one another since the starting conditions and influencing factors in each municipality determine the respective merger process. In addition, evaluations always face the

fundamental challenge of clearly distinguishing which effects were directly related to the respective merger or which were perhaps only 'bandwagon effects'. To name a few examples: Was the renovation/new construction of the kindergarten planned anyway or was it only made possible by the merger? Are noticeable improvements in the citizen service office a result of the merger or just the result of inter-municipal learnings from a seminar? In this regard, it is regrettable that although there are many positive individual reports from Styrian municipalities about their successful mergers or scientific case studies on individual mergers, a comprehensive and systematic evaluation of the entire amalgamation process in Styria is still pending.[132]

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[132] For more information, see https://zukunft-gemeinde.at/.

7. The Structure of Local Government in Poland

7.1 The System of Local Government in Poland

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Types of Local Governments

Poland is a unitary state without any autonomous entities. As a consequence, a uniform system of territorial self-government exists throughout Poland. The traditions of territorial self-government date back to 1918 when, after 123 years of political oblivion, the Polish state was established. After World War II, Poland was an undemocratic and centralized state which led to, among other things, the liquidation of territorial self-government. The reconstruction of territorial self-government began in Poland with the political transformation after 1989. The first stage was the restoration of territorial self-government in communes (*gmina*) in 1990, then in 1999 the self-government in counties (*powiat*) and in voivodeships (*województwo*) was introduced.

The current Constitution of the Republic of Poland of 1997 introduces two types of territorial self-government, namely *local* self-government and *regional* self-government (Article 164). Currently in Poland (since 1999), territorial self-government is three-tier and it is structured as follows:

- self-government in communes as the basic level of local self-government;
- self-government in counties the second level of local self-government;
- self-government in voivodeships as regional self-government.

In addition, large municipalities (over 100,000 residents) may be granted the status and tasks of a counties (city with *powiat* rights/cities with *powiat* status).

Therefore, there are four levels of political representation in Poland: the state and three levels of territorial self-government.

At present (2020), there are 2,477 communes (*gmina*), including 1,555 rural *gminas*, 621 urban-rural *gminas* and 302 urban *gminas*. The population of *gminas* ranges from 1.7 million (the Capital City of Warsaw) to 1,300, and the average population of a Polish *gmina* amounts to 15,000. It means that in the comparison to other European countries, Poland's *gminas* are relatively large. If we take into account only urban *gminas*, the average population is 61,000, whereas in rural *gminas* the average population amounts to approximately 7,000. At the beginning of the political transformation in Poland in 1990, there were 2,383 *gminas*. It means that modifications introduced in the division into *gminas* have been rather minor.

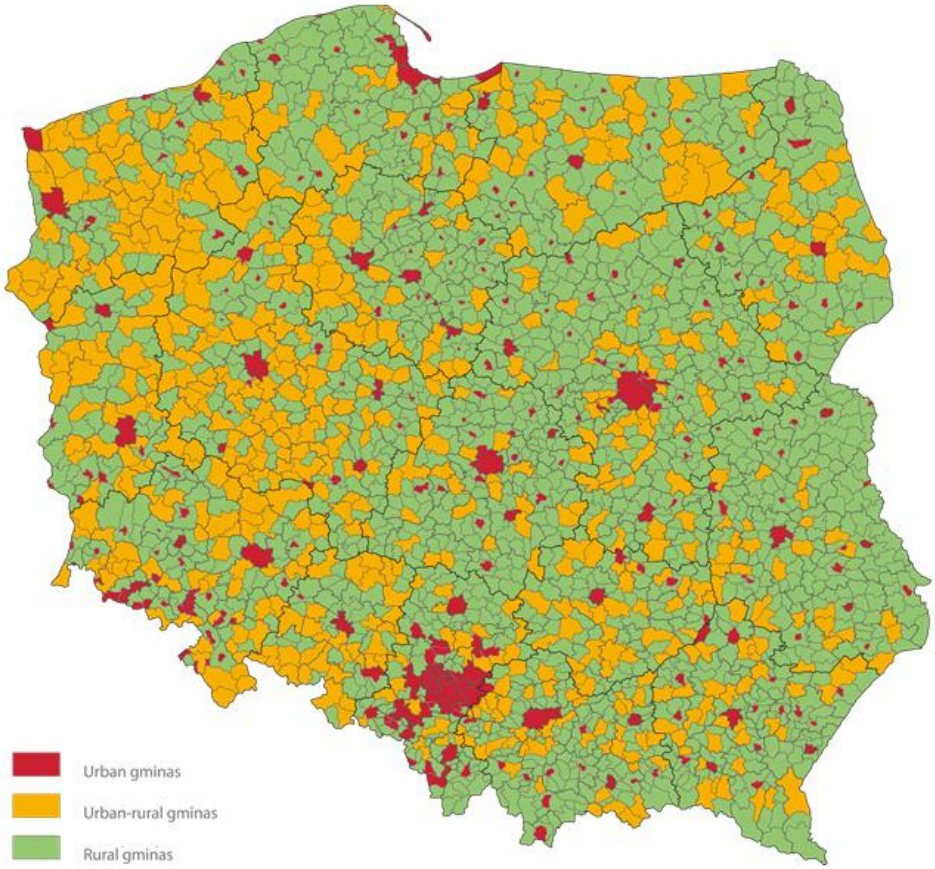

Figure 1: Spatial delimitation of *gminas* in Poland[133]

The second tier of the local government, i.e. the level of counties (*powiat*), was established in Poland in 1999. At present, there are 314 *powiats* and 66 cities with *powiat* status. The population of *powiats* range from 21,500 to 373,500. The average population of a Polish *powiat* amounts to 82,000, whereas cities with *powiat* status have on average 191,000 inhabitants. When the territorial reform was being prepared in 1999, it was the establishment of *powiats* (as intermediate units between *gmina* and voivodeship) which gave rise to the greatest controversies. Dissenting voices against the introduction of an additional level of territorial structure (and, in consequence, a local government unit) were not rare. Even now the issue of *powiats* is under public debate, mainly due to the problem of the financing of *powiat* local government as well as functional weakness of smaller *powiats* (Polish *powiats* are small units in comparison to their counterparts in other European countries). The formation of seven new *powiats* in 2002 was the last major modification in the map of *powiats*.

The third level of territorial structure applies to voivodeships (*województwo*). The voivodeships correspond to the NUTS-2 regions (according to the European Nomenclature of Territorial Units for Statistics),[134] which are the basis for regional operational programs co-financed by

[133] 'Types of gminas and urban and rural areas' (*Statistics Poland*, 2020) <https://stat.gov.pl/en/regional-statistics/classification-of-territorial-units/administrative-division-of-poland/types-of-gminas-and-urban-and-rural-areas/> accessed 2 November 2019.

[134] Eurostat, 'Background' <https://ec.europa.eu/eurostat/web/nuts/background> accessed 2 November 2019.

the European Union. They year 1999 marked a crucial point in shaping the territory and political system of voivodeships. After lengthy preparations accompanied by political disputes, it was decided to form 16 voivodeships. It meant a departure from territorial fragmentation on a regional level (in the years 1975-1999 there were as many as 49 voivodeships in Poland). As a result of an enlarged territory, voivodeships as regions gained the right to self-government– thus, another stage of decentralization of Poland was reached. So far, the number of voivodeships has not been changed.[135]

Legal Status of Local Governments

The inclusion of the principle of subsidiarity[136] in the preamble to the Constitution of the Republic of Poland of 1997 and the principle of decentralization[137] in the first chapter of the Constitution is of key importance for the legal status of self-government in Poland. Article 16 provides legal guarantees for local authorities: '(i) The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law. (ii) Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility.'

A comprehensive regulation concerning territorial self-government is contained in Chapter VII ('Local government') of the Constitution of the Republic of Poland of 1997.

Territorial self-government is based on democratic legitimacy. At each level, residents elect a representative body (the number of councilors currently ranges from 15 to 51, with the exception of Warsaw with 60 councilors). In addition, the head of the executive body (mayor) has been elected directly by the residents at the *gmina* level since 2002. Moreover, the Constitution of Poland guarantees residents of *gminas*, *powiats* and voivodeships the right to directly settle matters through the institution of a local referendum. A referendum on self-taxation of residents for public purposes is a special type of the local referendum. However, such a referendum can only be held at the *gmina* level.

Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities (Article 163 of the Constitution of the Republic of Poland of 1997). *Gmina* self-government, which has been granted the presumption of competence in matters of territorial self-government, is of fundamental importance. Article 164 establishes the following: '(i) The commune (*gmina*) shall be the basic unit of local government. (ii) Other units of regional and/or local government shall be specified by statute. (iii) The commune shall perform all tasks of local government not reserved to other units of local government.'

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[135] Mirska Andżelika, 'State policy on the formation and modernisation of Polish territorial structure' in Europäisches Zentrum für Föderalismus-Forschung Tübingen EZFF (ed), *Jahrbuch des Föderalismus 2018*: *Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2018).

[136] 'Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities'.

[137] Article 15: 'The territorial system of the Republic of Poland shall ensure the decentralization of public power'.

Territorial self-government units are subject to the Constitution of the Republic of Poland and the Acts of the Polish State. Three system acts are of fundamental importance:

- the Act of 8 March 1990 on *Gmina* Self-Government,
- the Act of 5 June 1998 on *Powiat* Self-Government,
- the Act of 5 June 1998 on Voivodeship Self-Government.

The only criterion of supervision over the activity of self-government is the criterion of legality, supervision is exercised by government administration authorities (the Prime Minister, voivodes[138] and regarding financial matters - regional audit chambers). However, any disputes between the government administration and territorial self-government shall be settled by an administrative court. There are no authoritative interrelations between the tiers of territorial self-government – only voluntary cooperation is possible.

The Constitution divides public tasks performed by self-government into own tasks (financed from the budget of a self-government unit) and commissioned tasks (financed from the state budget).

Gmina self-government performs a wide range of public tasks which include, among others, issues related to local technical infrastructure, social infrastructure, education, health and order protection and safety. In accordance with the principle of subsidiarity, the *powiat* self-government 'assists' *gmina* in performing local tasks that exceed the capacity of a *gmina* ('supra-communal' local tasks). While the self-government of *gmina* and *powiat* implements a number of public services for local communities on an ongoing basis, the main role of voivodeship self-government is to facilitate economic development of regions. Among other things, the task of the voivodeship self-government is to manage EU structural funds.

(A)Symmetry of the Local Government System

There are three types of *gminas*:

- urban *gminas* (their boundaries correspond with the boundaries of the city forming the municipality);
- urban-rural *gminas*, which include both cities within administrative boundaries and areas outside city boundaries;
- rural *gminas* without cities within their territory.

Cities in Poland are towns and cities with city rights (granted by the central government). However, it is a formal classification based solely on an administrative criterion. The Act on *Gmina* Self-Government does not differentiate the tasks of according to this classification – all *gminas* have the same scope of activity. The exceptions are large urban *gminas* which also have the status of *powiat* (city with *powiat* rights). They carry out the tasks of both *gmina* and *powiat*. Currently, there are 66 of them and the general criterion for their establishment is a

[138] The voivodes (16) shall be the representative of the Council of Ministers in voivodeships. They are appointed by the Prime Minister. *Voivodeships* are the highest-level administrative subdivision of Poland.

population over 100,000. However, some local government politicians claim that this threshold should be reduced to 50,000[139].

On the other hand, the need is recognized to merge the cities with the *powiat* rights and *powiats* whose authorities are seated in the said cities due to significant disproportions in the institutional potential of *powiats*. Government analyses indicated a significantly higher potential of cities with *powiat* rights and a particularly low potential of *powiats* without large urban centers. The data show that *powiats* without large cities have significantly scarcer resources allocated to the fulfilment of public tasks of *powiats*[140].

Public tasks may be performed by individual self-government units independently or by way of cooperation with other self-government units (inter-municipal cooperatives). Self-governments of a given level may cooperate with each other (cooperation between *gminas*, between *powiats*, between voivodeships). Moreover, cooperation between the levels is also possible: since 2016, unions of *powiats* and *gminas* may be established. The form of the *powiat-gmina* union is intended for the implementation of tasks that exceed the competence of one tier of self-government. The aim was to enhance the independence and operational flexibility of territorial self-government units. It can also be interpreted as an attempt to address the problems occurring mainly in metropolitan areas.

The legal form of the union of *gminas* (union of *powiats*, union of *gmina* and *powiat*) requires the establishment of a new legal person to perform part of the tasks of the self-government. Unions of *gminas* are a very popular form of performing self-government tasks (currently there are 313 of them in Poland and they include from 2 to 49 *gminas*). There are 7 *powiat* unions and 8 *powiat-gmina* unions. Their tasks involve mainly the organization of common local public transport. The same applies to education as only a uniform system of education from primary schools (which is the responsibility of *gminas*) to secondary schools (which are subject to *powiats*) can resolve demographic problems or fulfil the expectations of the local labor market.

The performed public tasks may also be modified through 'delegating' public tasks by a territorial self-government unit to another territorial self-government unit. This is done by way of a voluntary agreement.

'Commissioning' tasks to the self-government by the government administration is a different matter – if they are commissioned by virtue of the law, they are imposed on the self-government 'from the top' (together, of course, with financial resources from the Polish state budget). Polish self-governments indicate that those funds are often insufficient.

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[139] 'Interpelacja nr 5867 do Ministra Spraw Wewnętrznych i Administracji' (*Sejm Rzeczypospolitej Polskiej*) <http://orka2.sejm.gov.pl/IZ5.nsf/main/2AE373E5> accessed 1 July 2019.

[140] 'Zasadniczy, trójstopniowy podział terytorialny państwa' (*Ministerstwo Spraw Wewnętrznych i Administracji*, 31 May 2001) <https://archiwum.mswia.gov.pl/pl/aktualnosci/1644,dok.html> accessed 1 July 2019.

Political and Social Context in Poland

Compared to other countries, the national political parties are in Poland not very strongly represented at the local government level.[141] To gain a stronger voice, self-governments attempted to create a nationwide political movement of mayors of large cities. For example, in 2011 Union of Mayors – Citizens to the Senate[142] (*Unia Prezydentów – Obywatele do Senatu*) was established and it put forward its candidates in the elections to the upper house of the Polish Parliament – Senate (majority voting system applies). The Local Government Movement 'Non-Partisans' (*Ruch Samorządowy 'Bezpartyjni'*) was also established, consisting of mayors and councilors. The purpose of the movement is to be an alternative to political parties in local government elections (primarily at the level of the voivodeship self-government).

However, if we analyze the results of local government elections, the influence of national political parties clearly diminishes, the lower the level of government. Starting from the highest level, i.e. the 16 voivodeship self-governments, it is basically political parties that dominate the elections to the voivodeship assemblies. In the local government elections of 2018, candidates of national parties received a total of 89.4 per cent of votes. The Local Government Movement 'Non-Partisans' gained 5.28 per cent of the country's vote. Regional groupings received marginal support, except for three voivodeships. In the Opolskie Voivodeship, 'The German Minority Electoral Committee' traditionally receives strong support (in 2018 – 14.64 per cent). In two other voivodships, regional movements concentrated around local politicians obtained: 8.29 per cent of votes (the Lower Silesian Voivodeship: Electoral Committee of Voters *'With Dutkiewicz for Lower Silesia'*[143]) and 5.26 per cent of votes (the Świętokrzyskie Voivodeship: Electoral Committee of Voters '*Wenta*[144]*'s Świętokrzyskie* Project'.

At the *powiat* level, the presence of parties in the elections is weaker, in the 2018 elections the national parties won about 62 per cent of votes. At the level of *gminas*, the parties have obviously the smallest influence – local election initiatives prevail. In *gminas* with up to 20,000 inhabitants (single-mandate constituencies) national parties won about 27 per cent of votes. In *gminas* with over 20 000 inhabitants the figure was approx. 50 per cent.[145] In rural *gminas*, traditionally, the peasants' party – the Polish People's Party (*Polskie Stronnictwo Ludowe*) – has played an important role. In the last elections, the importance of the Law and Justice Party

[141] Bukowsk Michał, Jarosław Flis, Agnieszka Hess and Agnieszka Szymańska, Rządzący i opozycja, partie sejmowe i lokalne w małopolskich wyborach samorządowych 2014 (Attyka 2016) 24.

[142] The Senate is the upper house of the Polish Parliament, the lower house is the Sejm. The Senate and the Sejm exercises legislative power in Poland. The Members of both houses are elected by direct election. The Senate consists of 100 senators, the Senate - 460 deputies.

[143] Rafał Dudkiewicz was from 2002 to 2018 the Mayor of Wrocław, the capital city of the Lower Silesian Voivodeship.

[144] Bogdan Wenta having run from his own committee and was *elected* as Mayor of *Kielce,* the capital of the Świętokrzyskie Voivodeship. For years related with handball, first as a player of the Polish national team and Germany. 2004 - 2012 was the coach of the Polish national handball team. One of the best handball player in history of Polish handball.

[145] National Electoral Commission, 'The Results of Local Elections 2018' (*Local Government Elections 2018*, 30 June 2018) <https://wybory2018.pkw.gov.pl/pl/dane-w-arkuszach> accessed 14 December 2019.

(*Prawo i Sprawiedliwość*) has increased, reflecting the situation at the national government level.

The number and share of rural population in the total population of the country is declining. At the end of 2017, the rural population accounted for 39.9 per cent (in 1950 over 63 per cent)[146]. The *gminas*' population forecasts of the Polish Central Statistical Office (GUS) for 2017-2030 indicate, above all, a strong development of major urban agglomerations with adjacent areas. They will continue to attract people from more peripheral areas. At the same time, a continuation of the suburbanization process should be expected, which will lead to a significant increase in population in the *gminas* adjacent to big cities.[147] These changes are caused by lower prices of flats or house building costs and reflect the growing economic status which enables inhabitants to move to an area more beneficial in terms of being a 'greener environment'.[148] In 2018, 55 cities with *powiat* rights (there are 66 cities of this type in total) recorded a decrease in population compared to the previous year. These included cities that aspire to play the role of a metropolis (Poznań, Łódź, Bydgoszcz). Warsaw, the capital city of Poland recorded an increase. The number of ***gminas*** with less than 5,000 inhabitants is steadily growing. There are already approx. 800 of them.

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[146] Stańczak Joanna and Znajewska Agnieszka, 'Population in Poland: Size and Structure by Territorial Division as of June 30, 2017' (Central Statistical Office, 2017) <https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5468/6/22/1/ludnosc._stan_i_struktura_w_przekroju_terytorialnym._stan_w_dniu_30.06.2017.pdf> accessed 1 December 2019.

[147] 'Prognoza ludności gmin na lata 2017-2030' (*Statistics Poland*, 31 August 2017) <https://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-gmin-na-lata-2017-2030-opracowanie-eksperymentalne,10,1.html> accessed 1 December 2019.

[148] Małgorzata Waligórska, Zofia Kostrzewa, Maciej Potyra and Longina Rutkowska, 'Population Projection 2014-2050' (Central Statistical Office 2014) <https://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-na-lata-2014-2050-opracowana-2014-r-,1,5.html> accessed 1 December 2019.

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7.2 The Structure of Local Government in Poland: An Introduction

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The number of local government units in Poland is relatively stable. As far as the number of *gminas* [communes, municipalities] is concerned, there were 2,383 at the time of the restoration of local government in 1990. Currently, there are 2,477 of them. This means an increase in the number of *gminas* by 3.9 per cent. Between 1990 and 2018, the number of *gminas* with less than 2,000 inhabitants increased from 15 to 40, while the number of *gminas* with less than 5,000 inhabitants increased from 654 to 794[149]. The number of cities with *powiat* rights remains unchanged and currently stands at 66.

The number of *powiats* [counties], that were established in 1999 was 308, currently there are 314. The structure of voivodeships (16 units) did not change.

However, this does not mean that the problem of the territorial structure in Poland does not provoke disputes and political discussion. On the one hand, local communities are active and take initiatives to establish separate smaller territorial units. On the other hand, the central government, which has authority to introduce changes in the territorial structure of the country, proposes solutions aimed at consolidating small *gminas* and *powiats*. Moreover, a discussion is taking place among experts about dysfunctions in the territorial division and the desirable changes. The discussion about metropolitanization processes is especially important. It entails the determination of the development strategy for Poland (polarization-diffusion model versus sustainable development model)[150].

Thus, territorial units in Poland have not been consolidated, which has been a dominant trend in the last few decades in European countries (e.g. Germany, Sweden, Switzerland, Denmark, the Netherlands).

The numerous causes for the process opposite to consolidation, i.e. fragmentation of the *gmina* structure in Poland, include inter alia:

- the establishment of new *gminas* was a manifestation of grassroots social movements in the process of democratization and restoration of self-government after 1990. Local government in localities was often considered an important value;
- the lack of statutory provisions on the criteria for the establishment of new *gminas* resulted in spontaneous and uncontrolled division.

[149] Katarzyna Ciesielska, Ewa Kacperczyk, Krystyna Korczak-Żydaczewska and Mirosława Zagrodzka, 'Demographic Yearbook of Poland' (Statistics Poland 2019) <https://stat.gov.pl/obszary-tematyczne/ludnosc/ludnosc/powierzchnia-i-ludnosc-w-przekroju-terytorialnym-w-2019-roku,7,16.html> accessed 22 November 2019.

[150] Andżelika Mirska, 'Probleme der Metropolisierung in Polen in Hinblick auf die territoriale Struktur des Landes ' in Europäisches Zentrum für Föderalismus-Forschung Tübingen EZFF (ed), *Jahrbuch des Föderalismus 2013: Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2013).

It was only in 2015 that a legal provision was introduced to counteract the fragmentation of the territorial structure in Poland. The criterion of *gmina* revenue and population size was adopted.

The above provision prohibits the establishment of *gminas* in which:

- the revenue would be lower than the lowest tax revenues per capita provided for individual *gminas* in the Act of 13 November 2003 on Revenue of Local Government Units;
- the population of the newly established *gmina* would be lower than that in the *gmina* with the smallest population in Poland.[151]

On the other hand, incentives for voluntary mergers of *gminas* and *powiats* are offered. They include financial incentives which were first introduced in Poland in 2003. *Gmina* or *powiat* established as a result of voluntary consolidation is provided with additional funds from the state budget for 5 years (increased share in PIT revenues for a new *gmina* or *powiat*).[152] Even so, there had not been a single consolidation of territorial units in Poland until 2015.[153] For this reason, the financial incentive was increased in 2015. The first voluntary merger took place in 2015. Two territorial units were consolidated: the city with *powiat* rights (Zielona Góra) was merged with the surrounding rural *gmina* (under the same name: Zielona Góra). The initiative was undertaken by the city which conducted an intensive promotional campaign for the merger. The authorities of the rural *gmina* were rather reluctant and sceptical. Eventually, in a local referendum, which took place only in the rural *gmina*, 53.4 per cent of the inhabitants voted in favor of the merger. Accordingly, the Polish government decided to merge the two *gminas*. As a result, Zielona Góra (city with *powiat* rights) increased its area from 58.34 sq m to 278.79 sq m, becoming the sixth largest city in Poland. The population has increased by about 20,000 and is now 140,000 inhabitants.

The financial incentives are crucial in joining local government units on the example of Zielona Góra issue. What is more, residents of the village were allowed by the authorities of Zielona Góra to decide (during the village meetings) about the allocation of additional funds from the state budget on the investments. As announced by the Mayor of Zielona Góra, the money was divided among the village councils in proportion to the number of individual villages' residents. The infrastructure investment extending and the areas increase intended for investment were the most expected benefits during the information campaign for the connection of the City of Zielona Góra and the rural Commune of Zielona Góra. Conversely, the local taxes raise and the cost of living increases for rural areas residents could be the main threats to the rural communities.[154]

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[151] Art 4(d) of the Act of 8 March 1990 on G*mina S*elf-Government.

[152] Art 41 of the Act of 13 November 2003 on the Revenues of Local Government Units.

[153] The response of the Ministry of Administration and Digitization to parliamentary question no 24063 on the consequences of administrative reform, <http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=0F92DD9D > accessed 22 November 2019.

[154] Piotr Dubicki and Piotr Kułyk, 'Proces integracji miasta z gminą wiejską. Przykład Zielonej Góry. The Process of Urban-Rural Integration. Using the Example of Zielona góra' (2018) 32 Studia Miejskie 113 <http://www.studiamiejskie.uni.opole.pl/wp-content/uploads/2019/05/S_Miejskie_32_2018-Dubicki.pdf>.

All adjustments to the territorial structure of *gminas*, *powiats* and voivodships are made by the central government in Poland. It is mandatory for the government to consult the local authorities affected by these changes. Both representative bodies and residents are consulted (a local referendum may be carried out). However, the outcome of the consultations is not binding on the government. The residents also have the right to take the initiative to establish, merge, divide and liquidate a *gmina* and establish the borders of the territorial unit. It is implemented in the form of a local referendum.

As regard the aforementioned issue of consolidation of territorial units, the above example of Zielona Góra draws attention to a wider problem of territorial structure in Poland, namely the so-called 'bagel'-*gminas* [*gminy obwarzankowe*] (Figure below). This means that in the vicinity of a rural *gmina* there is a separate city (urban *gmina* or city with *powiat* rights) – often with the same name. As there is no administrative center in a rural *gmina*, the authorities and administration of that rural *gmina* are based in a neighboring city (which is a separate *gmina* with its own authorities and administration). It is often the case that the rural and municipal authorities are based in the same building.

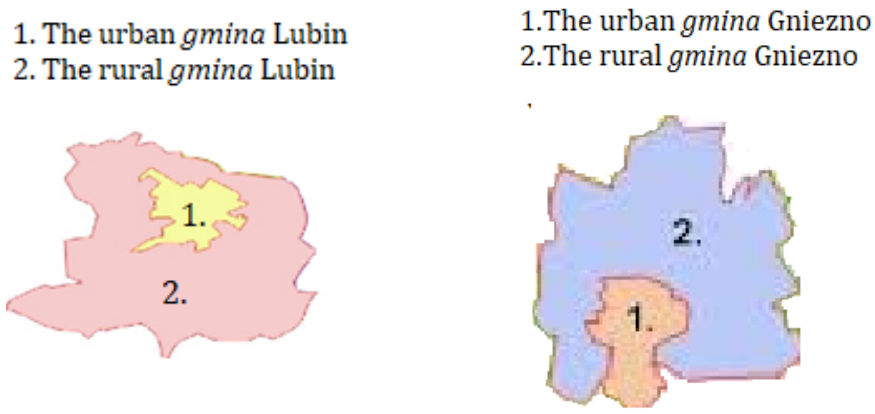

Figure 2: Examples of the shape of 'bagel'-*gminas*.[155]

In Poland there are 144 urban *gminas* (and 14 cities with *powiat* rights) surrounded by rural *gminas* –'bagels'. According to some experts, a systemic solution is needed – i.e. a merger of all 'bagel'-*gminas* with cities. The authorities of individual cities and the Association of Polish Cities (*Związek Miast Polskich*) also propose such a solution.[156] They claim that the inhabitants move from the city to the suburbs, i.e. to the area of the rural *gmina* (where they also pay PIT which contributes towards the budget of the rural *gmina*), and work in the city and use the local infrastructure (the free-rider problem). It is also argued that cities need land for urban investments. However, the 'bagel'-*gminas* are reluctant to hold negotiations about

[155] Source: own elaboration based on Association of Volunteer Firefighting Brigades, 'Lista stron OSP' (*Związek Ochotniczych Straży Pożarnych RP*, 2008) <https://www.osp.org.pl/hosting/katalog.php?id_w=16&id_p=309&id_g=2281 > accessed 2 November 2019.

[156] Tomasz Żółciak, 'Cicha wojna na linii gminy - miasta o zmiany granic [Silent War Between Rural Gminas and Cities for Changes of Borders]' (*GazetaPrawna.pl*, 31 January 2018) <https://serwisy.gazetaprawna.pl/samorzad/artykuly/1101214,wojna-na-linii-gminy-miasta-o-zmiany-granic.html> accessed 22 November 2019.

consolidation with the city and are concerned about a loss of identity, independence and, of course, financial independence. It is argued that the indebted cities want to repair their finances through a merger with a rural *gminas* (bonus from the central budget). The 2013 report of the Minister of Administration and Digitization states that the government does not plan systemic solutions and top-down liquidation of all the 'bagel' *gminas* but only expects voluntary mergers.[157]

In recent years, the conflict between urban and rural *gminas* in Poland has been aggravating. Cities are attempting to take over some of the rural areas (officially: adjustment of borders between territorial units). The parties to the conflict are represented by local government organizations: the Association of Rural Communes (*Związek Gmin Wiejskich*) and Association of Polish Cities. Both parties present conflicting demands and they seek to win over the Polish government. Rural *gminas* demand a guarantee of inviolability of their borders,[158] while cities postulate that the government should issue permits to increase their area at the expense of neighboring *gminas*, as they need land for investments.[159] In each case, the government decides on the adjustment of the borders between the territorial units – considering the requests of the cities to take over a part of the area of the neighboring *gmina*.

Since the territorial reform of 1999, metropolitan areas have not been regulated. The government proposed various top-down solutions – however, none of them eventually was adopted. The dispute concerned, among other things, the question of which cities in Poland can be considered as 'metropolises'. Government documents from 2011 referred to 10 metropolitan areas, identified on the basis of a number of criteria, including the population over 30 000.[160] However, no new territorial units have been created. The progress was made in 2017, when the first metropolitan territorial unit in Poland was established. Under an act, the Upper Silesian and Zagłębie Metropolis [*Górnośląsko-Zagłębiowska Metropolia*], i.e. the metropolitan union for the metropolitan area of the Upper Silesian conurbation, was established. To date, no other metropolitan union has been established by a top-down decision.

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[157] Ministry of Administration and Digitization, 'Assessment of the Situation of Local Governments' (2013) <http://eregion.wzp.pl/sites/default/files/ocena-sytuacji-samorzadow-lokalnych.pdf > accessed 1 December 2019.

[158] Position of the 32nd General Assembly of the Association of Rural Communes of the Republic of Poland of 19 June 2018 on amendments to the law on the division and change of *gminas*' borders, <http://www.zgwrp.pl/attachments/article/1352/XXXIIZO_stanowisko_granice.pdf> accessed 1 December 2019. Katarzyna Kubicka-Żac, 'Gminy wiejskie chcą lepszej ochrony swych granic [Rural Gminas Demand Better Protection of their Borders]' (*Prawo.pl*, 27 April 2019) <https://www.prawo.pl/samorzad/gminy-wiejskie-chca-lepszej-ochrony-swych-granic,402541.html> accessed 1 December 2019.

[159] Aneta Kaczmarek, 'Zmiany granic gmin. „Zbyt łatwo silniejszy zabiera ziemię słabszemu" [Changes in the gminas' Borders. "Too Easily the Stronger Takes the Land from the Weaker"]' (*Portal Samorządowy,* 7 November 2019) <https://www.portalsamorzadowy.pl/prawo-i-finanse/zmiany-granic-gmin-zbyt-latwo-silniejszy-zabiera-ziemie-slabszemu,134527.html.> accessed 30 November 2019.

[160] Ministry of Regional Development, 'Concept of the Country's Spatial Development 2030' (2011) 167 <http://www.wzs.wzp.pl/sites/default/files/files/19683/89272000_1412985316_Koncepcja_Przestrzennego_Zagospodarowania_Kraju_2030.pdf > accessed 30 November 2019.

For years, however, very large cities with their surrounding *gminas* and *powiats* have been establishing grassroots associations and arrangements to jointly carry out tasks in functional areas (e.g. a joint metropolitan ticket for public transport).

Examples of voluntary cooperation in the functional areas of the largest cities in Poland include:

- Gdańsk-Gdynia-Sopot Metropolitan Area[161] (2011), an association of 57 local governments, an area of 5.500 sq km with 1.5 million inhabitants;
- Metropolis of Poznań[162] (2007), an association of 23 local governments, 3,000 sq km, 1 million inhabitants.

However, this was not a common practice in large Polish cities. One method of encouraging or even forcing cooperation between large cities and their functional areas involved a financial incentive from the European Regional Development Fund and the European Social Fund. It involves an instrument implemented in Poland to support cities, namely the Integrated Territorial Investment (ITI). Large cities and surrounding *gminas*, in order to cooperate under the ITI model, establish a partnership (e.g. an association or an inter-*gmina* union) or enter into an agreement and prepare a joint ITI strategy. It should include objectives and projects to be implemented.

Thus, the largest cities were 'forced' to cooperate in exchange for additional funding. This resulted in the cooperation between local governments, e.g.

- Cracow Metropolis[163] (2014), 15 local governments, 1.2 million inhabitants, 1,275 sq m;
- Warsaw Functional Area[164] (2014), Warsaw and 39 *gminas* surrounding Warsaw, 2.7 million inhabitants, area of 2,932 sq km.

Moreover, the EU funds allow the implementation of cross-border cooperation programs. These programs are open to participation, alongside other entities, of cross-border local governments from Poland and neighboring countries. Programs carried out currently (2014-2020): 'Poland-Slovakia', 'Poland-Czech Republic', 'Poland-Saxony', 'Poland-Brandenburg', 'Poland-Mecklenburg-Western Pomerania-Brandenburg', 'Poland-Lithuania', 'Poland-Belarus-Ukraine', 'Poland-Russia', 'South Baltic' (Denmark, Lithuania, Germany, Poland and Sweden), 'Baltic Sea Region' (Denmark, Sweden, Finland, Lithuania, Latvia, Estonia, selected regions of North-East Germany, non-EU countries): Norway, Belarus, Russia).[165]

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[161] Website of the Gdańsk-Gdynia-Sopot Metropolitan Area, <http://en.metropoliagdansk.pl/>.

[162] Website of the Metropolis of Poznań <http://metropoliapoznan.pl/strona,27,dzialalnosc.html>.

[163] Website of the Cracow Metropolis <http://metropoliakrakowska.pl/>.

[164] Website of the Warsaw Functional Area <https://omw.um.warszawa.pl/>.

[165] Ministry of Development Funds and Regional Policy, 'Programy Europejskiej Współpracy Terytorialnej i Europejskiego Instrumentu Sąsiedztwa' (undated) <http://www.ewt.gov.pl/strony/o-programach/przeczytaj-o-programach/> accessed 1 December 2019.

Kaczmarek T, 'Functional Urban Areas as the Focus of Development Policy in Poland' (2015) 29 Rozwój Regionalny i Polityka Regionalna 9 <http://obserwatorium.miasta.pl/wp-content/uploads/2016/10/RR29_009-019.pdf>

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Mirska A, 'State policy on the formation and modernisation of Polish territorial structure' in Europäisches Zentrum für Föderalismus-Forschung Tübingen EZFF (ed), *Jahrbuch des Föderalismus 2018*: *Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2018)

7.3 What does Metropolitan Cooperation in the Functional Area of the Capital Warsaw Involve?

Andżelika Mirska, *University of Warsaw*

Relevance of the Practice

Warsaw is the largest city in Poland, its capital city, and is centrally located. Until 2002, the city area was divided into 11 independent *gminas* which formed the obligatory municipal union of Warsaw. Since 2002, these *gminas* have been transformed into 18 districts (auxiliary units) and Warsaw has become a uniform *gmina* with 1.7 million inhabitants. A functional area of Warsaw was naturally created, which, depending on the concept, includes from 39 to 72 *gminas*. However, despite the pressing needs of local governments' cooperation, for a long time Warsaw's cooperation with neighboring local governments has not improved at all (despite various projects and declarations of cooperation). The launch of Integrated Territorial Investment (ITI) from the EU was decisive and forced such cooperation in Poland.

The previous lack of voluntary cooperation among communes was caused by several reasons. Financial issues (no additional financial incentives) as well as mutual prejudices and the concern about dominating small communes by Warsaw played a significant role. Moreover, there was no cooperation habit. Mayors of communes around Warsaw assess Warsaw as a partner acting from the strength position, uncomprehending the small communes' problems and generally not interested in voluntary cooperation with them.

The lack of cooperation between municipalities around Warsaw is claimed to be also due to selfishness and caring only for their own interests. 'There are many local governments that only invest in themselves as a part of the competitiveness. They want to demonstrate their communes as the leaders. They do not want to cooperate with other communes so that a neighboring commune accidentally would either not benefit from this cooperation or not take over the competitiveness on its own side. This is the jaundice.' – Opinion of one of the mayors of the communes near Warsaw. Therefore, mutual self-perception as competitors is the problem. The lack of trust and the lack of social capital are also factors that influence the relations between local governments. The opinion among mayors concerning local governments in the area around Warsaw that are diverse and have little common interest is another characteristic feature. The division into east and west, into rural and other communes, into communes located very close to Warsaw and those located further away, and into economic specializations: logistics, judiciary, tourism and others are identified.[166] According to P Swianiewicz, the similarity of partners contributes to the cooperation. However, large differences usually cause friction between small suburban communes and a much larger central city. Thus, local governments compete against each other for residents, tourists,

[166] The local leaders' attitude considering the cooperation in the Warsaw Metropolitan Area.

investors and public funds. Consequently, the problem of establishing common interest in terms of the cooperation undertaken is a fundamental issue.

The new instrument of the European Union, i.e. Integrated Territorial Investment (ITI), is a response to the development needs of metropolitan areas, including metropolitan Warsaw in view of the above barriers to voluntary cooperation of local governments (bottom-up) and the lack of legal regulations which regulates the commune governments cooperation within urban agglomerations (top down).

The significant role of external financing for building cooperation relations between local governments is indicated.

Description of the Practice

The 'Warsaw Functional Area for ITI' was established in 2014. It encompasses Warsaw and 39 *gminas* surrounding Warsaw, 2.7 million inhabitants, area of 2,932 sq km. The partners had to enter into the 'Agreement of the *Gminas* of Warsaw Functional Area on cooperation in the implementation of the ITI in the EU 2014-2020 financial perspective'[167] and agree on a joint 'Strategy' document.[168]

This strategy focuses on three objectives to be achieved through specific lines of action:

Objective 1: Improved accessibility of public services.
Line of action:
1.1. Information services.
1.2. Education services.
1.3. Services to increase inhabitants' activity.

Objective 2: Development of business networks.
Line of action:
2.1. Promotion of economy.
2.2. Investment areas.
2.3. Human capital.

Objective 3: Improvement of space quality.
Line of action:
3.1. Transport links;
3.2. Natural and cultural environment.

The organizational structure of the 'Warsaw Functional Area for the implementation of ITI' includes: (i) Steering Committee, (ii) Consultative Forum, (iii) Secretarial Office.

The 'Warsaw Functional Area for ITI' consists of one city with county rights (the Capital City of Warsaw), 14 urban communes, 12 urban-rural communes and 13 rural communes.

[167] (version 7, 12 September 2019) <http://omw.um.warszawa.pl/wp-content/uploads/2018/10/Strategia-ZIT-WOF-VII_2018_09_06.pdf > accessed 2 November 2019.

[168] <http://omw.um.warszawa.pl/wp-content/uploads/2014/07/Strategia-ZIT-WOF.pdf> accessed 2 November 2019.

Administratively, these communes belong to 10 counties. It concentrates over half of the voivodeship's residents (50.5 per cent) despite the fact that this area covers a relatively small part of the Mazowieckie voivodship (8.3 per cent). Due to the specificity of the area, especially the number and size of settlement centers, the urbanization rate for the 'Warsaw Functional Area for ITI' (87.5 per cent) is significantly higher than the value for the Mazowieckie Voivodeship (64.2 per cent), as well as the entire territory of Poland (60, 6 per cent). Moreover, the 'Warsaw Functional Area for ITI' is the most densely populated area of the voivodeship (912 people / km^2). This value is over six times higher than in the entire Mazowieckie Voivodeship case (149 people / km^2).

Contracts were signed for 115 projects for the grant amount of PLN 606.5 million. What is more, they will be implemented individually by communes in partnership with communes around Warsaw, in partnership with Warsaw, as well as by non-governmental organizations operating in the metropolitan area and private entrepreneurs. Everything is connected with the partnership resulting from the 40 communes' agreement signed in February 2014 and the joint ITI investment strategy. The projects concern both the problems of rural areas (e.g. educational programs for rural schools in the commune to provide equal educational opportunities for children) and the metropolitan problems (the provision of childcare facilities for children in nurseries in one of the districts of Warsaw with the highest birth rate[169]). There are also projects implemented jointly by several municipalities, such as the construction of bicycle paths connecting 6 communes. Projects with impact on all local governments i.e. in the field of e-services are also distinguished. For instance, the project entitled 'Construction and implementation of an integrated support system for care services in the Warsaw Functional Area (E-Care)'.[170]

Assessment of the Practice

The cooperation of local governments in the functional area of Warsaw is an urgent necessity. The ITI was a catalyst for such cooperation. As it has not been in place for long, it is still difficult to assess the effects. The actions and mechanisms of cooperation should be examined. However, the initiation of such cooperation is certainly a success. Preparations for the next period of EU funding for ITIs (2021-2027) are currently ongoing.

[169] 'Population Figure Monitoring 2015' (*Statistical Office in Warsaw*, 2015) <https://warszawa.stat.gov.pl/monitoring-stanu-ludnosci/>.

[170] 'Projects under Integrated Territorial Investments of Greater Warsaw' (*Metropolia Warszawska*) <http://omw.um.warszawa.pl/en/zintegrowane-inwestycje-terytorialne/zit-metropolii-warszawskiej-cele-i-korzysci/zit-metropolii-warszawskiej-planowane-dzialania/>.

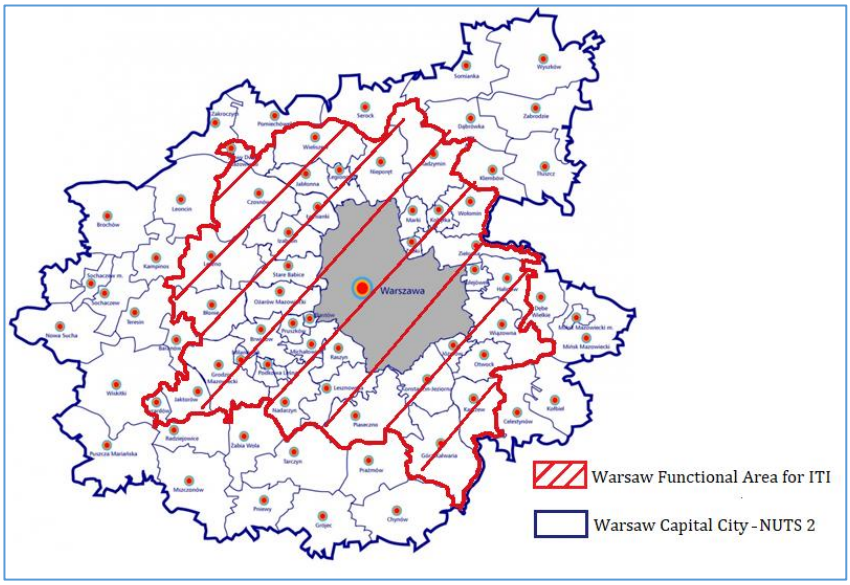

Figure 3: The Borders of the 'Warsaw Functional Area for ITI' and of the 'Warsaw Capital City'-NUTS 2.[171]

Apart from the establishment of the ITI program, the second factor that influenced the discussion on the Warsaw metropolitan area was the division of the Mazowieckie Voivodeship into 2 statistical units at NUTS2 level (from 1 January 2018). 'Warsaw Capital City' NUTS was identified, which included Warsaw and 70 surrounding *gminas*. A milestone for further joint metropolitan activities will be the 'Strategic Action Plan for the Warsaw Metropolis – Strategic Guide 2.0' developed by local governments, indicating the development needs of the metropolis in the coming years.[172]

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Zuzańska-Żyśko E, 'Shaping of Metropolization Process in Poland – Theoretical Aspect' (2015) 41-42 Studia Regionalia 95

[171] Source: own elaboration based on Tomasz Demianczuk, 'Warszawa i 39 gmin wspólnie ruszają po dotacje w ramach ZIT' (*City of Warsaw*, 9 March 2016) <http://www.um.warszawa.pl/aktualnosci/warszawa-i-39-gmin-wspolnie-ruszaj-po-dotacje-w-ramach-zit-konferencja-prasowa>.

[172] Przemysław Chwiszczuk, 'Strategic Action Plan for Greater Warsaw – Strategic Guide 2.0' (*Metropolia Warszawska*, 26 September 2018) <http://omw.um.warszawa.pl/plan-dzialan-strategicznych-dla-metropolii-warszawskiej-przewodnik-strategiczny-2-0/> accessed 1 December 2019.

7.4 First Territorial Unit of Metropolitan Nature in Poland: The Metropolitan Union 'Upper Silesian-Zagłębie Metropolis'

Andżelika Mirska and **Karolina Zbytniewska**, *University of Warsaw*

Relevance of the Practice

After many unsuccessful attempts to solve the problem of governance in metropolitan areas in Poland in a top-down manner, the establishment of a new territorial unit of metropolitan nature in 2018 was certainly an important event in Poland. Of course, this is only the first step in a territorial reform. However, the success (or failure) of the 'Upper Silesian-Zagłębie Metropolis' will determine the objectives for further reforms in this area.

Description of the Practice

The first metropolitan union in Poland established pursuant to an act of parliament was created on 1 January 2018 within a territory of one voivodeship – the Śląskie voivodeship which is the most highly urbanized and most populated in Poland. Moreover, it is a polycentric type of metropolitan area, i.e. an urban settlement system consisting of many highly urbanized territorial areas.[173]

Firstly, the development of metallurgy and mining, mainly of hard coal was the factor that has resulted in the emergence of a polycentric structure (conurbation) in Upper Silesia from the 19th century. The region is established by a dozen or so highly urbanized cities with a comparable population and economic potential. The special features of Upper Silesia are: a very high population density and build-up intensity, an extensive road infrastructure network and public transport connections, large daily migration between the agglomeration cities. The natural environment degradation related to the industry development and the mineral deposits exploitation as well as the post-industrial areas revitalization is a significant challenge

The metropolitan union 'Upper Silesian-Zagłębie Metropolis' comprised 41 territorial units: 13 cities with *powiat* status and 28 *gminas*. (The entire Śląskie voivodeship consists of 19 cities with *powiat* status, 17 *powiats* and 167 *gminas*). The area of the union is 2.553 sq km which constitutes approximately 20 per cent of the area of the Śląskie voivodeship. The union is inhabited by over 2.3 million residents, i.e. the half of population of the whole Śląsie voivodeship. The heavy concentration of people within the union is also reflected by the population density in the amount of 893 persons per sq km (For the Śląsk voivodeship it is 370

[173] Andżelika Mirska, 'State Policy on the Formation and Modernisation of Polish Territorial Structure' in Europäisches Zentrum für Föderalismus-Forschung Tübingen EZFF (ed), *Jahrbuch des Föderalismus 2018*: *Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2018).

persons per sq km, national average for Poland -123 per sq km).[174] The degree of urbanization is very high and amounts to 94 per cent (the average for the Śląsk voivodeship is 78 per cent, for Poland – 60 per cent in 2016).[175]

The concept of formation of a metropolitan union in Poland is based on cooperation between local government units, state authorities and – most importantly – inhabitants. The process of formation of Metropolitan Union 'Upper Silesian and Zagłębie Metropolis' included three stages:

First, adoption of the Act of 9 March 2017 on the Metropolitan Union in the Śląskie Voivodeship which set forth the procedure for the establishment of a metropolitan union.

Second, preparation of a motion for the establishment of the metropolitan union by *gminas* involved. Formally, the motion was submitted by the city council of Katowice, the largest city in that region (300 thousand inhabitants).

Third, the issuance of the regulation by the Polish government on the establishment of the metropolitan union.[176] The regulation became effective as of 1 July 2017. The issuance of the regulation involved obtaining an opinion from:

- councils of *gminas* which were to be included in the metropolitan union after having consulted inhabitants;
- *sejmik* [regional assembly] of the Śląskie voivoideship (it is a legislative body of the local government of the Śląskie voivodeship);
- Silesian voivode (a representative of the Polish government in the Śląskie voivodeship).

One of the obligatory elements of the procedure for the establishment of the metropolitan union regulated by the Act of 9 March 2017 on the Metropolitan Union in the Śląskie Voivodeship was the application of a participatory democracy instrument. In all *gminas* included in the motion it was required to hold consultations with inhabitants about the inclusion of a given *gmina* in the metropolitan union to be formed within the Śląskie voivodeship. They were held from 11 April to 11 May 2017 – for the period of minimum 2 weeks in each of the *gminas*. Opinions could be submitted through various means: by post, e-mail, dedicated boxes in *gmina's* offices, cultural centers, libraries etc. and, in some *gminas*, through electronic means via websites or through pollsters. In total, 12.5 thousand inhabitants participated in the consultations. 90 per cent of them was in favor of the formation of the metropolitan union, 5 per cent was against, and 5 per cent cast invalid votes.[177]

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[174] Tadeusz Markowski and Tadeusz Marszał, *Metropolie, obszary metropolitalne, metropolizacja. Problemy i pojęcia podstawowe* (Polish Academy of Sciences 2006) 15.

[175] 'Metropolis Today' (*Górnośląsko-Zagłębiowska Metropolia*, 2019) <https://metropoliagzm.pl/en/metropolia-dzis/> accessed 1 December 2019.

[176] Regulation of the Council of Ministers of 26 June 2017 on the establishment within the Śląskie voivodeship of the metropolitan union under the name 'Upper Silesian and Zagłębie Metropolis'. Regulation of the Council of Ministers of June 26, 2017 on the establishment of a metropolitan union in the Śląskie Voivodeship under the name of Górnośląsko-Zagłębiowska Metropolia (Dz.U. 2017 poz. 1290).

[177] Motion to establish the metropolitan union, accepted through the resolution of the City Council of Katowice of 29 May 2017, 19. Content of the motion: <https://bip.katowice.eu/Lists/Dokumenty/Attachments/102396/DS-909-17.pdf> accessed 1 April 2018.

Consultations with residents were only advisory and non-binding (not a form of local referendum). However, they were evidently considered by the individual communes' councils voted for joining the Metropolitan Union 'Upper Silesian and Zagłębie Metropolis'. Separate consultations with residents were organized by each of the communes in their areas. Nevertheless, the question raised was similar in all communes: 'Are you in favor of your commune joining the Metropolitan Union "Upper Silesian and Zagłębie Metropolis"?'[178]

As regards the opinions of councils of *gminas* included in the metropolitan union, all 41 councils opted for the formation of a new territorial unit. It should be stressed, however, that in accordance with the act, at least 70 per cent of *gminas* must be in favor for the regulation on the establishment of the metropolitan union to be adopted.[179]

The Metropolitan Union 'Upper Silesian and Zagłębie Metropolis' owns its systemic and legal position to the act and regulation, namely a decision made by the central Polish authorities (the Parliament of Poland and the Council of Ministers). This new unit in the territorial structure of Poland gained a legal status similar to that of local government units. The Act of 9 March 2017 on the Metropolitan Union in the Śląskie Voivodeship stated that 'the metropolitan union shall perform public tasks on its own behalf and responsibility, have legal personality and the independence of the metropolitan union is legally protected'. (This legal principle has been applied to local government units: *gminas*, *powiats* and voivodeships). Additionally, the act set out the scope of operation and tasks, authorities (bodies) of the metropolitan union, the procedure for their appointment and scope of competences.[180] The determination of financial independence principle and guaranteed sources of financing the activities of the union was also of major significance.

The metropolitan union constitutes a new organizational and legal form in the Polish political and government system, combining the elements of the classic, voluntary unions between *gminas* and local government units. It cannot, however, be qualified as a local government unit, as it fails to meet the obligation imposed by the Constitution of the Republic of Poland according to which a decision-making body must be appointed at a general election.[181]

The decision-making body (the Metropolis Assembly) is the regulatory and inspecting authority of the Metropolitan Union 'Upper Silesian and Zagłębie Metropolis'. It consists of delegates from the communes forming a part of the union which is one from each commune. Voits, mayors or presidents of cities (i.e. commune executive authorities) are these delegates or persons authorized by them. The assembly election method established in the act was criticized by scientists.[182] The charge was the lack of democratic procedures.

The management board is the executive authority of the Metropolitan Union 'Upper Silesian and Zagłębie Metropolis', and consists of 5 members, including the chairman. The

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[178] 'Wyniki konsultacji społecznych w Katowicach' (*Metropolia GZM*, 30 May 2017) <http://gzmetropolia.pl/katowice/20170530-wyniki-konsultacji-spolecznych/>.

[179] Art 7(4) of the Act of 9 March 2017 on the Metropolitan Union in the Śląskie Voivodeship.

[180] Act of 9 March 2017 on the Metropolitan Union in the Śląskie Voivodeship.

[181] Andżelika Mirska, 'State Policy on the Formation and Modernisation of Polish Territorial Structure'.

[182] Sławomir Bukowski, 'Ustawa metropolitalna kosztem demokracji?' (*Wspólnota, 12 January 2016)* <https://wspolnota.org.pl/news/ustawa-metropolitalna-kosztem-demokracji>.

management board is elected by the meeting of the union in a secret ballot. Firstly, the board chairman is elected and then the remaining members of the board at the chairman request.

The metropolitan union assembly resolutions are passed in a special way, i.e. by a double majority of votes (the majority of communes included in the union and such a number of communes that their residents constitute the majority of the population living in the metropolitan area).

The legal personality was granted by the Metropolitan Union 'Upper Silesian and Zagłębie Metropolis'. However, the residents were not made the union's authority operator. Residents do not have the right to elect the union authorities or the right to a referendum on union's matters.

Conversely, the metropolitan union has the remaining three features of local government, i.e.:

- the subject - established in order to perform public tasks - like local government units;
- the tasks - the act uses the term 'own tasks' of the union – like local government units;
- review over the activity - the union was subject to review - like local government units.

Only communes can be members of a metropolitan union.

The solutions provided for in the act are aimed at the formation of institutionalized 'metropolitan governance system' with the elements of a 'metropolitan government' indicated by the fact of public taxes constituting the source of income and statutory competences of the metropolitan union.

Not only the establishment of the metropolitan union but also the modification of its boundaries remains at the discretion of the central government. The modification is carried out through the same procedure which is applied for the formation of the union, however, the modification may only involve the expansion of the union area by inclusion of additional *gminas*. Therefore, it is not possible to leave the metropolitan union.

The Metropolitan Union performs public services that include shaping of the spatial order, social and economic development, public transport, metropolitan passenger mobility, co-operation on delineating national and regional roads within the metropolitan limits, and promoting of the metropolis externally. Setting up an umbrella metropolitan union allows to coordinate planning and implementation of these services better and at a lower cost in sum. This also benefits its citizens, who – apart from comfortability of these solutions, also save money on coherent ticket systems for example, but also who can identify more with a broader metropolitan entity.[183]

Assessment of the Practice

The first year of the existence of the Upper Silesian-Zagłębie Metropolis showed that it is fairly difficult to reconcile the interests of the many entities that form the metropolitan union. The source of financing for the 'Upper Silesian-Zagłębie Metropolis' are, inter alia, payments made

[183] 'Metropolis Today' (*Górnośląsko-Zagłębiowska Metropolia*, 2019) <https://metropoliagzm.pl/en/metropolia-dzis/> accessed 2 December 2019.

by the communes. It is a very difficult and arduous negotiation process to establish the mechanism for calculating the contribution. The major problem constitutes constant reconciliation of the amount of the contribution paid by the communes to the joint budget. It should be emphasized that the communes making up the 'Upper Silesian-Zagłębie Metropolis' had never cooperated with each other(except for the strict center of the union). For example, one commune planned the construction of a housing estate, and neighboring commune planned the construction of a landfill next to it. Thus, the activities of the 'Upper Silesian-Zagłębie Metropolis' constitute an attempt to coordinate the activities of the member communes.[184] Although the union performs its tasks (e.g. creates new public transport lines), the conflict between the Law and Justice party and the Civic Platform party, which has been brought from the central politics level, has a great influence on its activity. It hinders the decision-making process, however the parties are aware of the need to cooperate for the benefit of the inhabitants. Apart from that, there is a historical conflict between two geographical regions ('Silesia' and 'Zagłębie') which now form part of a single territorial unit.

A bottom-up cooperation of local government units functioned as a metropolitan union in the Upper Silesian-Zagłębie 'Metropolis' area before its establishment in 2018 (pursuant to the act of the Polish Parliament and the Council of Ministers Regulation). A voluntary bottom-up intercommunal union called 'Upper Silesian Metropolitan Union' was established in 2007. It was created by 12 cities with county rights, and then 2 more cities with county rights joined to it. The activities of the Upper Silesian Metropolitan Union laid the foundations for the top-down creation of Upper Silesian-Zagłębie Metropolis'.

Pursuant to the Act, the Upper Silesian-Zagłębie Metropolis' must be characterized by the following features:

- the strong functional interactions existence;
- the urbanization processes advancement;
- a coherent area in spatial terms;
- the number with at least 2 million residents.

It is necessary to participate in the association of smaller towns and even neighboring rural communes considering the fact that the Upper Silesian Metropolitan Union area from 2007-2017 does not have a total number of two million residents.

Therefore, the borders of the Metropolis GZM established in 2017 covered 41 communes, including 13 cities with county rights and 13 urban communes, 13 rural communes and 2 urban-rural communes.

[184] See the report from the LoGov Country Workshop, Structure of Local Government, 24 May 2021.

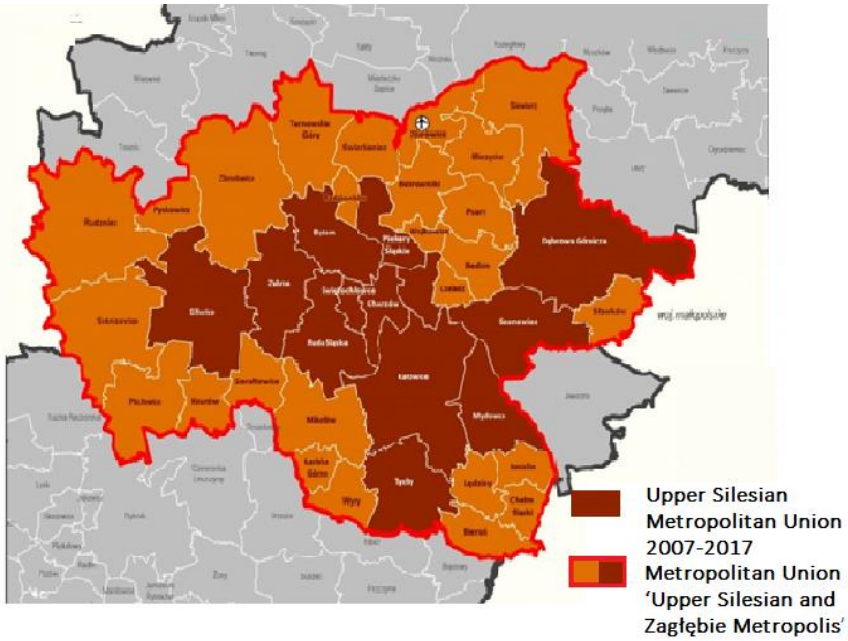

Figure 4: The Borders of the Upper Silesian Metropolitan Union (a bottom up initiative) and of Metropolitan Union 'Upper Silesian and Zagłębie Metropolis' (the top down intervention).[185]

The Upper Silesian-Zagłębie 'Metropolis' consists of two integrated spatial and functional forms, such as the core and the surroundings, i.e. the outer zone. The core creates a complex group of cities. It is a multi-center system called a polycentric system upgraded from an earlier development of the conurbation type. It consists of the largest 13 cities with county rights in terms of the population number and the hierarchy of municipal functions.

Figure 5: The Borders of the Śląskie voivodeship and the 'Upper Silesian-Zagłębie Metropolis'.

[185] PZS, 'Piekary Śląskie: konsultacje społeczne ws. Metropolii Silesia' (*Piekary Śląskie*, 13 April 2017) <piekaryslaskie.naszemiasto.pl>.

The core is surrounded by municipalities that form a ring within the reach of the main metropolitan center. This area is spatially dense, created by communes with different administrative status. It is so-called the outer zone of the core or the metropolitan area. It consists of communes directly adjacent to the metropolitan union core or the ones located further away.

Suburbanization is a form of urbanization processes towards metropolitanization. On the one hand, the cities spreading indicate an improvement in the life quality considering the cities congestion and pollution growth. On the other hand, it is the result of the land rent increase in the largest centers core zone. It causes a partial blurring of the settlement structure traditional division into town and village, deepening the spatial boundaries disappearance between individual communes and intensifying the residential areas development.

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7.5 The Association 'Gdansk-Gdynia-Sopot Metropolitan Area' as an Example of Urban–Rural Cooperation

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Relevance of the Practice

The management problem of metropolitan areas is one of the most crucial challenges for Polish local governments and for the Polish State in the 21st century. The solution to this problem may involve: (i) grassroots cooperation initiatives between local government units, or (ii) top-down solutions, i.e. legal regulations prepared by the central government and parliament.

The *Tricity* is a special area in northern Poland, situated directly on the Baltic Sea, and consisting of three neighboring cities Gdansk, Gdynia and Sopot as separate urban communes (*gminas*) with county (*powiats*) status. They constitute the metropolitan area core.

The functioning of the two economically strong cities (Gdansk and Gdynia) in close proximity results from historical conditions. From the 11th century, Gdansk has evolved into the commercial and port center in this area. Gdynia's development began only in the 1920s. It was caused by the establishment of the Free City of Danzing (*Wolne Miasto Gdańsk*) and Poland's difficult access to the Baltic Sea. The Polish Government decided to build a port in Gdynia, leading to the dynamic city development. Sopot is situated between them, playing primarily a part of a tourist center.

	Total population					
	1939	1946	1990	2000	2010	2020
Gdansk	ca. 250 000	117 894	465 143	462 995	460 509	471 525
Gdynia	ca. 120 000	77 829	251 498	253 387	249 461	245 867
Sopot	31 000	26 917	48 203	42 348	38 858	35 562

Table 1: The population development in the Tricity

Metropolization processes occur naturally in this area. The Tricity is a type of polycentric urban agglomeration.[186] A problem for the coherent area management is the growing functional associations between Gdynia, Gdansk and Sopot, and their surroundings including neighboring cities, communes (*gminas)* and counties (*powiats*). Since the restoration of local government

[186] Currently, the notions of agglomeration is not present in the Polish legal system. An agglomeration - densely built-up area of mutually related settlement units developed by concentration processes. The term 'conurbation' may also be used in this context: the conurbation—a territorial coalescence of two or more sizable cities whose peripheral zones have grown together, see 'Conurbation' (*Britannica*, undated) <https://www.britannica.com/topic/conurbation> accessed 21 September 2021.

in Poland in 1990, local politicians have been aware of the need for cooperation between communes (*gminas*). Since 1999, counties (*powiats*) have been functioning in this area (second level of local government). Moreover, the voivodeship self-government has been operating in this area since 1999 (the third level of self-government, which is responsible, inter alia, for regional rail transport).

Since 1990s, the grassroots initiatives occurred, regarding cooperation between local governments. Gdansk was the initiator of cooperation between local governments, and Gdynia presented its own ideas. The Association Gdansk Metropolitan Area was the most significant,[187] established in 2011 at the Mayor of Gdansk initiative, consisting of 41 local governments, and the Association Metropolitan Forum of the Local Government Units Heads (NORDA) established by the Mayor of Gdynia, composed of 20 representatives of local governments.[188]

The cooperation between Gdansk and Gdynia seemed to be impossible. However, an agreement was reached in 2015 and the Gdansk Metropolitan Area association was transformed into the Association Gdansk-Gdynia-Sopot Metropolitan Area. The Association henceforth consociates local governments of the entire metropolis and is an institution that officially represents them considering the Government and the European Commission. The association enables joint implementation of decisions, such as investment planning, providing bus and rail connections, and promoting communes (*gminas*) and counties (*powiats*) as one organ.

Certainly, the establishment of one common organization was accelerated by the fact that since February 2014, the office of the Association Gdansk Metropolitan Area has acted as the headquarters of the Association of 'Integrated Territorial Investments (ITI)'[189] which is a new instrument for metropolitan cooperation financed by EU funds. Currently, the Gdansk-Gdynia-Sopot Metropolitan Area serves in that capacity.[190]

Description of the Practice

The Association Gdansk-Gdynia-Sopot Metropolitan Area is a voluntary association of 59 local government units with over 1.6 million inhabitants.

The area of the Association Gdansk-Gdynia-Sopot Metropolitan Area includes:

- 3 cities with county (*powiats*) status (Gdansk, Gdynia, Sopot);
- 11 municipalities (urban communes);
- 13 urban-rural communes (*gminas*);
- 24 rural communes (*gminas*);

[187] See the website of the Gdansk-Gdynia-Sopot Metropolitan Area, <https://www.metropoliagdansk.pl/>.

[188] See the website of NORDA, <www.nordaforum.pl/>.

[189] For more information, see report section 3.3. on Integrated Territorial Investment.

[190] 'ZIT w województwie pomorskim' (*Obszar Metropolitalny Gdańsk Gdynia Sopot*, 2020) <https://www.metropoliagdansk.pl/zit/zit-w-wojewodztwie-pomorskim/> accessed 10 January 2021.

- 8 counties (*powiats*).

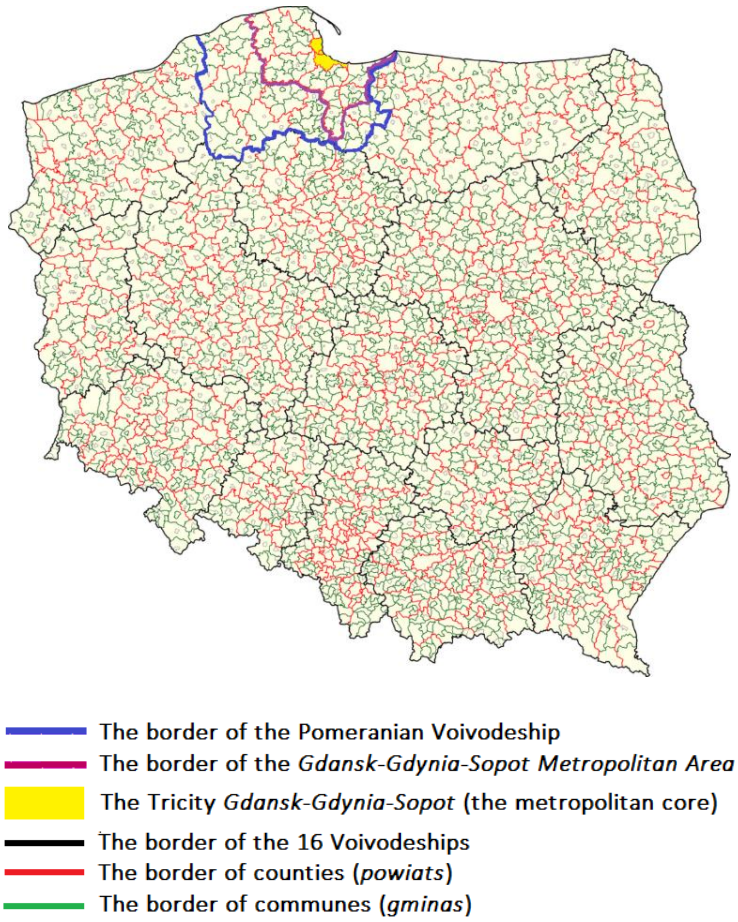

Figure 63: The border of the Association Gdańk-Gdynia-Sopot Metropolitan Area against the background of the Pomeranian Voivodeship and of Poland[191]

The Gdansk-Gdynia-Sopot Metropolitan Area consists of 51 communes (*gminas*). Communes (*gminas*) are the first, primary level of local government in Poland. Additionally, counties (*powiats*), the second level of local government in Poland, are members of the Association. Under the subsidiarity principle, they help communes (*gminas*) perform local tasks of 'supragmina' character. Counties (*powiats*) cover several communes (*gminas*).

[191] Own elaboration, with the map taken from Aotearoa <https://pl.wikipedia.org/wiki/Wikipedysta:Aotearoa/mapy>.

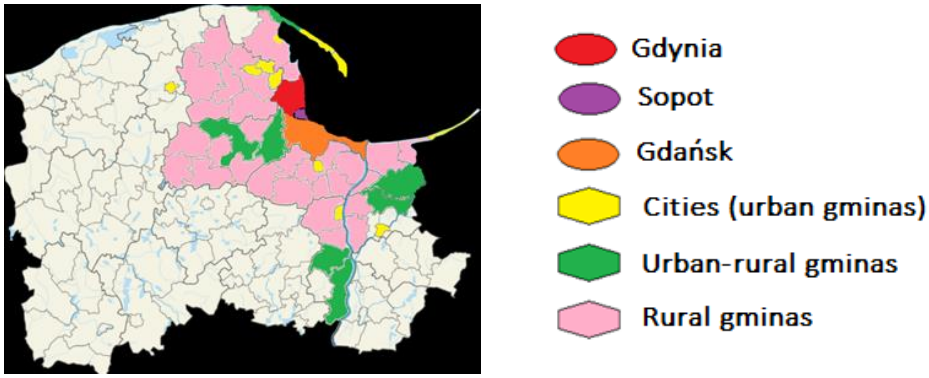

Figure 14: Communes (*gminas*) included in the Association Gdansk-Gdynia-Sopot Metropolitan Area in the territory of the Pomeranian Voivodeship[192]

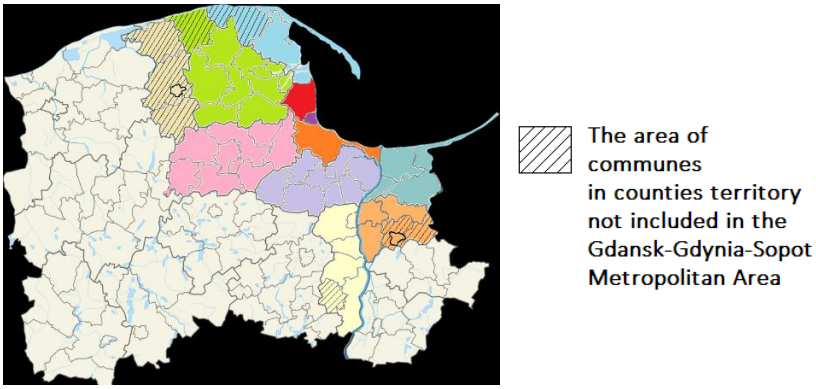

Figure 15: Eight counties (*powiats*) included in the Gdansk-Gdynia-Sopot Metropolitan Area in the territory of the Pomeranian Voivodeship[193]

The Gdansk-Gdynia-Sopot Metropolitan Area comprises 8 counties (*powiats*). However, not all communes (*gminas*) from these counties (*powiats*) joined the Association. The commune does not have to take any action in order not to become a member of the association. The activity is needed if the commune wants to join the association. Then, the decision to join the association is made by the representative authority, who adopts a resolution.[194]

The map above presents communes (*gminas*) on a territory of five counties (*powiats*), not acceding to the Association. These include the peripheral communes (*gminas*), remote from the metropolitan area. Thus, the boundaries of the Gdansk-Gdynia-Sopot Metropolitan Area are different depending on whether we are considering communes (*gminas*) or counties

[192] Own elaboration, with the map taken from Aotearoa <https://upload.wikimedia.org/wikipedia/commons/thumb/9/99/Pomorskie_mapa_administracyjna.png/238px-Pomorskie_mapa_administracyjna.png>.

[193] Own elaboration, with the map taken from Aotearoa <https://upload.wikimedia.org/wikipedia/commons/thumb/9/99/Pomorskie_mapa_administracyjna.png/238px-Pomorskie_mapa_administracyjna.png>.

[194] Art 12 of the Statute of The Gdańsk-Gdynia-Sopot Metropolitan Area Association, passed on 13 April 2015, amended on February 2020, <https://www.metropoliagdansk.pl/upload/files/Statut(2).pdf> accessed 10 January 2021.

(*powiats*). Furthermore, it should be noted that Gdańsk, Gdynia and Sopot are classified as the cities status with county (*powiat*) rights.

The Association's statute provides for so-called 'supporting members' of the Association. Any natural or legal person declaring financial, material or substantive assistance in achieving the objectives of the association may become a supporting member. Supporting members have neither passive nor active voting rights in the association.[195] Currently, these include the University of Gdansk and the various economic operators, such as Gdansk Lech Walesa Airport, the Gdansk Heat Generators (*Gdańskie Przedsiębiorstwo Energetyki Cieplnej Sp. z o.o.*).

The association has legal personality and operates through the following bodies:

- the General Assembly;
- the Council;
- the Board;
- the Audit Committee.

The general assembly is the highest authority in the Gdansk-Gdynia-Sopot Metropolitan Area and is attended by all local government units affiliated to the association. The local government units' mayors are the representatives from each local government. The meetings are held at least once a year. One very important point is that the votes of the participants of the general assembly are equal. Each has a single vote whether they are a city with close to half a million inhabitants like Gdansk or if they are a small rural municipality with tree thousand residents. The most important competences of the general assembly include adopting the Association's activity program, adopting and introducing changes to the statute, the association council election and granting discharge for its activities.

The council is the authority that sets out and verifies strategic development directions of the Gdansk-Gdynia-Sopot Metropolitan Area. It is democratically elected by the general assembly. The council consists of a minimum of 6 and a maximum of 12 members. The term of office is equal to the term of office of local government units' authorities. The association council competences include electing members of the management board, approving draft resolutions of the general assembly submitted by the management board, including the draft budget.

The association is led by the association board (1-3 people) which is selected by the council. The board is the executive authority and represents the association and is accountable for its work to the council. The board functions are performed professionally and its members are compensated for their tasks.

The audit committee is the control and internal supervision authority. The audit committee consists of 3 to 5 people elected by the general meeting.[196]

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[195] Art 13 of the Statute of The Gdańsk-Gdynia-Sopot Metropolitan Area Association, passed on 13 April 2015, amended on February 2020 <https://www.metropoliagdansk.pl/upload/files/Statut(2).pdf> accessed 10 January 2021.

[196] Chapter VI of the Statute of The Gdańsk-Gdynia-Sopot Metropolitan Area Association, passed on 13 April 2015, amended on February 2020 <https://www.metropoliagdansk.pl/upload/files/Statut(2).pdf > accessed 10 January 2021.

Assessment of the Practice

The Gdansk-Gdynia-Sopot Metropolitan Area is a voluntary association of local governments, whose activities are financed primarily from membership fees. The history of the Association's formation presents the difficulty in creating grassroots cooperation initiatives. The issue of financing is always a problem. The communes (*gminas*) are concerned about abandoning performing tasks for their inhabitants in order to pay the membership fee. It may be negatively assessed by the inhabitants. However, by joining the Association, it is possible to build, for instance, a communication infrastructure connecting the commune (*gminas*) with the center of the metropolitan area. Under the conditions existing in Poland, funds from the European Union (EU) are undoubtedly an incentive to create such associations. Additionally, it concerns the Gdansk-Gdynia-Sopot Metropolitan Area. The office of the association has acted as the headquarters of the Association of Integrated Territorial Investments (ITI). As part of ITI cooperation, 167 projects are implemented with a total value of PLN 1.97 billion, of which PLN 1.07 billion come from EU funds.[197] The main financing source of Integrated Territorial Investments in Poland is 16 'Regional Operational Programs'. They were negotiated between 16 voivodship self-governments (regional level in Poland) and the European Commission.

What is more, other opportunities are sought by the association to increase the financing sources of its activities. The intention of local governments is the top-down establishment of a new territorial unit of a metropolitan feature. In this case, the Metropolitan Union Upper Silesian and Zagłębie Metropolis is an example, established in 2017 by act of the Polish Parliament and a regulation of the central government.[198] If such a territorial unit was created, it would receive additional funds from the Polish State budget. A draft law on the Metropolitan Union Gdansk-Gdynia-Sopot creation was prepared by the Gdansk-Gdynia-Sopot Metropolitan Area in 2020.This draft was submitted to the Senate of the Republic of Poland, the second chamber of the Polish Parliament. On this basis, the Senate prepared a draft law, which has been submitted to the *Sejm*, the first chamber of the Polish Parliament.[199]

Regardless of expectations for the top-down establishment of the Metropolitan Union Gdansk-Gdynia-Sopot Metropolitan Area, the association undertakes intensive activities for the metropolitan area development. A number of documents have been prepared, including the 'Strategy of the Gdańsk-Gdynia-Sopot Metropolitan Area until 2030'. Network management is the primary strategy assumption. It includes the cooperation of local governments with the social sector, business, central government, scientific and research institutions. The position of small rural governments is particularly emphasized in order to gain better access to the resources of the metropolis by belonging to the Association. The innovation and position

[197] '7 lat owocnej współpracy w ramach Zintegrowanych Inwestycji Terytorialnych' (*Obszar Metropolitalny Gdańsk Gdynia Sopot*, 12 February 2021) <https://www.metropoliagdansk.pl/metropolitalne-wiadomosci/7-lat-owocnej-wspolpracy-w-ramach-zintegrowanych-inwestycji-terytorialnych/> accessed 11 January 2021.

[198] For more information, see report section 4.3. on the Functioning of the Metropolitan Union 'Upper Silesian-Zagłębie Metropolis'.

[199] Sejm, 'Senacki projekt ustawy o związku metropolitalnym w województwie pomorskim' (*Sejm*, 1 March 2021) <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?id=0C36111687C506F9C12585F400379047> accessed 1 March 2021.

reinforcement in the European and global metropolitan system is also the objective of an action.[200]

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[200] 'Strategy of the Gdańsk-Gdynia-Sopot Metropolitan Area until 2030' (Gdansk-Gdynia-Sopot Metropolitan Area Association 2015) <https://www.metropoliagdansk.pl/upload/files/Strategia_OM%20G-G-S%20do%20roku%202030.pdf> accessed 2 January 2021.

8. The Structure of Local Government in Croatia

8.1 The System of Local Government in Croatia

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

Croatia has 21 units of regional self-government (*zupanija*), 20 counties and the Croatian Capital City of Zagreb. Each county is divided into a number of local government units. Also, each county has its own representative and executive body elected by popular vote for a term of four years. The City of Zagreb is a special territorial and administrative unit whose responsibilities are regulated by a separate Act on the City of Zagreb. The City of Zagreb has a dual status as a unit of local and regional government unit and thus performs activities within the scope of the city and as a county. It also carries out responsibilities of the state administration. In doing so administrative bodies of the City of Zagreb have the powers and obligations of state administration bodies.

There are 556 units of local government, that is 128 towns (*grad*) and 428 municipalities (*opcina*). Towns are local government units typically of urban character with more than 10,000 inhabitants. Exceptions apply in case of historical, economic or geospatial reasons. Municipalities are local government units of rural character with less than 10,000 inhabitants. Each town and municipality has its own representative and executive body elected by popular vote for a term of four years. Each local government unit is further divided into one or more settlements regardless urban or rural. One or more settlements are represented by sub-local government entities called neighborhood councils with elected representatives which serve on non-professional terms. Some towns and some municipalities have only one neighborhood council. Towns and municipalities have basically the same responsibilities, except for towns in which counties have their administrative seat and towns with a population above 30,000 inhabitants. The latter are referred to as 'large towns' and have additional responsibilities. Seats of county are generally the largest towns within a county. There are only four large towns which are not the seat of a county.

Legal Status of Local Governments

The right to local and regional self-government is guaranteed by Article 128 of the Croatian Constitution, according to which '[c]itizens shall be guaranteed the right to local and regional self-government' and this right 'shall be exercised through local and/or regional representative bodies', as well as citizens' direct participation in the administration of local affairs. The rights specified in this Article shall be exercised by Croatian and European Union nationals in compliance with law and EU *acquis communautaire*.

The right to local government is further prescribed in national legislation such as the general Local Government Act, Local Government Financing Act, etc. The Croatian system of local self-government is based on the principle of autonomy of government and the principle of subsidiarity. The European Charter of Local Self-Government has been fully ratified by the Croatian Parliament. Croatian local governments have a judicially enforceable right to local self-government before the Constitutional Court and other judiciary bodies.

(A)Symmetry of the Local Government System

Local authorities have comprehensive responsibilities which are enumerated in the Constitution and further prescribed by the general Local Government Act. Local government units perform tasks of local importance which directly affect needs of the citizens and which are not assigned to state bodies by the Constitution or other laws, and especially the tasks referring to organization of settlement and housing; spatial and urban planning; utility services; child-care; primary health protection; social welfare; elementary education; culture, physical culture and sports; consumer protection; environment protection; fire and civil protection; maintenance of municipal roads and traffic management. In addition to these competences, large towns also have responsibilities related to maintenance of local public roads and construction permits.

Regional government units carry out affairs of regional importance which are not assigned to central bodies by the Constitution or other laws. The scope of counties' responsibilities can be self-managing and entrusted (government affairs). Counties are tasked with performing the following tasks: general public administration services; primary and secondary education; healthcare; regional and urban planning; economic development; environmental protection; transport and traffic infrastructure; management of the network of educational, medical, social welfare, and cultural institutions; administration pertaining to agriculture, forestry, mining, and industry; management of road transport infrastructure; construction permitting, excluding the area of big cities and a county seat city.

Re-assignment of responsibilities between individual local and regional governments is allowed pending approval of the representative bodies of both government units. Out of 556 local government units some 8-10 local governments have taken over such responsibilities. Certain restrictions apply such as the ability to fund a specific responsibility (in case of most of responsibilities) and a minimum number of inhabitants (8,000 inhabitants for management of elementary education).

Political and Social Context in Croatia

The Croatian population of 4.2 million is predominantly urban with 71 per cent of the total population living in towns which cover 39 per cent of total territory. The remaining 29 per cent of the total population are scattered through municipalities which cover 61 per cent of Croatian territory. According to the 2011 Census, 19 per cent of the population lives in Zagreb,

the capital city of Croatia. Population density is 76 inhabitants per square kilometer (139 inhabitants per square kilometer in towns, 36 in municipalities).

National parties dominate local level of government. In 2009, direct elections of a mayor were used for the first time, replacing the former system in which a representative body elected a mayor. But this did not significantly change the political landscape at the local level. The share of incumbents who lost in the 2017 elections was 40 per cent in towns and 30 per cent in municipalities, but national parties still dominate local level of government. In the 2017 elections a group of non-aligned mayors raised, making them the second largest 'political' group at the local level with a share of 15 per cent of the total number of town/municipal mayors.

References to Scientific and Non-Scientific Publications

Legal Documents:

Constitution of the Republic of Croatia, 2014

Law no 110/2015 on Territories of Counties, Cities and Municipalities

Law no 98/2019 on Local and Regional Self-Government

Scientific and Non-Scientific Publications:

Ministry of Administration of the Republic of Croatia, 'Local and territorial (regional) Self-Government' <https://uprava.gov.hr/o-ministarstvu/ustrojstvo/5-uprava-za-politicki-sustav-i-organizaciju-uprave-1075/lokalna-i-podrucna-regionalna-samouprava/842>

8.2 The Structure of Local Government in Croatia: An Introduction

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Between the WWII and the Croatian independence, structure and number of subnational units changed frequently. A two-tier subnational government model dominated the era. The number of units varied from of 89 regional and 737 local governments in the 1950's down to 11 regional and 102 local government units during the last decade of the Socialistic Republic of Croatia.

The number of local governments increased significantly since the 1990's when Croatia declared its independence from former Yugoslavia. The 1992 Law on Territories of Counties, Cities and Municipalities laid out a new structure of subnational governments in the newly independent Republic of Croatia. Counties are regional governments, cities are urban local governments and municipalities are rural local governments. The 1992 Law established 20 counties, the City of Zagreb with dual city/county status, 68 cities and 405 municipalities. Over the course of years, fragmentation of local governments continued and currently rests at 20 regional, 555 local government units (127 cities and 428 municipalities) and the City of Zagreb with dual status.

The rationale for the 1992 fragmentation is frequently attributed to centralization of competencies and governance during war time. The legislative basis for such a territorial structure was established by the 1992 Law on Local Government and Administration. Both laws were published in the Official Gazette 90/1992 of December 30, 1992. The Law on Local Government and Administration stipulates that 'a municipality is a local government unit composed of several settlements which represents natural, economic and social unity interlinked with common interests of population', which basically provides grounds for broad fragmentation of the territory.

Both laws contain provisions related to voluntary amalgamation/border change and inter-municipal cooperation. The Law on Local Government and sectoral laws allow transfer of competencies between local, regional and even national authorities. Until 2015 the laws allowed representative bodies to change borders by mutual agreement of representative bodies and with prior consultation of citizens in case the border change affects inhabited settlement. Also, representative bodies or one third of the population can propose a change of territorial affiliation of the settlement or establishment of the new local government. As of 2015 the law was amended to provide for voluntary amalgamation of adjoining local governments. Representative bodies can decide to carry out amalgamation by majority vote of members of each representative body. Representative bodies are required to consult with the residents prior to a decision. Consultations are carried out under referenda rules and are obligatory for the representative body. There are no fiscal or other incentives for voluntary amalgamation. So far there were no attempts at or cases of voluntary amalgamations of local governments. The lack of attempts at voluntary amalgamation could be attributed to the lack of external incentives and/or nationally driven initiatives for amalgamation. Limited resources coupled with the economies of scale should be one of the natural drives of change; however,

major costs of public service provision (health, education, utilities) in lagging local governments are carried either by the regional government or neighboring local governments. Therefore, economies of scale do not seem to play a major role in voluntary amalgamation. External incentives may need to be used as a catalyst for voluntary amalgamation.

An alternative to amalgamation exists in a form of inter-municipal cooperation. Local governments are allowed to carry out their responsibilities through various forms of inter-municipal cooperation, be it joint administrative departments, companies or institutions. The Law on Local Government lays a broad foundation for voluntary inter-municipal cooperation and leaves it up to local governments to craft details of the cooperation through bi/multi-lateral agreements. There are no mandatory inter-municipal cooperation arrangements in provision of services. There are only a few examples of formal inter-municipal cooperation in Croatia and the subject area is not thoroughly researched. Therefore, the question remains why do local governments refrain from joint service delivery – be it lack of regulation, lack of incentives, political or other issues. In case of certain responsibilities that are provided by the regional government on behalf of smaller local governments (e.g. construction permitting), inter-municipal cooperation is limited because of legislative barriers. In case of some basic local government functions there may not be a sufficient economy of scale to encourage the change.

Joint local utility companies are a rather frequent form of service provision, although these are not considered voluntary cases of inter-municipal cooperation. These companies became 'joint' during the process of local government fragmentation in the 1990s – large local government were divided into several smaller local governments and each was given a share in the communal company. These companies primarily carry out water supply, wastewater and waste disposal services.

In terms of grassroots inter-municipal cooperation initiatives there are only a couple of examples in Croatia. One is the Kaštelir-Labinci, Sv. Lovreč and Vižinada joint Department for Finance and Legal Affairs in Istria. The other is a joint non-profit organization for international relations originally established by the municipalities of Tovarnik, Ilok, Nijemci, Tompojevci and Lovas.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 110/2015 on Territories of Counties, Cities and Municipalities

Law no 98/2019 on Local and Regional Self-Government

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8.3 Inter-Municipal Cooperation of the Island of Krk

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

Inter-municipal cooperation of the Island of Krk is one of the very few examples of inter-municipal cooperation combining informal cooperation and planning, joint public service funding and delivery. It contradicts inexistent cooperation practices through a variety of intergovernmental relations. Furthermore, it raises important questions related to preconditions or enablers of inter-municipal cooperation in an environment that does not seem to discourage nor incentivize inter-municipal cooperation.

This practice is an example how (in)formal inter-municipal cooperation and planning can address problematic realities of the urban-rural divide.

Description of the Practice

The Island of Krk is located in the North Adriatic Sea. It has a surface area of 405km^2 and a population of 17,860. It is connected to a mainland by a 1430m long tolled bridge constructed in 1976-1980 period. The distance between the Island of Krk and the nearest large economic hub (the City of Rijeka, population of 120,000, third largest local government in Croatia) is 22km. The key industries are tourism, agriculture and oil.

During the period of 1945-1992 the Island of Krk used to be a single unit of local government. In 1992 it was fragmented just as the rest of Croatia into 7 local government units – the City of Krk and 6 rural municipalities. The Island remained fragmented until this day. Historic records claim the Island was divided into 5 areas from the 7th to the 19th century.

The legislative framework for local governance, funding, employment and other areas relevant for inter-municipal cooperation applies equally to island and inland municipalities.

In the period of fragmentation in 1992, an informal coordination of city and municipal mayors of the Island was created as a means of coordinated planning and development of the island. There is scarce evidence on the establishment and methods of operation of the coordination. Interviews with the coordination members reveal that coordination meetings are challenging, but with realistic outcomes. Further, it notes that the coordination meetings are taking place at regular intervals depending on the urgency of matters to be addressed and all local governments are required to act accordingly. Recent public disclosures, especially related to Covid-19 pandemic, confirm regular activities of the coordination and the fact that the conclusions of the coordination are being translated into operational, legislative and development actions of individual local governments.

Besides of informal coordination, there are formal cooperation mechanisms in place. All local units are owners of the local utility company called Ponikve. Although the joint utility company

was not established as a result of voluntary cooperation initiative, as discussed above, it is still being jointly managed by all local government units. Originally established in 1960s the company was tasked with fresh water production. In 1986 it merged with a utility company from Omišalj and expanded operation into waste management, maintenance of public and green areas, cemetery and wastewater. Since 1991 until today due to national legislative changes various services were outplaced into specialized companies owned by island local governments which provide those services for the whole island. National legislative changes required that water supply and wastewater services must operate as individual entities. In effect, this forced local governments to split Ponikve into three specialized companies – (i) water services and sewer, (ii) waste collection, construction, electricity and other communal services and (iii) shared services.

Communal utility companies of the Island of Krk are highly reputable companies in this sector with exceptional results compared to their peers. Water supply losses in Croatia, according to various public sources, are approximately 40 per cent of water extracted from the wells. Ponikve officially reports losses below 20 per cent. Over the last 20 years, the number of users connected to waste water services linearly grew from 1,500 to 11,683 users. Over the last 15 years, the share of recyclable waste collected increased from 18 to 57.8 per cent.

The firefighting service for the whole island is jointly funded and provided through the island's Firefighting Union. Members of the Union are Professional Fire Brigade Krk and voluntary firefighting associations of island municipalities. All local governments are signatory to two Agreements on financing fire protection which include funding for regular services, firefighting and development of fire protection system.

Furthermore, all island local governments have established a joint kindergarten/preschool facility and provide joint funding for this service. There is a central kindergarten/preschool facility and municipal outposts which provide service to residents of various municipalities while the central facility also provides shared services for outposts.

Although not directly related to inter-municipal cooperation it is also worth noting that the city has initiated activities related to development of its own fiber-optics broadband network in 2009. The island's local governments are also actively attracting new technologies and services to the island, including network of e-mobility chargers, IoT demonstration sites, etc.

Assessment of the Practice

Although the enabling or preventing effects of legislation on inter-municipal cooperation were not studied in-depth, the example of Island of Krk demonstrates that the current legislation does not have a preventing effect. The cooperation does not seem to be a product of a broad political platform, so one could raise a valid question whether the cooperation is geographically conditioned.

However, the fact that other islands have not established broad cooperation mechanisms raises a question whether there are potential obstacles in the process or should the legislation provide (or highlight any existing) incentives for cooperation. Further research on historical or other issues related to Krk cooperation is advised.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 110/2015 on Territories of Counties, Cities and Municipalities

Law no 98/2019 on Local and Regional Self-Government

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9. The Structure of Local Government in Albania

9.1 The System of Local Government in Albania

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

With the 2014 Territorial and Administrative Reform (TAR)[201], in Albania there are two types of local self-governments, i.e. the basic level of local self-government consisting in 61 municipalities (*Bashkia*), and the second tier of local self-government made up of 12 regions (*Qarku).*

Municipalities comprise also administrative units, which can be towns and/or villages. In most cases, the administrative units are the former rural communes that were amalgamated with the TAR with their closest and cultural and historical urban centers. The Municipality of Tirana, for example, is subdivided in 24 administrative units, i.e. 11 subdivisions of the former (urban) municipality and 13 (rural) communes that were amalgamated to Tirana with the TAR. The administration of these units is part of the municipal administration and is directed by an administrator who is appointed and dismissed by the mayor. Towns may be divided into smaller units called quarters (*lagje*). As a rule, a quarter can be established in territories with over 20,000 residents. A town's division into quarters and its territory shall be approved upon a decision of the municipal council.

The regions, the second-tier local self-governments in Albania, were and continue to be entrusted with only few general responsibilities for 'coordination and harmonization' of regional policies with national policies and they may also perform any function that is mandated to them by one or more municipalities within the region or the central government. In practice, the regions do not perform any significant responsibility, other than some administrative tasks delegated by the national government.

Legal Status of Local Governments

The right of local governments to self-government is enshrined in Article 13 of the Constitution of Albania and the Law on Local Self-Government. The constitution prescribes that local government in Albania is based on the principle of decentralization of powers and is exercised according to the principle of local autonomy. The constitutional standing of the second-tier of local self-government, the regional council (*Këshilli i Qarkut),* is the same as for municipalities, regardless of the fact that they have only a few 'coordination' own responsibilities. Only the

[201] Law no 115/2014 on the Administrative-Territorial Division of Local Government Units in the Republic of Albania.

municipal council (*Këshilli Bashkiak)* is directly elected. The regional council is composed of members from the elected bodies of the municipalities that make up the region, i.e. mayors and other members that are elected from among municipal councilors of the municipalities that compose the region.

The Law on Local Self-Government prescribes the right and the ability of local governments in Albania to regulate and manage public affairs under their own responsibility, within the limits of the law. The exercise of the right of self-government is guaranteed by additional rights of local governments as juridical persons, the right to own and dispose of property, to raise revenues and make expenditures, to perform economic activity, to cooperate with other local governments, etc. The Law on Local Self-Government prescribes also the basic principles of local government finances, according to which, local governments 'shall be entitled, within national financial policies, to adequate financial resources, commensurate with the responsibilities provided for by the Law' (Article 34).[202]

(A)Symmetry of the Local Government System

All municipalities are entrusted with general competences to carry out all responsibilities relevant to the local community (as prescribed by law), and any other responsibility that is not specifically assigned (by law) to another level of government. Local governments are entrusted with own and delegated functions and responsibilities. Local self-governments have own responsibilities in the core public services and public infrastructure, in the field of education, social protection, culture, recreation and sports, environmental protection, agriculture, rural development, forests and pastures and protection of nature and biodiversity, local economic development and public order and safety including fire protection. Although these are all 'own' local matters, the degree of political and administrative and fiscal powers decentralized to local governments varies significantly from function to function and in any case, in performing these functions, local governments should also respect regional and national policies and standards for service delivery.

The spirit of the new Law on Local Self-Government entails symmetric decentralization of exclusive functions to all new 61 municipalities, regardless of size, capacity or any other condition that may affect service delivery for particular functions. However, the law introduces also the possibility of asymmetrical decentralization to specific municipalities. However, the transfer of specific responsibilities to specific local governments shall be regulated through a separate law.[203] In practice there are a number of cases of asymmetries through transfers of competences to specific local governments for specific purposes, either through a specific law, government decree or a more simple Memorandum of Cooperation between different central and local governments. Examples include the transfer of responsibilities for operating and maintaining pre-university students' dormitories, the operation of certain social service centers that were previously operated by a specific line ministry and public order, as the

[202] Law no 139/2015 on Local Self-Government, Art 34.

[203] Law no 139/2015, dated 17 December 2015, on Local Self-Government, Official Gazette No 249, p16963, Art 21.

municipal police in Tirana may impose fines for the irregular parking within the territory of the municipality, which is a national police competence.

Political and Social Context in Albania

Albania has a relatively young history of democratic local self-government. While an independent country since 1912, for about half a century (1944-1990), Albania suffered a severe totalitarian regime, during which local government meant simply 'local structures of the (central) government'. Albania began the journey of political and administrative decentralization in 1992 with the first local democratic elections. As an in many other ex-communist countries, the early reform processes simply focused on laying down the basic concepts and legal framework for decentralization and local self-government to counter a half century legacy of repressive and non-democratic institutions.[204] In the early 2000s Albania adopted decentralization reforms that saw the consolidation of local responsibilities and the introduction of basic instruments for the financing of local responsibilities. The reforms enacted between 2014 and 2017, have been even more impactful. In 2014, the Government of Albania (GoA) consolidated 373 urban and rural local governments into 61 municipalities. In 2015, Parliament passed a new Law on Local Self-Government (LSGL)[205] and a new Law on Local Self-Government Finance (LGFL).[206] These laws were considered as critical components of a larger strategic plan to expand the role of democratically-elected local governments in Albania by creating larger municipalities and giving them more responsibilities and resources.[207]

Following the collapse of the communist regime, the political landscape is dominated by two major parties, the Democratic Party (DP) and the Social Party (SP). The third largest political party is the Socialist Movement for Integration (SMI). The 2013 general elections were won by a coalition between the SP and the SMI that governed together until the general elections of 2017, since when the SP is governing alone. Local politics is controlled by these three major parties. There have been only a few cases of an independent candidate running a local government as a mayor. The latest case when independent mayors run and took office is the local elections of 2007. Between 2007 and 2011 there have been 12 independent mayors out of 373.After 2011, there have been no cases of independent mayors taking office in Albania.

Regarding the social context of local government, it is important to note the massive number of Albanians that have left the country (but that still have Albanian citizenship) since the early 1990s. Only between 2014 and 2018, about 200,000 Albanians have emigrated while about

[204] Stafa Elton and Xhumari Merita, 'Albania: Aligning Territorial and Fiscal Decentralisation' in William Bartlett, Sanja Kmezić and Katarina Đulić (eds), *Fiscal Decentralisation, Local Government and Policy Reversals in Southeastern Europe* (Palgrave Macmillan 2018).

[205] Law no 139/2015 on Local Self-Government (LSGL).

[206] Law no 68/2017 on Local Self-Government Finance (LSGFL).

[207] Government of Albania, 'National Crosscutting Strategy for Decentralization and Local Government' (adopted by Decision of the Council of Ministers no 691 of 29 July 2015).

100,000 have immigrated.[208] As for internal population movements, the 2011 census ascertained that the population living in urban areas for the first time exceeded the population living in rural areas. The resident population in urban areas was 53.5 per cent, while 46.5 per cent lived in rural areas.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 115/2014 on the Administrative-Territorial Division of Local Government Units in the Republic of Albania

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[208] Instat, 'Migration and Migrant Integration' (Instat Institute of Statistics) <http://www.instat.gov.al/al/temat/treguesit-demografik%C3%AB-dhe-social%C3%AB/migracioni-dhe-integrimi-i-migrant%C3%ABve/#tab2>.

9.2 The Structure of Local Government in Albania: An Introduction

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Since assuming power in 2013, the new socialist-led Government of Albania initiated a comprehensive decentralization reform process composed of three key pillars: (i) territorial and administrative reform aiming at the re-organization of the first-tier local government units in Albania to create larger and stronger local governments ; (ii) political decentralization reform by consolidating and expanding local governments rights and responsibilities through a new Law on Local Self-Government; and (iii) fiscal decentralization reform through the adoption for the first time of a comprehensive Law on Local Self-Government Finance.

In 2014, the Government of Albania, adopted a Territorial and Administrative Reform (TAR), consolidating the very fragmented 308 rural communes and 63 urban municipalities into just 61 larger municipalities.[209] In practical terms, communes were amalgamated to the 'closest' or 'historical' urban center and are now called 'administrative units'. The second tier of local governments was not affected by the territorial and administrative reform.

This TAR constitutes a major milestone in the country's effort to improve the effectiveness and efficiency of public administration and the quality of public services. The reduction in the number of local government units should increase the efficiency of local government by lowering administrative costs. The concentration of human and financial resources in a smaller number of larger local government units should increase the effectiveness of public services by enhancing the ability of local governments to respond to the preferences of their electorates. And the transfer of additional responsibilities for delivering day-to-day public services to larger local government units should allow the national government to focus more of its energies on the strategic, legislative, and policy-making functions of the state—including the goal of balanced territorial development.[210]

As a result of the TAR, the average size of the first-tier local self-government units in terms of population increased by 5.4 times, from 8,700 inhabitants to over 47,000 inhabitants. However, despite the territorial consolidation, there is still a large variation in the size of local self-governments among the new municipalities in terms of population, from 3 200 inhabitants for the smallest and youngest Municipality of Pustec to the capital of Tirana, which had over 760,000 inhabitants in 2017, according to the civil register data. The Municipality of Tirana, being the largest one in terms of population, urbanization and economic development, is subdivided into 24 administrative units, eleven subdivisions of the former municipality and 13 communes that merged after the reform. In terms of territory, after the TAR, on average, the size of the first-tier local self-government units increased by 69 times, with a maximum of 479

[209] Law no 115/2014 on the Administrative-Territorial Division of Local Government Units in the Republic of Albania.

[210] Tony Levitas and Elton Stafa, 'Creating an Equitable, Transparent, and Predictable Unconditional Grant Formula' (USAID's Planning and Local Governance Project PLGP 2015) <https://www.plgp.al/wp-content/uploads/2.-Unconditional-Grant-Policy-Paper-September-30-2015-Clean_eng-2.pdf> accessed 18 May 2019.

times in the case of the Municipality of Skrapar. The territory of the new Municipality of Tirana grew by 28 times. The government declared that the main rationale behind the amalgamation was the territorial continuation and historical, cultural, traditional and economic elements. However, the opposition has raised concerns that the new administrative division was based much more on political rather than objective variables. As a result, the opposition did not participate in the design of the new administrative division of Albania, and the reform was approved with the votes of the ruling coalition only. From this perspective, the territorial division may be revised with the change of government in Albania, and in fact in January 2020, as part of the electoral reform, the opposition called for the revision of the territorial and administrative division. While the Constitution allows for a change of the territorial and administrative division through a law that takes into account history, culture and tradition, recent reforms have been in practice top-down processes driven by the central government.

The Constitution grants to local governments the right to amalgamate and create joint institutions and establish forms of inter-municipal cooperation. Between 2000 and 2014, however, there has been only one case of voluntary amalgamation of two communes in the north of Albania. This indicates perhaps a lack of incentives from national and local policymakers to promote and engage in voluntary amalgamations, as it would result in either loss of power or risk of loss of power with implications on local and national politics. Similarly, a severe inheritance from the past in terms of close 'government' presence at territorial level and lack of trust in institutions may have prevented citizens to engage in an active manner to support amalgamations. By the same token there have been only few isolated cases of inter-municipal cooperation, although allowed by the legal framework and desirable in terms of economic efficiency, in particular in the case of smaller municipalities. Conversely, with the new territorial and administrative division, there have also been cases where newly established municipalities preferred to create their own municipal structures to perform certain functions instead of continuing with the joint management of previously existing utilities that was serving multiple jurisdictions.

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9.3 The Territorial and Administrative Reform

Elton Stafa, *NALAS Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

The territorial and administrative reform (TAR) adopted in July 2014 constitutes the most important and perhaps the most impactful of the reforms undertaken by the government of Albania in the sphere of decentralization and local governance in recent years. The reform consolidated 373 fragmented rural communes and urban municipalities into just 61 municipalities. This reform eliminated the previous urban-rural separation and, by unifying the local government units (LGUs) in terms of size, has created an opportunity to increase administrative efficiency and improve service delivery.

The reform was planned and adopted in a record time of 9 months only, and in the background of an extreme political polarization in Albania, with the opposition not participating in the planning and adoption of the reform.

The practice responds to the specific questions of report section 4 on local government structure related to analyzing the reasons behind amalgamations of local governments, how are these amalgamations planned and implemented etc. Given the multitude of implications of the territorial reorganizations for local government functions and finances, for intergovernmental relations and citizen and stakeholder participation, the described practice cuts across key questions in report section 2 on local responsibilities, section 3 on local finances, section 5 on intergovernmental relations and section 6 on people's participation in local decision-making.

Description of the Practice

Since taking office in September 2013, the new Government of Albania initiated a Territorial and Administrative Reform (TAR) to reorganize Albania's local governments. This was considered as the first step towards empowering local governments by giving them more functions and resources.

The TAR aimed at increasing the cost-efficiency of local governments, so that they can provide better services and make sure that citizens of these communities may enjoy more access to such services. The rationale behind the TAR was that the current territorial division in Albania does not reflect the social, economic, demographic and infrastructural developments since 1992, nor citizens' expectations regarding public services to be delivered at the local level. In particular, the fragmentation of local governments has prevented service delivery and development.

Cost efficiency and reduction of administrative costs has been one of the dominating arguments in the development of the TAR. The government assessed that 70 per cent of the communes spent more than 80 per cent of their budgets on salaries and administrative

services. The government declared that the TAR will reduce administrative costs for salaries by 30-60 million USD per year, which would have meant increased spending for improving local services and investments by up to 240 million USD in one governing mandate. It was developed in the framework of the Constitution of Albania, the European Charter of Local Self-Government and the 2000 Law on the Organization and Functioning of Local Government in Albania, which was repealed by the 2015 Law on Local Self-Government.

The Constitution of Albania (Article 108) stipulates that 'the territorial and administrative division of local government units shall be established by law, on the basis of mutual economic needs and historical tradition. Their borders may not be changed without first hearing the opinion of their inhabitants'. The Law on the Organization and Functioning of Local Government provides additional details and regulates also the process of TAR.

The reform process was chaired by an ad hoc parliamentary committee and the Minister of State for Local Issues, which was supported by a Technical Secretariat, composed of 12 regional working groups and 12 regional technical coordinators – one for each of Albania's 12 regions. The process was supported also with the technical expertise from research institutions, civil society organizations and Albania's development partners.

The TAR was planned and adopted in a record time of 9 months only, between September 2013 and July 2014 when the Law on Administrative-Territorial Division of Local Government Units in the Republic of Albania was approved by Parliament, with a qualified majority of 3/5, with the votes of the members of parliament from the ruling coalition only. The new territorial division with 61 municipalities entered into force after the local elections held in June 2015.

Unfortunately, the TAR was undertaken in a framework of extreme political polarization in Albania. Despite several invitations, the opposition refused to take part in the deliberations of the parliamentary committee. The opposition recognized the importance and even necessity of territorial consolidation. However, they considered that the key challenges faced by both smaller and larger local governments were the unclear delineation of local government responsibilities and the lack of adequate fiscal resources.[211] From this perspective, the opposition argued that the TAR should take place after reforms in the areas of political and fiscal decentralization. Ultimately, and equally importantly, the opposition raised also the concerns that the reform was not being consulted properly with local governments, citizens and stakeholders in general and that it was mostly motivated by the political interest of the ruling coalition to delineate new administrative borders that would favor them during elections. Indeed, the short process of planning and adopting the reform, has created challenges for stakeholders to become part of the consultation process, although the government had developed several consultation roundtables at national and regional level. In fact, after the law was approved, the opposition challenged it at the Constitutional Court, on the ground of a lack of consultation with local communities. The Constitutional Court eventually ruled in favor of the constitutionality of the law but the controversy over the lack of consultation remained vivid in the statements of the opposition.

[211] Ilirian Agolli, 'Opozita dhe reforma territoriale' (*Voice of America*, 2 July 2014) <https://www.zeriamerikes.com/a/lulzim-basha-reforma-territoriale/1949373.html>.

The government declares that the proposal of the new administrative and territorial division was based on a set of technical criteria approved by the ad-hoc parliamentary committee on 28 April 2014. The criteria underwent a public consultation process across all the regions in Albania in the period March-April 2014 with representatives from the local government, associations of local elected officials and stakeholders.

After the approval of the technical criteria in April 2018, the government prepared and submitted for approval to the ad hoc parliamentary committee five versions for the new administrative and territorial division. The parliamentary committee approved the version with 39-47 local government units, on 22 May 2014. Afterwards the proposal was pushed for public consultation with stakeholders. The consultation process was conducted with three main stakeholder groups: (i) representatives of local government and the associations of local elected officials; (ii) community consultations with citizens through an opinion poll that interviewed 16,000 citizens; (iii) public hearings with stakeholders, civil society and businesses. After this consultation process, the final version proposed to Parliament for approval included 61 municipalities as first tier of local governments in Albania.

The government states that this division was based primarily on the technical criteria formerly approved by the parliamentary committee. The most important of these criteria is the one that stipulates that the newly created unit is a separate functional area. The concept of 'functional area' means a territorial space where there is a frequent and intense interaction between the inhabitants and institutions for economic, social, development and cultural purposes. The functional area is organized around the urban center with the highest population compared to other centers within the area, and has the capacity to provide a full range of public services that should be provided by a local government unit. Other important criteria include the distances to urban center, territorial continuity, a considerable number of inhabitants, historical tradition, preservation of the boundaries of merged communes etc.

In short, in order to establish 61 new municipalities, the existing municipalities and communes have been merged to form 1 functional area, composed of urban and rural areas. The existing communes and municipalities that were absorbed by the new local unit are regarded by law as sub-divisions of the municipality, called administrative units. All the 61 new municipalities include on average 5-6 existing municipalities and/or communes

Assessment of the Practice

This TAR constitutes a major milestone in the country's effort to improve the effectiveness and efficiency of public administration and the quality of public services. The reduction in the number of local government units and the elimination of the extreme territorial fragmentation is expected to increase both the efficiency and effectiveness of service delivery at the local level. The government declared that it expected that at the end of the first mandate, 240 million dollars would be saved from the reduction in the administrative costs. Unfortunately, to date, administrative costs for salaries have not decreased. On the contrary, between 2016 and 2019, local government spending for salaries of municipal employees has increased by 38 per cent, while spending for investment has increased by only 25 per cent. The two main reasons for the increase in spending for salaries are related to an increase in the reference

framework for the level of salaries for municipal employees and an increase in the number of municipal employees as a direct consequence of the choices of the local political leaders coming after the local elections of 2015 and 2019. It is important to highlight, though, that increased spending for salaries does not necessarily mean increase in inefficiency – to the contrary, the quality of services and access to services depend also on the people and human resources available at the municipal level. Nevertheless, a disproportionate focus has been put on the expected savings in administrative costs. Rather than savings, discussions could perhaps have been focused on how the TAR would have improved services. International practice also suggests that in the design of TARs there is in general a disproportionate focus on cost efficiency and that in practice the administrative costs usually increase in the first years of TARs.

Unfortunately, it is too early to assess whether the TAR has improved access to and quality of local services. Although it is a legal obligation to report on service delivery standards and performance, unfortunately there are no official reports measuring performance of local services in the aftermath of the TAR. However, a Local Government Perception Survey in 2020 by the United Nations Development Program Office in Albania shows that compared to 2016, there is a slight improvement in the local government scores for the criteria of effectiveness and efficiency and transparency and rule of law.

The reform was adopted primarily through a top-down approach and was completed in just nine months since the establishment of the ad hoc parliamentary committee in charge for the reform. The criteria utilized for the revision of the territorial division were defined only two months before the approval of the final version of the territorial and administrative division. Also, the 5 different versions put forward to the parliamentary committee, local governments, citizens and stakeholders in general, were prepared just a couple of months before the final approval of the new map. In short, the process, while necessary and long overdue, was completed in a rush, and many of the stakeholders perceive that they were in front of a fait accompli.

The reform has formally eliminated the urban-rural categorization of local governments. At the territorial level little has changed, however. A Local Government Perception Survey in 2020 commissioned by the United Nations Development Program Office in Albania shows that there continue to be strong differences in terms of availability and access of public services in the urban vs rural areas. The survey shows that comparing to 2016, there is no significant improvement in this dimension. From this perspective, there a long way ahead before the TAR can produce the desired effects of eliminating the urban-rural divide in terms of access and quality of services. The newly developed policies for regional development and cohesion can play an important role in reducing territorial development disparities and encouraging inter-municipal cooperation and help municipalities address the challenges they face in their urban and rural areas.

Ultimately, and perhaps even more importantly, this reform was undertaken in a framework of extreme political polarization in Albania. Unfortunately, it was approved unilaterally by only the ruling coalition, with the opposition challenging the approved law at the Constitutional Court, on the ground of a lack of consultation with local communities. The opposition has also since the approval of the TAR, raised the concern that the new territorial division is based on the political interest of the ruling coalition. All these elements raise concerns over the longevity

of such an important reform and potentially may lead to other unilateral changes by the incoming government.

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10. The Structure of Local Government in Moldova

10.1 The System of Local Government in Moldova

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Types of Local Governments

The Republic of Moldova is organized in *rayons*, cities, villages and the Autonomous Region of Gagauzia. The administrative and territorial organization of the country is based on two levels: villages (communes), sectors (of the Chisinau municipality) and cities (municipalities) constitute the first level; *rayons*, Chisinau municipality and Balti municipality constitute the second level. Chisinau municipality is the capital city of the country and its status is regulated by the organic law. Urban localities are classified on four ranks according to a list of indicators that describe their level of social and economic development. Cities that meet specific requirements established by law could be assigned with the status of a municipality.

A total number of 32 *rayons* and 1495 localities (from which 32 are part of the Autonomous Region of Gagauzia) exist in Moldova (excluding the breakaway Transnistrian Region of Moldova). From the total list of localities, 66 are urban localities, including 53 cities and 13 municipalities and 832 are rural localities. 597 localities do not have own administration as they are part of a bigger administrative entity.

Legal Status of Local Governments

In fulfilling their competences, the local public administration authorities have autonomy, enshrined and guaranteed by the Constitution of the Republic of Moldova, the European Charter of Local Self-Government and by other treaties to which the Republic of Moldova is a party. According to Article 109 of the Constitution of the Republic of Moldova, 'public administration in the administrative-territorial units is based on the principles of local autonomy, decentralization of public services, eligibility of the local public administration authorities and consultation of citizens in the local issues of special interest.'

The public administration authorities, through whom local autonomy is exercised in villages and cities, are the elected local councils and the elected mayors. Local councils and mayors act, under the conditions of the law, as autonomous administrative authorities and manage public affairs of villages and cities. The *rayon* council coordinates the activity of the village and city councils in order to realize the public services of district interest. The *rayon* council is elected and functions according to the law.

The relations between the local public authorities are based on the principles of autonomy, legality and collaboration in solving common problems. In order to ensure local autonomy, the

local public administration authorities elaborate, approve and manage autonomously their budgets and have the right to implement local taxes and to establish their amount according to the law.

(A)Symmetry of the Local Government System

For the first-level local authorities, the following own fields of activity are established:

- urban planning and management of green areas of local interest;
- collection and management of household waste, including the cleaning and maintenance of land for their storage;
- distribution of drinking water, construction and maintenance of sewage and wastewater treatment systems;
- construction, maintenance and lighting of local public streets and roads, local public transport;
- arrangement and maintenance of cemeteries;
- administration of goods from local public and private domains;
- construction, management, maintenance and equipping of pre-school and out-of-school institutions (nurseries, kindergartens, art schools, music);
- development and management of urban gas and heat distribution networks;
- cultural, sporting, recreational and youth activities, as well as the planning, development and management of the infrastructures necessary for these types of activities;
- arranging agricultural markets, commercial spaces;
- carrying out any other measures necessary for the economic development of the administrative-territorial unit;
- establishment and management of municipal enterprises and organization of any other activity necessary for the economic development of the administrative-territorial unit;
- the construction of houses and the granting of other types of facilities for the socially vulnerable population, as well as for other categories of the population;
- organization of territorial services (stations) of rescuers and firefighters, contributing, in accordance with the law, to the protection of the cultural heritage and monuments in the administered territory.

For the second-level local public authorities, the following own fields of activity are established:

- administration of assets in the public and private areas of the district;
- planning and administering the construction, maintenance and management works of some public objectives of *rayon* interest;
- construction, administration and repair of the roads of district interest, as well as of the road infrastructure;
- organization of passenger car transport, administration of buses and car stations of *rayon* interest;
- establishing a general framework for the development of the territory at *rayon* level and the protection of the forests of *rayon* interest;

- supporting and stimulating the initiatives regarding the economic development of the administrative-territorial unit;
- elaboration and implementation of the projects of construction of the interurban gas pipelines (including the medium pressure gas pipelines), of other thermo-energetic objectives with local destination;
- maintenance of primary schools, kindergartens and high schools, vocational secondary education institutions, boarding schools and boarding schools with special regime, other institutions in the field of education that serve the population of the respective district, as well as other methodical activities from the field;
- administration of cultural, tourism and sports institutions of *rayon* interest, other cultural and sporting activities of *rayon* interest;
- administration of municipal enterprises of district interest;
- administration of social assistance units of district interest;
- development and management of community social services for socially vulnerable categories, monitoring the quality of social services;
- contribution, under the conditions of the law, to the protection of the cultural heritage and monuments in the administered territory.

Local public authorities of the first and second levels, within the limits of the law, have full freedom of action in the regulation and management of any matter of local interest which is not assigned to another authority. Other competences specific to the local public authorities can only be assigned to them by law.

The competences pertaining to the central public authorities can be delegated to the local public authorities by the first and second levels, respecting the criteria of efficiency and economic rationality. The delegation of powers may be performed by the parliament. The delegation of powers may concern all local public authorities of the first and second levels (general delegation) or only some local public authorities. The delegation of powers shall be accompanied by the provision of the necessary and sufficient financial resources for their realization.

Political and Social Context in Moldova

The resident population of the Republic of Moldova at the beginning of 2019 was 2.68 million, decreasing by 1.8 per cent compared to the same period of 2018. The main reason for the decrease in the number of the resident population is negative net migration that increased from –24,600 people in 2014 to –48,600 people in 2018. As far as internal population movements are concerned, about 57 per cent of the population lives in rural areas. According to the 2014 census, about 17 per cent of the population lives in the capital city of the country, Chisinau municipality.

The general local elections, the 7th electoral exercise since the proclamation of the independence of the Republic of Moldova, took place in 2019 throughout the territory of the country, including in the localities of Gagauzia, except for the settlements under the control of the unrecognized administration in Transnistria. The highest number of mayors come from the

social-democratic Democratic Party of Moldova (261), the former ruling party of Moldova, followed by the Party of Socialists of the Republic of Moldova (206) that are currently governing the country and representatives of the opposition electoral block ACUM (172) and SOR party (43). A total number of 112 city halls are led by independent candidates and a remaining 99 city halls are led by extra-parliamentary political parties.

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10.2 The Structure of Local Government in Moldova: An Introduction

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Local public administration reform and territorial and administrative reform is a sensitive subject in Moldovan politics. Since the onset of its independence, Moldova saw a major territorial reform implemented in 1998 which proved to be unsuccessful and reversed during the next political circle with a new political establishment in 2001.

The 1998 territorial and administrative reform brought two important changes. Firstly, the number of second-tier local public administrations (level 2 LPAs) was reduced from 40 *rayons* to ten counties, while the number of first-tier local public administrations (level 1 LPAs) was reduced from 912 to 662 which was later considered insufficient to give a boost for development of LPA level I. Secondly, the functions related to public services were concentrated at the level of the county administration, managed by the Prefect — the representative of the government. The second change was not welcomed by citizens, because it increased the distances between public services and citizens.[212]

The 1998 territorial and administrative reform was basically reverted in 2001, given the new political context in the country. The new regulation re-established a fragmented second-tier LPA administration based on *rayons*, and increased again the number of first-tier LPAs to 971 units, including 26 in the Autonomous Territorial Unit of Gagauzia (ATUG) and 70 localities in the breakaway Transnistrian region. Returning to *rayon* administration meant returning to a number of first-tier LPAs almost as in 1998, and therefore to the situation before the territorial and administrative reform. Second-tier LPA boundaries also changed, but the lower number of *rayons* was the consequence of the creation of the ATUG (which includes three former *rayons*, currently named *dolai*).

Changes in the administrative-territorial structure involved the creation of an additional institutional level – eight territorial offices of the State Chancellery. The main purpose of the territorial offices was to ensure the management of decentralized services, together with the ministries, which held the status of founders of decentralized regional services. This approach led to increased costs of providing services, which were accessible mainly in some of the cities which were also a *rayon* residence. First-tier LPAs were not yet able to provide most of the services to the population. The territorial offices of the State Chancellery were subsequently reformed and transferred to the management of the former Ministry of Local Public Administration. In 2009, the territorial offices were transferred back to the State Chancellery.

Since 2009, administrative decentralization has been managed in the framework of the National Decentralization Strategy for the period 2012-2015, latter extended until 2018. This document aimed at transformation in a few areas, covering decentralization of services and

[212] Ion Beschieru and others, 'Studiu privind scenariile de reformă administrativ-teritorială' (publisher 2018) <https://cancelaria.gov.md/sites/default/files/studiul_privind_scenariile_de_reforma_administrativ-teritoriala_elaborat_in_decembrie_2018.pdf>.

skills; financial decentralization; patrimony decentralization and local development; administrative capacity of LPA; democracy, ethics, human rights, and gender equality.

According to the evaluation Report published in 2018 on the progress in the implementation of the strategy, '[t]he main policy documents and commitments in the field of decentralization and local self-government have expired and remain largely unimplemented.' [213] Main achievement of the strategy is a progress in the local finances domain with the amendment of the Law no 397 on Local Public Finances that has introduced the general and special purpose transfers for the LPAs and subsequently the fiscal capacity principle for the distribution of the general purpose transfers.[214]

Currently, the administrative and territorial organization of Moldova, apart from the Autonomous Territorial Unit of Gagauzia (ATUG), is based on two levels: villages (communes), sectors (of the Chisinau municipality) and cities (municipalities) that constitute the first-tier local public authorities (LPAs) and *rayons*, Chisinau and Balti municipalities that constitute the second-tier local governments. Urban localities are classified on four ranks according to a list of indicators that describe their level of social and economic development. From the total number of localities, 66 are urban, including 53 cities and 13 municipalities and 832 are rural. It is also important to mention that 597 localities, with very small population, do not have their own administration as they are part of a bigger administrative entity.

Territorial and administrative reform remains a key priority of the government in Moldova, and therefore is a sensitive subject in Moldovan politics. The government views the territorial and administrative fragmentation as one of the key challenges that needs to be addressed in order to strengthen local governments, reduce territorial disparities and improve service delivery.

Indeed, there are significant disparities across the spectrum of urban and rural first-tier LPAs in Moldova. Currently, 30 per cent of first-tier LPAs have less than 1,500 inhabitants, although, according to the legal provisions, for the formation of an administrative-territorial unit the number of population must be at least 1,500 inhabitants. At the same time, about 89 per cent of first-tier LPAs has a population of less than 5,000 inhabitants. In accordance with the legal provisions, administrative capacity is defined as adequate for an LPA if its administrative expenses do not exceed 30 per cent of the total amount of its own revenues. An analysis of the financial reports for 2017 reveal that not even one first-tier LPA met this legal criterion. On average, the administrative costs of first-tier LPAs are about 2 times higher than their own revenues. Moreover, only about 89 first-tier LPAs can cover their administrative expenses with their own revenues. The administrative expenditures in per capita terms in smaller first-tier LPAs (less than 1,500 inhabitants) are almost twice the national average. In larger first-tier LPAs (more than 5,000 inhabitants), administrative expenditures are 2.5 times smaller than in those LPAs with less than 1,500 inhabitants.

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[213] 'Local Democracy Situation and the Degree of Implementation of Decentralization Policy Documents in the Field of Decentralization in the Republic of Moldova' (monitoring report, CALM/IDIS Viitorul 2018) <http://www.viitorul.org/files/Local%20Democracy%20Monitoring%20Report_Moldova.pdf>.

[214] 'Implementarea Strategiei naţionale de descentralizare, discutată în cadrul Comisiei administraţie publică' (*interlic*, 15 November 2017) <http://www.interlic.md/2017-11-15/implementarea-strategiei-natzionale-de-descentralizare-discutata-in-cadrul-comisiei-administra-ie-pu-51458.html>.

Along with administrative capacity, fiscal capacity per capita approximates the level of economic development of an LPA, being defined as the ratio between the amounts of income collected from Personal Income Tax (PIT), related to the number of inhabitants. Based on the data for 2017, only about 12 per cent of first-tier LPAs has a higher fiscal capacity per inhabitant than the national average (lei 697.14).

The share of capital investments in the total expenditures of first-tier LPAs is limited, being largely financed from special purpose transfers of the state budget, investment funds managed at the national level (energy efficiency fund, the ecological fund, the regional development fund, the social investment fund, etc.), as well as from external grants. The distribution of the funds allocated for capital investments is made in a highly non-transparent manner as there are no formula or any transparent rules or formulas governing the allocation. As a result, these allocations are considered as highly politicized. Also, there is no representation of the LPAs in the management of the investment funds created at the national level. [215]

It has to be mentioned that the situation regarding the provision of two essential local public services, the supply of drinking water and the collection, transport and storage of household waste, is very problematic. According to official statistics, in 2017 only 54.4 per cent of the country's population benefited from drinking water supply services. Also, the analysis in territorial profile shows the existence of large areas in the north, center and southeast of the Republic where less than 20 per cent of the population has access to the public drinking water supply system. In 2017, only 23.1 per cent of the total population had access to sewerage services, with a major difference between urban and rural areas, of 50.6 per cent and only 2.3 per cent, respectively.

Regarding the collection, transport and storage of household waste, according to the National Bureau of Statistics, in 2017, only 30.9 per cent of the population is served by sanitation services, the degree of coverage in urban areas being 64.1 per cent and only 6.0 per cent in rural areas. These figures are reinforced by the audit of the Court of Accounts carried out in 2017,[216] which shows that 723 localities do not have access to public drinking water supply system and 1,378 localities, out of 1,521 in total do not benefit from sanitation services.

Nonetheless, there is little political or social consensus in Moldova related to the territorial and administrative reform. Voluntary amalgamation is a rather new concept in Moldova. While this form of bottom-up territorial and administrative reform has a high potential for success, still it lacks the development of a clear set of incentives for local communities and the necessary institutional framework.

Several analyses show that the lack of financial and administrative capacity of first-tier LPAs to provide a minimum amount of public services for the population remains a key challenge. From this perspective, the amalgamation of first-tier LPAs through a territorial and administrative reform is the major solution discussed and proposed by the central government. However, in Moldova there is little political or social consensus related to the administrative-territorial

[215] Ion Meleștean, 'Clientelismul politic în alocarea resurselor publice din Bugetul de Stat către autoritățile publice locale' (Expert Grup 2018).

[216] Court of Accounts, 'Eficiența gestiunii economico-financiare și administrării patrimoniului de către întreprinderile care prestează servicii de aprovizionare cu apă a populației' (2017).

reform that would (or should in theory) lead to an improvement in the provision to the population of cost efficient and high quality public services. The issue of the identification of a proper balance between owned competencies and capacities to perform the mandatory functions still did not find a widely supported solution. The approaches to the resolution of these problems range between significant reductions of the administrative costs of the LPAs with subsequent risks related to limitation in the access of the population to the public services and centralization to the higher administrative level of the LPAs' competences.

Territorial reform against the background of high political instability and polarization raises significant concerns for local democracy and autonomy. Secondly, there are no sustainable grounds to believe that the administrative-territorial reform will bring any economies of scale. Even if the average size of Moldovan municipalities is increased, this will not necessarily prove to be more efficient and effective. Currently, there are towns with significantly higher population compared to small rural communities that are less efficient and there are many small municipalities with fairly high performance in the delivery of public services.

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10.3 An Integrated Bottom-up Alternative Model to Territorial and Administrative Reform

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Relevance of the Practice

The practice describes the integrated model for territorial and administrative reform in Moldova, proposed by CALM, the Congress of Local Authorities from Moldova. The model is proposed as an alternative to the top-down approach proposed by the national authorities in earlier years. The model is based on three basic elements defined as priorities: Administrative Decentralization (DA), Inter-municipal Cooperation (CI) and Voluntary Amalgamation (A). The DACIA model comes as an alternative to the top-down approach of territorial reform discussed and proposed by subsequent central governments in Moldova over the past two decades.

From this perspective, this practice cuts across with the key issues elaborated in the other report sections, as regards local government functions and service delivery (section 2), local government finance (section 3), intergovernmental dialogue (section 5) and citizen participation (section 6). The practice shows relevant disparities in terms of service provision and local administrative management across the spectrum of smaller and larger local public administrations in Moldova.

Description of the Practice

From June to October 2017, CALM organized a broad consultation process with its members at the regional level in about 20 *rayons* regarding local government and administrative-territorial reforms, in order to develop its own vision and model of such complex reforms. As a result of these consultations, with about 500 mayors, presidents of the *rayons* and other local government representatives, CALM has defined the concept of the reform model called DACIA. This is a theoretical model that still requires adjustment of the normative framework in order to promote and make possible its application.

The model is based on three basic elements defined as priorities: Administrative Decentralization (DA), Inter-municipal Cooperation (CI) and Voluntary Amalgamation (A).

The DACIA model of local government (LG) reform suggested by CALM is a comprehensive one including several important, closely correlated and interdependent factors and areas. The model proposes a visionary, step-by-step approach, grounded in Moldovan realities and in the needs of the LG system in Moldova. At the same time, taking into account the importance of the political factor and the previous experiences, the concept tries to touch upon less sensitive approaches aiming at a broad national consensus needed to ensure sustainability and continuity of the reforms in this area. In particular, the following main directions are proposed:

- delimitation of the areas of competence and attributions of the central public administration and the local public administration with the main goal for LPAs to become the exclusive holders of most areas of competence of local and/or regional importance;
- spatial planning, recalibration and territorial organization of public services (administrative, communal, and social) and development of the voluntary amalgamation institution, and development of the inter-municipal cooperation institution;
- organizational and institutional decentralization to ensure real and total autonomy for local public administration authorities to organize their activity, by establishing their own structure and organization chart; ensuring the autonomy and the right of LPA to their own remuneration systems;
- financial decentralization to increase and consolidate the LPAs own income base and establishing by organic law of a minimum level of fiscal revenues, estimated as a share in the gross domestic product to be provided annually to LPA; but also enlarging the fiscal capacity concept that would take into account the available economic resources, geographical location, simplification of the real estate taxation system (focusing it on a national minimum, multiplied by coefficients set for geographical areas at the level of locality or region, determined on the basis of the degree of access to public infrastructure – implicitly the stock and current expenses financed annually for its operation);
- patrimonial decentralization with the main goal to achieve clear delimitation of state public property and its taxation at the same rate with private property;
- economic decentralization in order to create a healthy competition environment between LPAs and the development of a stimulating budget system that would reward performance by changing the distribution of the funds of the balancing fund to encourage in particular the localities that make the best use of existing resources and ensure a high degree of utilization of available resources;
- local e-government by implementing one-stop-shops in the provision of public services and ensuring LPAs access to government databases;
- administrative control by the elimination of excessive administrative, political, judicial control over LPAs;
- the institutional framework of the reform by creating a broad, inclusive and permanent platform at CALM, which will discuss all important aspects in the process of developing a generally acceptable reform concept closely connected with the realities and needs of the Republic of Moldova in modernizing public administration.

This model helps creating a system for reform that is dynamic, adjustable and constantly evolving that can be continuously complemented by concrete proposals and draft legislative modifications within current and potential future governmental timeframes. However, the DACIA model is challenged by several factors – lacking political will and commitment at the central level to advance political and financial decentralization, political instability and diverted focus due to the pandemic crisis.

Assessment of the Practice

The model proposed by CALM reflects the vision of local constituencies and is provides for an alternative to the top-down approach proposed in earlier years. At the end of 2018, a Report on Administrative-Territorial Reform Scenarios[217] was developed (and informally backed by the government) proposing three scenarios for local administration reform: (i) moderate consolidation with a final number of 231 first-tier LPAs, (ii) intermediary consolidation – 154 first-tier LPAs, and (iii) compact consolidation– 93 first-tier LPAs. The report takes into account several indicators to describe the benefits of the proposed reform scenarios such as population; proximity to administrative centers (estimated between 8 and 12.5 km); average number of staff units; the degree of professionalization/specialization of the staff; and the reduction of administrative expenses.

The report, however, does not make any specific reference to any methodological guidance for the assessment of the situation in the local public administration in Moldova. Nor does it include any theoretical assessment of good practices or any scientific arguments or substantiation. There are also concerns that the principals and provisions of the European Charter of Local Self-Government are not considered as a guidance framework for the Report. Overall, the model is focused on cost reduction scenarios rather than on best available option for high quality public services delivery settings. CALM assesses that the report ignores the dimension of intergovernmental relations in Moldova, including findings of the Congress of Local and Regional Authorities of the Council of Europe with respect to the situation of local and regional democracy in Moldova. Ultimately, the spatial scenarios for the territorial and administrative reform are based on few parameters that aim primarily to significantly reduce the number of LPAs, through a top-down approach. The decentralization domain and major problems faced in this area by Moldova seem to be neglected at this stage by local policymakers. While there certainly is room for improvement in the operational efficiency of first-tier LPAs, it must be recognized that the key challenges that Moldovan LPAs face are the incomplete political, administrative and fiscal decentralization reforms that have resulted in an inconsistent distribution of responsibilities across levels of government, inadequate funding and excessive interferences and controls from higher levels of government. All these dimensions play a fundamental role in determining the ability of first-tier LPAs to provide services to their citizens. Without adequate resources, simply changing the number and boundaries of first-tier LPAs may end up simply creating clusters of former small but still poor LPAs.

Additionally, a top-down approach to territorial reform, in the background of high political instability and polarization, and therefore developed without sufficient consensus between policymakers at national and local level would jeopardize the sustainability of the reform itself. Furthermore, high polarization does not allow for an effective consultation with local communities, which will be mostly affected by the changes.

[217] Ion Beschieru and others, 'Studiu privind scenariile de reformă administrativ-teritorială' (2018) <https://cancelaria.gov.md/sites/default/files/studiul_privind_scenariile_de_reforma_administrativ-teritoriala_elaborat_in_decembrie_2018.pdf>.

The argument of the simple reduction in the number of first-tier LPAs without addressing the more fundamental challenges that Moldovan local governments face is very simplistic. It is important that the discussion on the territorial reform should be linked to considerations of the overall distribution of public resources at and from the national level and the size of public investment necessary for the effective delivery of the local public services that currently present significant territorial disparities. Given these shortcomings, the implementation of top-down amalgamation measures under the central government guidance may result even a hazardous exercise.

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11. The Structure of Local Government in South Africa

11.1 The System of Local Government in South Africa

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Types of Local Governments

South Africa has a multilevel system of government organised at national, provincial and local level. There are nine provincial governments while the local sphere of government is constituted by 257 municipalities. The 1996 Constitution of South Africa recognises three categories of municipalities – Category A, B and C.[218] Metropolitan municipalities (Category A) have exclusive municipal executive and legislative authority in their respective areas of jurisdiction. Local municipalities (Category B), which currently total 205, share their municipal executive and legislative authority with district municipalities (Category C) within the relevant area they fall. District municipalities exercise their municipal executive and legislative authority in an area that covers more than one local municipality. These umbrella municipalities (currently 44) were established, among other reasons, to provide support and maximise on economies of scale in areas where there are low capacity municipalities. At policy level, the three broad categories of municipalities (A, B and C) are further broken down into seven sub-categories namely:

- A - metropolitan municipalities;
- B1 - secondary cities, local municipalities with the largest budgets;
- B2 - local municipalities with a large town as core;
- B3 - local municipalities with small towns, with relatively small population and significant proportion of urban population but with no large town as core;
- B4 - local municipalities which are mainly rural with communal tenure and with, at most, one or two small towns in their area;
- C1 - district municipalities which are not water services authorities; and
- C2 - district municipalities which are water services authorities.

National departments often make use of this sub-classification when dealing with municipalities.

The Constitution assigns to local government service delivery responsibilities and a development mandate. It equips local government with a variety of powers – legislative (the power to adopt by-laws), executive, fiscal, budget and administrative powers - to enable the delivery of these responsibilities and obligations. The functional areas of local government are enumerated in Schedule 4 (part B) and Schedule 5 (part B) of the Constitution. These schedules list matters, such as water supply, and electricity reticulation, land use planning, municipal

[218] See Sec 155(1) of the Constitution.

health, local roads, and refuse removal. The principles of subsidiarity and assignment recognised in the Constitution provide opportunities for municipalities to exercise additional functions.

Legal Status of Local Governments

Unlike in many countries, local government is recognised in the Constitution of South Africa as a sphere of government.[219] Thus, the existence of the institution of local government is not dependent on the goodwill of the national and provincial governments. This security of existence is extended to individual municipalities which may not be arbitrarily abolished or merged. Such abolishment or merger can only take place in terms of law and subject to oversight procedures that include the role of an independent body, the Municipal Demarcation Board.

The autonomy of municipalities is constitutionally recognised and can be enforced through the courts. Municipalities have a right to govern their respective areas and this right is only limited by the Constitution. The national and provincial governments may, however, regulate the exercise of this right but subject to limitations imposed by the Constitution. For instance, such regulation mainly takes the form of framework legislation that may not go to the 'core' of municipal functions as that is reserved for the legislative authority of municipal councils. National and provincial governments are further prohibited from impeding or compromising a municipality's ability to exercise this right whether by legislative or other means (Section 151(4) of the Constitution). Thus, it can be observed that unlike in many other countries, the Constitution of South Africa entrenches the existence and autonomy of local government that is jealously guarded by the courts in practice.

(A)Symmetry of the Local Government System

As explained above, there are three categories of municipalities in South Africa – metropolitan, local and district. The Constitution allocates to all metropolitan municipalities equal powers and functions. As opposed to metropolitan municipalities that have exclusive executive and legislative authority in their areas of jurisdiction, legislation and policy defines the division of responsibilities between district and local municipalities. As stated above, within the category of district municipalities there are those that have been designated as water services authorities and those that are not.

The Constitution entrenches the principles of subsidiarity and assignment which if implemented can also result in municipalities within and across categories exercising varying powers. Section 156(4) of the Constitution requires the national and provincial governments to assign to a municipality any of their functions if the function can 'most effectively be administered locally and the municipality has the capacity to administer it'. This provision is being implemented with respect to some functional areas of the national and provincial

[219] See Sec 40(1) of the Constitution.

governments. For example, metropolitan municipalities, which tend to have significant capacity, are already involved in the delivery of housing even though it is a national and provincial competence. Thus, there is a fair degree of asymmetry in the South African system of local government.

However, the Constitution does not explicitly state that the asymmetry at local level is strictly there to respond to the urban-rural distinction. In practice, nonetheless, district municipalities generally operate in rural and semi-rural areas while metropolitan municipalities and secondary cities (B1) govern in mostly urban areas. Thus, it can be concluded that the local government system is designed in such a way that enables it to respond or adjust to the urban-rural interplay, among other differences present at the local level.

Political and Social Context in South Africa

The ushering of a democratic era in 1994 brought hope to a country that had been ravaged by years of apartheid. Under apartheid, the state, economy and society were organised strictly on the basis of race.[220] The system benefited whites while the majority black population, as well as the minority Indian/Asian and coloured minority groups, were marginalised, deprived of equal economic opportunities and political representation to a different degree, and the former relegated to third class citizens. Since coming to power in 1994, under the leadership of Nelson Mandela, the majority led government of the African National Congress (ANC) has been confronted with a major challenge of undoing or redressing the injustices and legacy of apartheid. A variety of transformation interventions have been adopted in line with the demands of one of the most transformative constitutions in the world, the 1996 Constitution.

These interventions have recorded successes in some areas while failures are common in a number of areas, such as spatial transformation, with apartheid spatial landscape largely remaining intact 27 years after the end of apartheid.[221] Corruption and skills deficit, among other problems, continue to undermine the capability of the state to meet its obligation and development priorities at all levels of government.[222] The slow growth of one of Africa's largest economies has not made the situation any better. South Africa's GDP is estimated to grow by merely 1.5, 1,7 and 2,1 per cent in 2019, 2020 and 2021, respectively.[223] The unemployment rate, which in the second quarter of 2019 stood at 29 per cent, is another indicator of an economy in trouble.[224] It is thus without doubt that the economy is failing to generate sufficient resources, at a faster rate, for the state to cater for the needs of its estimated 58,78 million population (mid 2019 estimate).[225] This partially explains why poverty remains

[220] See Nico Steytler and Jaap de Visser, *Local Government Law of South Africa* (LexisNexis 2009) 1-3 to 1-9.
[221] Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood, 'Introduction' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019) 1.
[222] See Patricia Ntliziywana, 'Professionalisation of Local Government in South Africa' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019) 59.
[223] National Treasury, 'Municipal Budget Circular for the 2019/20 MTREF' (MFMA Circular no 94, Municipal Finance Management Act No 56 of 2003, May 2019) 2.
[224] Statistics South Africa (2019) <http://www.statssa.gov.za/> accessed 30 July 2019.
[225] ibid.

widespread, inequalities continue to deepen and universal access to basic services remains a dream for many South Africans.

The citizens have been impatient with the ANC government's performance in the last few years.[226] The political dominance of the ANC, reflected by, among other things, its two-thirds majority in the National Assembly in the early years of the democratic era, has slowly been eroded. In the 2019 elections, the ruling party won by 56 per cent of the national vote and narrowly won Gauteng province while the opposition, Democratic Alliance, kept its majority in the Western Cape province. At local government level, after the 2016 local government elections, the ruling party is no longer in control of four key metropolitan municipalities. Of the four, one is the legislative capital (City of Cape Town), the other is the administrative capital (Tshwane) while the City of Johannesburg is the economic hub of the country. Some form of coalition governments were formed in Johannesburg, Tshwane and Nelson Mandela Bay following the failure by any of the political parties to acquire a majority in these municipalities.

The metropolitan regions and cities remain key attraction points for people from rural areas in search for better economic opportunities. By 2017, over 67 per cent of the total population of South Africa was already residing in urban areas, including cities.[227] Consequently, rural areas have been left with a thin base to tap resources such as skilled manpower, a development which undermines their capacity to deliver. On the other hand, the infrastructure in these metropolitan areas is overwhelmed by the large-scale inward emigration and is failing to cope, as a result. For instance, a significant number of the population in these metropolitan regions still resides in informal settlements with no or limited access to basic public services. Even if such services were to be provided, a large portion of people in these areas are not able to pay due to incapacity. Thus, local government, which is positioned at the heart of state public service delivery in South Africa,[228] continues to face a variety of challenges, which are both within and outside of its control.

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[226] See Ntliziywana, 'Professionalisation of Local Government in South Africa', above, 59, 61, 63.
[227] See Statista, 'South Africa: Urbanization from 2009 to 2019' (*Statista*, 2020) <https://www.statista.com/statistics/455931/urbanization-in-south-africa/ > accessed 9 December 2019.
[228] See Steytler and De Visser, *Local Government Law of South Africa*, above, 1-3.

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11.2 The Structure of Local Government in South Africa: An Introduction

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Section 40(1) of the South African Constitution entrenches the three levels of government, namely, national, provincial and local government. The local government as already discussed in South Africa's report section 2 (local responsibilities) is made up of category A, B and C municipalities. The type of categories is determined by the Municipal Demarcation Board based on the factors set out in Section 155 of the Constitution, and Section 2 of the Municipal Structures Act (MSA). Essentially, areas that comply with the criteria in Section 2 MSA are categorised as metropolitan municipalities and the rest of the country as district and local municipalities.

However, under apartheid, local government institutions were race-based. Racial segregation in South Africa ensured that there were community councils, advisory boards and local authorities appointed for black urban areas. These institutions lacked legitimacy, had little authority, were inadequately funded and often comprised of national government appointees. Black rural areas known as homelands had tribal authorities administering local government matters. Indian and coloured communities were governed by separate local government structures that were subordinate to the national and provincial governments. Lastly, fully-fledged local authorities governed exclusively white communities or areas. Apartheid aimed to limit the extent to which affluent white local municipalities would have to shoulder the financial burden for servicing the disadvantaged black communities. Therefore, when South Africa became a democracy there was dire need to integrate these fragmented local institutions. The amalgamation of municipalities was inevitable to achieve non-racial municipalities.

The main reasons behind the amalgamations between 1994 and 2000 were to integrate racially based local government institutions. However, after 2000, amalgamations were done mainly to ensure the financial viability of municipalities. The Municipal Demarcation Act provides the legal framework for the amalgamation of municipalities. This Act provides a firm guideline as to how amalgamations are planned and implemented. This section will elaborate more on how the amalgamation of municipalities is planned and implemented in the thematic practice below.

The three categories of local government (category A, B and C), are metropolitan municipalities (single-tier), district municipalities and local municipalities (multi-tier). South Africa has eight metropolitan municipalities. On one hand, metropolitan municipalities are stand-alone or single-tiered municipalities with a single council at the helm. The metropolitan council executes all the functions of local government for a city or conurbation. On the other hand, district municipalities comprise of two or more local municipalities. While some local municipalities are secondary cities, or small towns, other local municipalities are rural. The local municipalities are represented on the district municipal council. District municipalities act as umbrella entities over local municipalities giving local municipalities support and assisting

with coordination, planning and service delivery. This setup enables coordinated governance throughout the country.

In order to bring urban government closer to the people and improve service delivery, there are ward committees in all local municipalities and metropolitan municipalities. Section 72 (1) of the Structures Act establishes a legal framework for ward committees. The primary objective of ward committees is to enhance participatory democracy. Functions of the ward committee include making recommendations on matters affecting the ward to the ward councillor, through the ward councillor, to the metro or local council, the executive committee, the executive mayor or the relevant metropolitan subcouncil. Therefore, the ward committee serves as a formal communication channel between the ward community and the council and its political structures. Subcouncils in metropolitan areas also serve the purpose of bringing urban governance closer to the people. However, in terms of the Municipal Structures Act, only certain types of metropolitan municipalities may establish metropolitan subcouncils. To date only Cape Town Metropolitan Municipality has a subcouncil. In order to establish the subcouncil, the municipality must adopt a by-law determining the number of subcouncils that are to be established. In addition to that, the municipality must designate a cluster of adjoining wards to the subcouncil. Among the powers and functions of subcouncils is the ability to make recommendations to the metro council on matters affecting its area. Such functions of subcouncils bring urban government closer to the people thus facilitating improvement in services.

The legal framework for horizontal inter-municipal cooperation is the Intergovernmental Relations Framework Act (IGRFA), which provides for vertical and horizontal intergovernmental relations (report section 4). This Act is a manifestation of Chapter 3 of the Constitution, which discusses co-operative government. Section 16 of the IGRFA provides for the Premier's Intergovernmental Forum (PIF) to promote and facilitate intergovernmental relations between the province and local governments in the province. In Section 24, the IGRFA also provides for district intergovernmental forums, which facilitate intergovernmental relations between district municipalities and local municipalities within the district. The IGRFA also provides for the establishment of inter-municipality forums in Section 28. These platforms serve as a consultative forum for participating municipalities to discuss and consult each other on matters of mutual interest.

In the South African case, several factors can facilitate or impede effective inter-municipal cooperation. The Gauteng City Region is an example of the challenge in managing large interconnected urbanised spaces that are governed by multiple local government structures. For instance, spatial and institutional fragmentation hampers development in the Gauteng City Region. Government institutions fail to align their programmes and projects, particularly with respect to infrastructure development. In certain instances, subsidies are transferred from the national government to provincial governments. The latter in turn transfer those subsidies to municipalities. Delays and bureaucracy often hinder this, particularly if the provincial political party is different from the local government municipalities. This is also precipitated by the lack of shared vision among the municipalities. Previously when one political party governed both provinces and municipalities, it was possible for intergovernmental disputes to be resolved informally at the political party headquarters. Now with different political parties at the helm, this is no longer possible. On the other hand, legislation such as the National Land Transport

Act 5 of 2009 facilitates inter-municipal cooperation. The act allows for the creation of a special purpose authority that brings together national, provincial and municipal transport functions into one jointly controlled entity.

References to Scientific and Non-Scientific Publications

Constitution of the Republic of South Africa, 1996

Municipal Structures Act 117 of 1998

National Land Transport Act 5 of 2009

11.3 How Amalgamations Are Planned and Implemented

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Relevance of the Practice

The South African amalgamation process of 2016 was kick started by the 'Back-to-Basics' programme, which analysed municipalities across the country, and concluded that approximately one-third of all municipalities were not doing well and some were not sustainable financially. To address the challenges being experienced by municipalities around sustainability or viability, several options were considered. These included direct interventions, strengthening district municipalities, or disestablishing and amalgamating some of the local municipalities to become larger local governments. The amalgamation of municipalities in South Africa in 2016 played a significant role in enhancing the economic viability of local governments, without necessarily targeting urban or rural municipalities. Although the amalgamations did not target rural municipalities per se (as other urban municipalities had poor economies). Nevertheless, the reality is that rural areas ended up more likely to be amalgamated as they were not as financially sound as their urban counterparts. This practice is closely linked to report section 3 on local financial arrangements because the amalgamation of local municipalities affects the tax base. For example, where municipalities that previously had a lower tax base were amalgamated with municipalities that had a higher tax base.

Description of the Practice

The practice of amalgamation is implemented in the same way in both urban and rural municipalities; in other words, the same laws apply to both urban and rural areas. Section 155(3) (b) of the Constitution states that before the amalgamation of local municipalities can occur, national legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority. In compliance with this obligation, Parliament enacted the Local Government: Municipal Demarcation Board Act, 27 of 1998, in terms of which the Municipal Demarcation Board was established to function as the independent authority to demarcate municipal boundaries, as required by the Constitution. The Municipal Demarcation Board comprises of members appointed by the President from a selection panel consisting of the following:

- the President of the Constitutional Court (or another member of the Constitutional Court designated by the President of that court), who must also be the convenor of the panel;
- a judge designated by the Chief Justice;
- one member of the Commission for Gender Equality, established by the Constitution, designated by that commission;

- two persons with specific knowledge of boundary demarcation (one must be designated by the Minister in consultation with the Members of (provincial) Executive Council (MECs) responsible for Local Government and the other person by the South African Local Government Association (SALGA); and
- the Chairperson of the Select Committee of the National Council of Provinces responsible for local government matters.

In *Matatiele Municipality and Others v President of the RSA and Others*, the Constitutional Court emphasised the rationale for an independent body so as to guard against political interference in the process of creating new municipalities. The Court held that 'if municipalities were to be established along party lines or if there was to be political interference in their establishment, this would undermine our multi-party system of democratic government. A deliberate decision was therefore made to confer the power to establish municipal areas upon an independent authority'.

According to Section 22(1) of the Demarcation Act, the Municipal Demarcation Board could perform its functions on its own initiative; on request of the Minister or a Member of the (provincial) Executive Council (MEC) responsible for local government; or on request by a municipality with the concurrence of any other municipality affected by the proposed determination or redetermination.

Therefore, based on the challenges being experienced by municipalities around sustainability or viability, the Minister responsible for Local Government requested the Municipal Demarcation Board in terms of Section 22(2) of the Demarcation Act to determine or re-determine the boundaries of various local municipalities. When the Municipal Demarcation Board is considering whether to determine or re-determine a municipal boundary, it must have an overall objective in mind to establish an area that would adhere to a particular set of requirements.

In order for the Municipal Demarcation Board to attain the overall objective and to comply with the required criteria outlined above, the Municipal Demarcation Board must also take specific factors (as provided in the Municipal Demarcation Act) into account when determining a municipal boundary. Among these factors are:

- the interdependence of people, communities and economies;
- the need for cohesive, integrated and un-fragmented areas;
- the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- provincial and municipal boundaries;
- areas of traditional rural communities; existing and expected land use, social, economic and transport planning; and
- the need for coordinated municipal, provincial and national programmes and services (including the needs for the administration of justice and health care and the topographical, environmental and physical characteristics of the area).

Apart from the Municipal Demarcation Board, it should be noted that the demarcation process involves a number of other role-players. These are municipal managers (these are appointed by the council), MECs responsible for local government affairs, Minister of Cooperative Governance and Traditional Affairs, traditional authorities especially the Provincial House of

Traditional Leaders, SALGA and any key stakeholders such as affected municipalities, thus ensuring that there is participatory democracy. It is important to note that the participatory democracy does not extend to a popular vote of the affected communities. According to Section 152 (1) (e) of the Constitution, one of the objects of local government is to encourage the involvement of communities and community organisations in local government. People's participation in local decision-making is discussed in more detail in report section 6. Constitutional Court judgments such as *Doctors for Life International v Speaker of the National Assembly and Others* affirm this position. The public consultative process requires members of communities to furnish written submissions either rejecting or supporting the proposals for redetermination and rationalisation of municipal boundaries and furthermore, attend the public hearings convened by the Municipal Demarcation Board. Before the board has a public meeting, it should first publish a notice in the newspaper circulating in the area concerned, stating the date, time and place of meeting and inviting the public. The purpose of this is to make the people aware of such a meeting and to give them the opportunity to attend it if they wish. The Municipal Demarcation Board must also consider all representations and views submitted and may then take a decision on the determination or, before it takes such a decision to hold a public meeting, conduct a formal investigation or to do both. What this essentially means is that the Municipal Demarcation Board is the decision maker in respect of the amalgamation of local governments.

Assessment of the Practice

Literature suggests that when local government structures are large (among other reasons due to amalgamation), access through public hearings, meetings, elections or direct contact is difficult as political representatives become far removed from the electorate which in turn weakens citizen participation. However, this is not the case in South Africa. South Africa put in place structures such as wards and subcouncils to curb against this result. The former has helped bring people closer to their government in both urban and rural areas by creating channels through which people can communicate with their local government. However, subcouncils have not achieved the same goal since only specific metropolitan cities can set up subcouncils. This in turn excludes some metropolitan cities and all rural municipalities from a structure that brings people closer to their local government. Nevertheless, it is important to note that for the metropolitan municipalities that qualify to establish subcouncils, their local councils have the discretion to decide whether or not to exercise the right to establish metropolitan subcouncils. To date it is not clear why the metropolitan municipalities other than Cape Town have decided not to establish subcouncils. It could be because they are content with just having wards as a means of enhancing citizen participation.

The aim of amalgamations post-2000 has been primarily to make municipalities more financially viable. However, a study conducted by Ncube and Vacu in 2014 indicated that the amalgamation processes in South Africa resulted in unintended economic consequences and significant transaction costs, especially during the transition process. Costs which the amalgamated municipalities have to bear. It is assumed that merging administrations reduces costs. However, while the Municipal Demarcation Board decides on the merger, it has no

control over whether the merged administrations will actually reduce costs after they have been merged. The Municipal Demarcation Board can merge two municipalities with the aim of reducing administration costs. In this instance, the two municipalities can merge their administration and trade unions to ensure that there are no retrenchments. Therefore, the total staffing numbers remain the same. Furthermore, the merged staff may demand salary parity such that the lower paid staff members must be upgraded to match their higher paid equivalent that came from the other municipality. What that means is that the whole exercise may end up costing more instead of being an exercise to improve the financial viability of local government. Further, rural municipalities end up being affected the most since a majority of unviable municipalities are in the rural areas.

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6%20LOCAL%20GOVERNMENT%20COALITION%20LED%20MUNICIPALITIES.pdf> accessed 23 November 2019

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11.4 Local Boundary Changes and Public Participation

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Relevance of the Practice

The act of demarcating boundaries does not have a pleasant history in South Africa. Boundary making was part of the series of instruments that the apartheid government used to disadvantage the black majority while advantaging the white minority. The reasons for boundary changes have evolved over time in South Africa: 'For much of the period between 1948 and 1994, South Africa's experimentation with decentralisation focused on demarcating jurisdictions and organising governance on the basis of race, rather than on the basis of functional linkages or similar criteria'.[229] Probably it is that history of abusing boundary making for partisan purposes that convinced the negotiator of the current Constitution to agree on the establishment of an independent institution that is responsible for demarcating municipal boundaries. That saw the establishment of the Municipal Demarcation Board (MDB). The Municipal Demarcation Act of 1998 gives the board the power to determine or re-determine municipal boundaries in South Africa. The act provides not only the criteria that the MDB must use when demarcating municipal boundaries, as mentioned in the preceding entry, but also the procedure that must be followed when demarcating boundaries. At the centre of that is the duty to facilitate public involvement.

Description of the Practice

The Constitution of South Africa provides for both representative and participatory forms of democracy, making the involvement of the local community in key decision-making processes mandatory.[230] Based on this constitutional imperative, the Municipal Demarcation Act requires the process of demarcation to be both participatory and inclusive. There is one board only which is responsible for all municipal demarcations, that is both urban and rural municipalities, and it applies the same rules across both types of municipalities as determined by the act. According to the act, the MDB begins the process of determining a municipal boundary by notifying stakeholders and the public in general of the board's intention to consider the matter, and inviting members of the public to submit their views on the matter (Section 26 of the Municipal Demarcation Act). The board can also hold a public hearing. It can also conduct 'a formal investigation'. The board must also make sure that its engagement with the public is 'as inclusive as possible'. This often takes the form of ad hoc meetings with relevant interested

[229] Philip Van Ryneveld, 'The Making of a New Structure of Fiscal Decentralization' in Bert Helmsing, Thomas Mogale and Roland Hunter (eds), *Restructuring the State and Intergovernmental Fiscal Relations in South Africa* (Friedrich-Ebert-Stiftung and Graduate School of Public and Development Management, University of Witwatersrand 1996).

[230] For more, see the Introduction to People's Participation in Local Decision-Making in South Africa, report section 6.2.

parties (i.e. business organizations, residents' associations, traditional leaders in rural areas, etc.), including the organisation of stakeholders' workshops.

Although the board has the obligation to consider all submissions and views expressed during public hearing, it is not bound by those submissions and views. The consent of the affected municipality is not required. In fact, the board is not specifically required to obtain the view of the relevant municipality. Neither is the approval of the residents of the affected municipality necessary for alteration of local boundaries. The final power of making determinations rests with the board. That is why the board, on a number of occasions, made decisions that went against the clearly expressed wishes of communities demanding or opposing local boundary changes. There are, however, cases where persistent community protests forced the MDB to look further into the demand and conduct further feasibility studies though those did not always result in changing the decisions of the board.

Sometimes, local boundary changes happen as a result of a change in provincial boundaries. According to the Constitution, a constitutional amendment that affects a particular province cannot pass 'unless it has been approved by the legislature or the legislatures of the province or provinces concerned' (Section 74(8)). The validity of provincial support to pass the amendment, in turn, depends on the provincial legislature effectively discharging its duty of facilitating public involvement (Section 118 of the Constitution). From this, it is clear that, first, the consent of the affected municipality is not a requirement even if the proposed changes may result in a municipality or part of a municipality moving from one province to another. Second, the public must be consulted. Again, although the provincial legislature has the duty to facilitate public involvement, the public does not have the power to veto the proposed changes.

In 2006, the Constitutional Court invalidated the constitutional amendment that enabled the transfer of the Matatiele Municipality (predominantly rural) from the KwaZulu-Natal province to the Eastern Cape province on the ground that the KwaZulu-Natal legislature had not consulted with the people of Matatiele. The Court suspended the declaration of invalidity for a period of 18 months to give the government time to rectify the procedural irregularities. In 2007, the Government and Parliament invited the public to make written submissions in relation to the proposed amendment. In that same year, the KwaZulu-Natal legislature held a number of town-hall meetings and hearings. Once the government was convinced that it had addressed the procedural defects, it enacted the Thirteenth Amendment transferring again Matatiele to the Eastern Cape. Members of the Matatiele community objected to the decision and brought a case again before the Constitutional Court. Although they admit that both national and provincial legislatures had facilitated public involvement this time, they argued that the submissions of the residents of the Matatiele Municipality and their representatives were not properly considered. They argued that the national and provincial authorities 'merely went through the motions in inviting submissions and arranging public meetings so as to secure constitutional compliance of the outcome of the process'.[231]

[231] *Matatiele Municipality and Others v President of the Republic of South Africa and Others* (1) (CCT73/05) [2006] ZACC 2; 2006 (5) BCLR 622 (CC); 2006 (5) SA 47 (CC).

In its ruling, the Constitutional Court cautioned against conflating the duty to engage the public and duly consider their views with the duty to be bound by the views of the public. Compliance of the legislature with the duty to consult the public does not depend on the extent to which the views of the public are reflected in the final decision. Although the Court acknowledges that the views of the public must be taken into account, it insisted that public opinion does not have a binding impact on Parliament and the decisions it takes. In the words of the Court, 'public involvement and what it advocates do not necessarily have to determine the ultimate legislation itself'.[232]

In another case on local boundary changes, involving the City of Merafong in Gauteng, discussed below, the Court has emphasised the non-binding nature of public views.

'[B]eing involved does not mean that one's views must necessarily prevail. There is no authority for the proposition that the views expressed by the public are binding on the legislature if they are in direct conflict with the policies of government. Government certainly can be expected to be responsive to the needs and wishes of minorities or interest groups, but our constitutional system of government would not be able to function if the legislature were bound by these views. The public participation in the legislative process, which the Constitution envisages, is supposed to supplement and enhance the democratic nature of general elections and majority rule, not to conflict with or even overrule or veto them.[233]

In Merafong, the Court had to deal with another issue pertaining to the extent of public consultation that has to take place. Unlike KwaZulu-Natal that initially failed to involve the public in the decision-making process affecting Matatiele, the Gauteng provincial legislature ensured that the public was consulted regarding the decision to transfer part of the Merafong City Local Municipality from Gauteng to North West, where the other part of the same municipality was located before the passing of the Twelfth Amendment. This public consultation included an opportunity to submit both oral and written submissions. The general observation from the public consultation was that the public was opposed to the transfer. Based on this, the Gauteng delegation to the National Council of Provinces, South Africa's second chamber of Parliament, was instructed by the provincial legislature to oppose the transfer of Merafong to North West. When it was told that the bill, which included the proposal to place not only Merafong but also a number of other cross-border municipalities within a single province, had to either be supported or opposed in its entirety, the Gauteng delegation made a U-turn and, without further engagement with the residents of the municipality, withdrew its objection to the transfer of Merafong. The decision of Gauteng raised the procedural issue of whether the provincial legislature was 'required to engage in a second consultation'. The Court held that the omission to consult again does not amount to a failure to facilitate public involvement in the processes of the Gauteng Provincial Legislature.

It goes without saying that residents of urban and rural areas do not have equal access to public hearings. However, the rural areas, which are often under-serviced and under-resourced, are home to a population that is characterised by low levels of literacy and poor education. They are also far from the urban centres where most hearings are often held. This means that any

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[232] *Poverty Alleviation Network & Ors v President of the Republic of South Africa & Ors* [2010] ZACC 5, para 62.

[233] *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* (CCT 41/07) [2008] ZACC 10; 2008 (5) SA 171 (CC); 2008 (10) BCLR 968 (CC), para 50.

effort to engage the public, including in processes of demarcation of boundaries, must take into account the particular challenges that a rural population faces. This may require preparing the rural population in advance to make sure that they engage meaningfully. It may also involve providing transport to members of rural communities to ensure that they attend hearings.

Assessment of the Practice

From the foregoing, it is clear that public consultation is an indispensable element of the process of local boundary changes. The views of the affected communities must be taken seriously. Failure to comply with the duty of facilitating public involvement has the effect of invalidating the decision. At the same time, the views and sentiments of the public are not binding. This clearly shows that the process of local boundary changes in South Africa is not only top-down (in so far as the initiation does not come from the local level) but also coercive. Neither the local government nor the local population has the final say on local boundary changes. Finally, although there are encouraging developments that aim at improving the participation of rural communities in key decision-making processes, they are not implemented consistently. More needs to be done to facilitate the involvement of rural communities in the processes of the MDB.

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11.5 A District Coordinated Development Model

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Relevance of the Practice

Identifying the effective way to deliver services is something that South African policy-makers continue to grapple with. This is crucial for a number of reasons. Past models for public service delivery have not performed as well as anticipated. They have been blamed for stagnated socio-economic development, incomplete projects and wasteful expenditure. They have also failed to prevent violent service delivery protests that have actually been markedly increasing in magnitude and intensity over the past few years. Officially launched by President Cyril Ramaphosa at a Presidential Imbizo in OR Tambo District Municipality in the Eastern Cape in early September 2019, the district-based coordination model seeks to overcome the challenges of inadequate service delivery that are traced back to the problem of the different spheres of government operating in silos.

Description of the Practice

The horizontal and vertical silos that characterize the workings of the three spheres of government are often blamed for the lack of integrated planning and implementation. This, according to President Ramaphosa, 'has made monitoring and oversight of government programmes and projects difficult'.[234] This state of affairs has been blamed for the non-optimal delivery of services and diminished impact on the triple challenges of poverty, inequality and unemployment.

The district coordinated development model presents a fresh perspective by seeking to move away from a system of service delivery that is dependent on each sphere aligning their plans with the other spheres towards a system that is based on joint planning.[235] As mentioned in the Introduction to the System of Local Government in South Africa, South Africa has a two-tiered system of local government, in which districts and local municipalities share legislative and executive authority, and there is a hierarchy between districts and local municipalities. Districts comprise of both urban and rural areas, but exclude metropolitan municipalities. The argument is that the multiple demands for spatially integrated planning and better public service delivery in the context of multi-level government can be best addressed through a system in which 'all three spheres of government work off a common strategic alignment

[234] Address by President Cyril Ramaphosa on The Presidency Budget Vote 2019/2010 (National Assembly, 17 July 2019) <http://www.thepresidency.gov.za/speeches/address-president-cyril-ramaphosa-presidency-budget-vote-2019-2010%2C-national-assembly%C2%A0>.

[235] See report section 5.4. on Intergovernmental Relations in Integrated Development Planning.

platform'.[236] The district-based coordination model is presented as a vehicle for joint planning which can aid both rural and urban municipalities to fulfil their constitutional development mandate (Section 152 of the Constitution) and by so doing support local municipalities, and especially rural municipalities which tend to struggle in terms of capacity and infrastructure planning and implementation. At the centre of the District Level Model is the single Joined-Up One Plan through which policies and programmes are implemented by each sphere of government. Each of the 44 districts is regarded as a centre of service delivery and economic development, the space in which each sphere of government uses its development plans to address strategic government priorities. The same applies to the 8 metros.

As a model of service delivery that operates within the existing constitutional framework for cooperative governance and intergovernmental relations, it requires national, provincial and local government to focus on their mandate areas when putting together a plan for each district. That is why the model is seen as 'practical Intergovernmental Relations (IGR) mechanism'.[237] The expected end product is one plan for each of the 44 districts and 8 metros.

A critical role of government is ensuring that the local, provincial and national spheres have a spatially integrated single government plan to drive development in the districts, which is especially important for rural municipalities within the districts as a new avenue for their development. Localized procurement and job creation are key components of the model. It is envisaged that local businesses will participate in and benefit from the development, and that citizens in the district concerned will be prioritized for employment on local projects. Government consultation of social partners is viewed as a key component of ensuring that development addresses the basic needs of stakeholders and local communities.

Assessment of the Practice

Through pursuing single, integrated district plans enabled by the vision of 'One District; One Plan; One Budget; One Approach', the model breaks with a past in which development was variegated, differentiated and discerned. Important is the fact that the model was endorsed by Cabinet, local government structures, traditional (rural) authorities and the President's Coordinating Council (PCC), seemingly bolstering the prospects for success, diminishing chances of competition and friction among the various arms of government assigned public service delivery functions.

The prospects for success appear to exponentially surge given that with effect from the 2020/21 budget cycle, national budgets and programmes will be spatially referenced across the 44 districts and 8 metros. In the same vein, provincial government budgets and programmes will be spatially referenced to districts and metros in the respective provinces.

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[236] Department of Cooperative Governance and Traditional Affairs, 'Concept Note: New District Coordination Model to Improve the Coherence and Impact of Government Service Delivery and Development' (2019) <https://edse.org.za/wp-content/uploads/2020/12/New-District-Metro-Coordination-Model-Concept-Note.pdf>.

[237] Department of Cooperative Governance and Traditional Affairs, 'About us' (*The District Development Model*, 3 July 2020) <https://www.cogta.gov.za/ddm/index.php/about-us/>.

Similarly, municipalities will express the needs and aspirations of communities in integrated development plans for the 44 districts and 8 metros.

However, despite the best intentions of the model, there are seemingly a number of impediments in its way. Coordination will be a mammoth task. The model brings together national, provincial, district and local municipalities. These are institutions that are often grappling with facilitating a common understanding of the service delivery challenges besetting local communities and how best they can be addressed. This is a challenge that seemingly requires energy sapping negotiations, mediation and consultation. A related challenge is the issue of how quickly district coordinating officers can be appointed, trained and facilitated to lead development planning under the new model.

The district development service delivery model claims to 'implement a balanced approach towards development between urban and rural areas'.[238] The fact that the joint planning approach takes place within the existing framework of division of powers suggests that the new model does not represent the formulation of service delivery planning by a higher level of government that is not in touch with the realities of rural municipalities. Each government retains their constitutionally assigned responsibilities. Arguably, the fact that they are now required to work together gives them an opportunity to have a universal view of the district in question, including the urban-rural divide. After all, each municipal district is regarded as a single space for joint planning in terms of this model.

It is also important to address the funding dimensions to the district coordinated development model given that this is an exercise that requires huge amounts of money, coordination effort and goodwill to roll out and realize. In the literature, uncertainties and misgivings have often been expressed about the role of districts in facilitating local development, with some suggesting the abolition of district councils and conferring their responsibilities on local municipalities. A common proposition in this contention is that local municipalities are better placed to champion better service delivery given that they are the closest sphere of government in touch with communities. It is, however, too early to determine whether the envisaged model will put an end to these reservations. Only time will tell.

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Department of Cooperative Governance and Traditional Affairs, 'Towards a District Coordinated Development Model: Concept Note' (2019)

[238] Department of Cooperative Governance and Traditional Affairs, 'Towards a District Coordinated Development Model: Concept Note' (2019).

12. The Structure of Local Government in Ethiopia

12.1 The System of Local Government in Ethiopia

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Types of Local Governments

The Federal Democratic Republic of Ethiopia (FDRE) Constitution has established a federal state structure composed of nine ethnic based constituent units namely: Tigray, Afar, Amhara, Oromia, Somali, Benishangul/Gumuz, Gmbella, Southern Nations, Nationalities and Peoples (SNNP) and Harari. Ethiopia is a dual federal state since Article 50(1) of the Constitution stipulates as The Federal democratic Republic of Ethiopia comprises the federal government and the state members. Local government is not explicitly stipulated by the Federal Constitution which remains almost silent. This paves the way to the constituent units to enjoy unlimited constitutional space in the area. Article 50(4) of the federal Constitution merely states that 'State government shall be established at the state and other administrative levels that they (i.e. the regional states) find necessary'. In fact, the second sentence of the article gives a specific federal mandate to the region and reads 'Adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units'. This implies the Constitution has implicitly provided for the establishment of non-ethnic local governments.

In addition, Article 39(3) states that Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits'. According to this article, local governments are established along ethnic lines for ethnic groups which are basically 'ethnic local government'.[239] Here, the Federal Constitution poses a duty on the regional states to realize genuine self-government and ample amount of decentralization of power to the local levels. Accordingly, all regional state constitutions have provisions related to local government with a relative uniformity.

As mentioned above, the constitutional recognition of local government in Ethiopia has remained debatable. Despite this debate, local governments are constitutionally recognized at least implicitly. If one gets a closer look to the provisions of the Federal Constitution, it envisaged the establishment of two kinds of local governments: ethnic and regular.[240] These two categories of local governments have two distinct objectives.[241] Ethnic local governments

[239] Zemelak A Ayele and Yonatan T Fessha, 'The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia' (2012) 58 Africa Today 89, 93.
[240] Zemelak A Ayele, 'The Existence of Local Government and its Institutional Security within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (UNDP and Center for Federal Studies 2015) 203.
[241] ibid.

aim at realizing the self-determination rights stipulated under Article 39(3) of the Federal Constitution. Practically these local governments are established in the name of 'nationality zones' or 'special *woreda*' in all regional states except Oromia, Harari and Somali. On the other hand, the regular local governments are established by the regional states as per the Federal Constitution's provision of Article 50(4) in the name of *zone*, *woreda* (city/town administration) and *kebele*.

Regarding administrative structure, all regional states, except Harari[242], are composed of three levels of local governments: nationality (*zone)*, special (*woreda)* and *kebele.* Nationality *zones, woredas,* special *woredas and kebeles* have three tiers of institutional structure composed of a council; administrative council and judicial body.[243] Zones are administrative levels just below the regional state comprising a number of districts (*woredas*) or urban centers. Unlike nationality *zones*, regular zones are founded by ordinary legislation with no council in Amhara, Oromia, Somali, Afar and Tigray regional states. It is a deconcentrated administrative body of the regional state. The *woreda* is the local government level standing next to the zone, encompassing *kebeles* and administratively subordinate and accountable to both the zone and regional state. *Kebele* is the lowest local government level included in all regional state constitutions. There are two categories of urban local governments: cities and towns. 'Cities' signifies the two cities under the federal jurisdiction (Addis Ababa and Dire Dawa). There are urban centers named by the legislations of their respective regional state councils. Towns are urban centers located beneath the zonal administrative structure and ranges from small to large based on their population size. Unlike others, small and medium towns may have a *woreda* status and in each *woreda*, there is a town from which the *woreda* is administered.[244]

Legal Status of Local Governments

Institutional security of local government is a crucial element of political autonomy of local government.[245] In order to protect the existence of local government as a sphere or level of government from the encroachment of the central government, constitutional recognition is recommended as an effective formal mechanism.[246] Political autonomy also entails uninterrupted existence of local government. The constitutional recognition of local government as an autonomous level of government does not only resist the intrusions from other levels but it also enhances the political and economic role that local government ought to play. Accordingly, local government administrations are supposed to be autonomous units. However, no constitutionally entrenched functions meet the above standards in the Ethiopian

[242] Harary regional state is composed of only two levels of governments: regional state and *kebele*.
[243] Christophe Van der Beken, *Completing the Consitutional Architecture: A Comparative Anaysis of Subnational Consituions in Ethiopia* (Addis Ababa University Press 2017) 141.
[244] WSUP Advisory, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia'(Draft Situational Analysis for Ethiopia's IUSHS) 20.
[245] Ayele, 'The Existence of Local Government and its Institutional Security within Ethiopia's Federal System', above, 202.
[246] ibid.

federal tradition. The Federal Constitution leaves this to the regional states to determine tiers, powers and functions.

As an element of political autonomy, local government functional competencies should be original, clearly defined, and development-related.[247] This is usually achieved through providing constitutional guarantees and full power to local governments on those functions. Considering the dual nature of the Ethiopian Constitution, local government units do not have original functions.[248] Rather their functions are determined by regional states.

(A)Symmetry of the Local Government System

Despite the fact that both typologies of local governments lack original autonomy, there is some kind of asymmetry between urban local governments and other regular (*woreda*) and ethnic (nationality zone and special *woreda*) local governments. The state constitutions constrained the councils of the latter in law-making powers. On the other hand, urban councils are empowered to issue policy and regulations of their own.[249] Accordingly, medium and large towns have enjoyed special status as compared to *woreda* governments having larger population. Moreover, a kind of paradox has arisen as the city councils which are under the supervision of the nationality *zone* council have a law-making power while the latter is restricted to its specific implementation guidelines.

Political and Social Context in Ethiopia

Ethiopia had entered in to the process of decentralization before a formal federal arrangement was endorsed in 1995. The Ethiopian People's Revolutionary Democratic Front (EPRDF), the incumbent political party since 1991, encouraged the establishment of local government units along ethnic lines. This was deemed to be a necessary response to accommodate diversity which was considered to be the most pressing challenge of the country.[250] Proclamation number 7/1992 was instrumental for the beginning of the first phase of decentralization (1991-2001). The Proclamation also laid down the foundation for the Federal Constitution. It had listed 64 ethnic groups to establish their own ethnic self-administration.[251] After ten years, the party realized that emphasizing only ethnicity leads to inefficiency in ensuring development and equitable service delivery and engaged in the further creation of new local governments and at some degree amalgamates certain of the existing ones.[252] Indeed, in 2001, the District

[247] Zemelak A Ayele, 'Decentralization, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (Doctoral dissertation, University of Western Cape 2012) 55.
[248] ibid 488.
[249] Van der Beken, *Completing the Consitutional Architecture*, above, 187.
[250] Zemelak A Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia' (2014) 6 Perspectives on Federalism 89, 109.
[251] National/Regional Self Governments Establishment Proclamation no 7/1992, Art 3, Federal Negarit Gazeta, No 2.
[252] Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia', above, 109.

Level Decentralization Program(DLDP) launched by the federal government, administrative convenience, good governance and development issues began to be the salient justifications for strengthening the decentralization process.

Currently, there are no less than 60 political parties registered in Ethiopia. Based on their constituency, political parties often classified in to three: national, regional and local parties. They also could be categorized in to three based on their political programs: EPRDF, incumbent party and composed of four ethnic based parties representing regional states of, Amhara, Tigray, Oromiya and Southern Nations Nationalities and Peoples.[253] EPRDF's affiliates are five in number which comprise Afar, Somali, Benishangul-Gumuz, Gmbella and Harari regional states.[254] These parties are ethnic based and not opposition parties following EPRDF's ideological orientation. Except a few, most of the opposition parties are ethnic based; their constituencies are regional and local governments. Ethnic based local parties are mostly oppositions mainly seeking either regional statehood or new ethnic local government status. Member parties of EPRDF are represented by an equal number of people both in its executive committees and despite the obvious difference in population size each party is supposed to represent. Moreover, many agree that the TPLF was the most influential member of EPRDF.[255] The party structure which controls all levels of government and its decision-making procedures on the principle of 'democratic centralism' affected local government creation and undermines the role of regional states in creating local government systems based on their circumstances.[256] Following the 2016 protests in the country an increasing party fragmentation within EPRDF has been seen. This political dynamic changed the previous centralized nature of the party and TPLF has been relegated from its core position in the party.[257] Enjoying this political liberalization opposition ethnic based local parties are getting more assertive in their claim of new territorial autonomy.

A City/Town administration, as the term implies, is established in urban areas. Based on classification, urban centers of Ethiopia are classified in five categories ranging from small towns to metropolitan City of Addis Ababa based on demographic size. According to Situational Analysis of IUSHS, the population size of small towns ranges from 2,000 to 20,000 people and constitute 80 per cent of total number of towns and only 33 per cent of urban population. The medium-sized towns range between 20,000 and 50,000, and hold 25 per cent of the urban population. Large-sized towns range between 50,000 and 100,000 people. There are 13 mega

[253] Amhara National Democratic Movement (ANDM) currently called Amhara Democratic Party/ADP/. Tigray People Liberation Front (TPLF), the Oromo Peoples' Democratic Organization (OPDO) currently called Oromo Democratic Party/ODP/, and the Southern Ethiopian Peoples' Democratic Movement (SEPDM).

[254] Afar National Democratic Party (ANDP), Somali People's Democratic Party (SPDP), Benishangul-Gumuz Peoples Democratic Party (BGPDP), Gambela people's Unity Democratic Movement (GPUDM), and Harari National League (HNL).

[255] Following party fragmentations, this has been confirmed by the leaders of the remaining member parties as there was no equal power balance within and TPLF took the upper hand in decision-making and even interfering in the internal affairs of each member parties.

[256] Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia', above, 90.

[257] Currently, the regional parties except TPLF and all affiliate parties have been merged in to one monolithic national party in the name of Prosperity Party.

towns with a population between 100,000 and 500,000 people each. Addis Ababa is the only city in the country that hosts over 500,000 with about 3.5 million residents.[258]

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[258] WSUP, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia'.

12.2 The Structure of Local Government in Ethiopia: An Introduction

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When the DLDP was launched by the federal government in 2001, the role of local governments became crucial and their mandate broadened.[259] Since 2001, two aspects of decentralization have taken place in Ethiopia: introduction of regular local government level block grants and their splitting. The splitting practices resulted in a dramatic increment of *regular local governments* throughout the country. By 2013, the number of such local government units had increased by 31 per cent from 2001.[260] On the contrary, ethnic local governments stayed constant in number.[261] In this scenario, urban administrations with *woreda* (district) status were created by splitting out of their host *woredas.*

Nowadays, the number of *woreda* and *zonal* governments is continuously increasing while amalgamation and disappearance of existing local units has remained the exception.[262] This local government practice has been the locus of state-society relations in the contemporary Ethiopian sub-national politics. Frequent demand has been coming from the local people claiming a new local government status. Despite the impression of the government is towards this frequent demand, the split of local governments remains a pressing issue in Ethiopia. The most significant recent trend of change in the figure of local government is the creation of new (special) *woredas* and (nationality) *zones* via the splitting of existing ones.

Splitting of *woredas* has been encouraged in order to meet two different objectives: (i) ensuring self-governments of ethnic groups and (ii) enhance development and public participation through decentralized governance system. The first motive and its implementation accelerated the claims of self-determination by many minority ethnic groups. This still is one of the pressing issues on the table of regional state executive offices. The splitting practices aimed to achieve the second goal are also accompanied by public requests. Many delegates of people have frequently appeared before the regional state executive office claiming new local government status and hoping to receive service in a more efficient and effective way.

References to Scientific and Non-Scientific Publications

[259] Solomon Nigussie, 'Intergovernmental Fiscal Arrangements in Ethiopia: Some Basic Issues' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (UNDP and Center for Federal Studies 2015) 99.

[260] Ayenew Birhanu, 'The Politics of Local Government Creation and Boundary Demarcation within Ethiopian Federation' (PhD thesis, Center for Federalism and Governance Studies, Addis Ababa University 2017) 116.

[261] ibid117.

[262] ibid 120.

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12.3 The Practice of Local Government Creation (Splitting)

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Relevance of the Practice

The creation of local government through splitting the pre-existing ones is a practice expected from countries with insufficient infrastructural facilities. People who live in rural areas travel long distances to receive services from their respective governments which is time and money consuming. Local government institutions and subsequent service provisions are mostly found in urban centers and which seems one of the urban rural divides in Ethiopia. Hence, the practice is relevant to bring the government and services closer to the rural people at least physically. The government is also pursuing the practice in the same intention. The criteria, reasons and level of public participation as well as their impact on quality service provisions do not only determine the access of the government to the relatively remote rural areas but they also minimize the burden of urban centers by containing a significant number of surrounding rural people not to go there.

Description of the Practice

According to Zemelak, the only articles in the Constitution that make passing reference to local governments are Article 39 and Article 50(4).[263] The ethnic local government is established for ethnic groups which are territorially concentrated.[264] The local government established along ethnic line can be either nationality *zones* or special *woredas*.[265] It is safe to say that Article 39(3) entitles ethnic groups to establish local government in order to accommodate ethnic diversity. Hence, the primary reason for local government creation and the subsequent splitting practices are motivated by the politics of ethnicity. The other article that deals with local government is Article 50(4) which mandates regional governments to grant adequate power to the lowest units of government in order to achieve public participation. Here, the splitting of local government practice is related to the motive to ensure local development, delivery of service and public participation.

In the Ethiopian case, both the federal and state constitutions do not lay down the manner in which the split of local government should be organized. Despite this silence, the legal-constitutional mechanisms and related practices show that there are at least four criteria formulated by regional state legislations: ethnicity, population size, administrative

[263] Zemelak A Ayele, 'Decentralization, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (doctoral dissertation, University of Western Cape 2012) 196.
[264] ibid.
[265] ibid 96.

convenience and area size. These criteria are largely applicable in establishing new *woredas* in which rural areas administered. There are no objectively quantified and single commonly articulated criteria justifying the local government creation. Consequently, there is uneven distribution of territory, population and number of local governments across the nine regional states. The practice shows that there is a wide range of flexibility to create a new local government or not. In addition, regional state legislations do not provide clearly established criteria with which one could judge the appropriateness of application in the splitting practices. This scenario challenges not only the service delivery responsibilities of local governments but also the attempt to bring the government closer to the people. On the other hand, the criteria employed to establish new urban local governments is relatively clear and objectively quantified. Among the four criteria three (population size, capacity of revenue generation and occupation of city resident) have their own quantified threshold.

The federal government and regional executives are the key actors in the initiation, direction and execution of splitting and creation of new local governments.[266] The regional administration took the lion-share in such practices. It is not to say that public input has not existed in this local government practice. Rather it is to say that the regional executive and its deconcentrated bodies facilitate public participation with some pre-determined outcome. Public gatherings are neither inclusive nor taken for real. Therefore, it is possible to argue that there is an imposition of local government boundaries with less local public participation.

Assessment of the Practice

The practice discussed above shows that there are multiple bases in the splitting and creation of new local governments in Ethiopia. In theory, the institutional security of existence of local government ensured through setting clear criteria and procedure to change its size and boundaries.[267] A closer look at the legal-constitutional mechanisms of both federal and regional states revealed that there are no clearly defined criteria that must be strictly followed without picking up one or two in the pretext of circumstances. It follows that the creation of local government has been subject to a pragmatic and informal way which involves informal negotiations along various networks of interest. Hence, the security of existence of local government as a sphere of level of government is compromised and the interests of the local people is down-graded.

Splitting (creation) of local government patterns and objectives vary according to the relative differences in heterogeneity of regional states. In relatively homogenous regional states like Amhara and Oromia, splitting practices are justified by administrative convenience and provision of socio-economic services. On the other hand, in heterogeneous ones like SNNP

[266] Ayenew Birhanu, 'The Politics of Local Government Creation and Boundary Demarcation within Ethiopian Federation' (PhD thesis, Center for Federalism and Governance Studies, Addis Ababa University 2017) 168.

[267] Zemelak A Ayele, 'The Existence of Local Government and its Institutional Security within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (UNDP and Center for Federal Studies 2015) 201.

regional state the objective and criteria of local government creation is to accommodate territorially concentrated ethno-linguistic groups.

The creation of new districts continues to meet the objectives of service delivery, to bring the government closer to the people and enhance public participation. However, it does not regulate the population number which is growing faster than the splitting practice. As a result, there is a challenge to achieve those objectives. Small and medium-sized towns, which constitute 80 per cent of the total number of urban centers of the country, are situated under the jurisdiction of *woreda* governments. The level of urbanization is greater in these towns than other larger urban centers.[268] Consequently, both urban and *woreda* local governments are in difficulties to deliver the necessary services in such dramatically changing demography. The creation of local government for territorially concentrated ethno-linguistic groups seems overstated. The lack of clear legal framework and a centralized political culture made it uncertain. Currently, there are more requests for ethnic local government status than ever before in various regional states like Tigray, Amhara, Oromia, Benishangul/Gumuz and more largely in SNNP.

As mentioned above, local governments are established for the purpose of enhancing democratic participation and ensuring efficient service delivery. Local government administrations are also supposed to be autonomous administrative units. However, there is no clear functions and mechanism of popular participation. All local governments are controlled by the ruling party decisions and over-shadowed the roles of their own legislatures. Hence, it is difficult to accomplish their responsibility of ensuring service delivery and grassroots democracy.

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[268] Birhanu, 'The Politics of Local Government Creation and Boundary Demarcation within Ethiopian Federation', above, 148.

12.4 Amalgamating Five Special Local Governments into a Single Administrative Zone vs Self-Government Rights of Ethnic Groups in SNNPRS

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Relevance of the Practice

What are generally termed as nation, nationalities and peoples under the 1995 FDRE Constitution, otherwise called as ethnic groups, are the right-bearers and are entitled to have their own states, zones or local governments depending on their level of economic and political development. Hence, state structures are designed to fit the interests of ethnic groups. However, in reality, only nine regional states came into being for the more than 85 ethnic groups. In consequence, other ethnic groups are entitled to establish their own ethnic zones and local governments. The justification is to guarantee each ethnic group the right to self-rule. The five special local governments in the Southern Nations, Nationalities, and People's Region (SNNPRS) were created to satisfy the self-administration demands of five ethnic groups in the region. These local governments are mainly rural local governments having one administrative capital at the center. The populations are mainly homogenous inhabited by a single ethnic group. The urban centers are relatively heterogeneous but still dominated by their respective ethnic groups. However, there is no visible difference in terms of urban-rural dimension as both of them are inhabited by the same ethnic groups. The major purpose of establishing local governments in these special *woredas* were to accommodate ethnic interests in the form of creating local governments for numerically smaller ethnic groups.

If one reads the preamble of the 1995 FDRE Constitution together with Articles 8, 39, 46 and 47,[269] it is self-explanatory that accommodation of ethnic identity is given utmost importance

[269] Art 8 provides that: (i) All sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia, (ii) This Constitution is an expression of their sovereignty, and (iii) Their sovereignty shall be expressed through their representatives elected in accordance with this Constitution and through their direct democratic participation.
Art 39 deals with the rights of nations, nationalities and peoples of Ethiopia which reads in full as: (i) Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession, (ii) Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history, (iii) Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and federal governments. Nation, nationality and people for the purpose of this Constitution is defined as: 5) a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.
Art 46 sets the criteria for state boundary demarcation. It explains: (i) The Federal Democratic Republic shall comprise of States, (ii) States shall be delimited on the basis of the settlement patterns, language, identity and consent of the peoples concerned.

in the Ethiopian federal system. In consequence, the organization of sub-national states and other local governments are in line with ethnic identity, language and other identity markers of nations, nationalities and peoples (NNP). The Southern Nations Nationalities and Peoples Regional State (SNNPRS) is one of the nine regional states of Ethiopia created in 1995 by bringing together 56 officially recognized ethnic groups. It is one of the most diverse states of Ethiopia comprising more than 50 per cent of the country's ethnic groups. For this reason, the region is known as a federation within a federation.

Although the region is considered as a single region in the Ethiopian federation, it comprises various forms of administrative hierarchies designed for accommodating ethnic diversities.[270] As a result, it was organized along zonal, *woreda*, special *woreda* and *kebele*[271] levels. SNNPRS is one of the regions where the workability of the Ethiopian federal system of accommodating ethnic diversity could be practically tested as many of the ethnic groups are claiming and reclaiming for the redrawing of their boundaries and even for their own independent statehood.

Description of the Practice

Before the creation of the SNNPRS and the drafting of the 1995 Constitution, the region was organized into five regional states (region 7-11) named in numbers as region 7, 8, 9, 10 and 11 as per Proclamation no 7/1992. During the transitional period (1991-1994) Ethiopia was structured into 14 regional states whose designation was in numerals rather than on an ethnic basis. However, with the coming into force of the new Constitution in 1995, the five regions were merged to create the SNNPRS. The process of amalgamation was not welcomed by all ethnic groups. For example, the Sidama (the largest ethnic group in the region) asserted for the restoration of their regional status.

Following the creation of the SNNPRS, the newly created region was sub-divided into 14 zones (Benchi Maji, Dawro, Gamo Gofa, Gedeo, Gurage, Hadiya, Keffa, Kembata Tembaro, Sheka, Sidama, Silte, South Omo, Wolayita and Hawassa Special Zones) and 8 special *woredas* (Alaba, Amaro, Basketo, Burji, Dirashe, Konso, Konta and Yem). It was in 2011 that the regional state decided to merge the four special *woredas* of Konso, Dirashe, Amaro and Burji, and one regular *woreda* of Alle into a larger administrative zone called Segen Peoples Zone. The newly established Zone consists of eight ethnic groups; Konso, Burji, Kore, Alle, Dirashe, Kusume,

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Art 47 lists down member states with possibilities for establishing additional states if a demand for statehood comes from other nations, nationalities and peoples of Ethiopia. It says: (1) Member States of the Federal Democratic Republic of Ethiopia are theFollowing: (i) The State of Tigray, (ii) The State of Afar, (iii) The State of Amhara, (iv) The State of Oromia, (v) The State of Somalia, (vi) The State of Benshangul/Gumuz, (vii) The State of the Southern Nations, Nationalities and Peoples, viii) The State of the Gambella Peoples, (ix) The State of the Harari People. It further guarantees that; (2) Nations, Nationalities and Peoples within the States enumerated in sub-Article1 of this article have the right to establish, at any time, their own States, provided that certain procedures are fulfilled as provided in the Constitution.

[270] Art 45 of the Constitution of the Southern Nations, Nationalities and Peoples Regional State provides for organizing the state at *zonal*, special *woreda*, *woreda* and *kebele* level. If a need arises, it provides for the possibilities of establishing at other administrative levels.

[271] *Kebele* is an Amharic term to denote the lowest level of state administration in Ethiopia.

Mashole and Mossiye. The move indicates the ideological shift of the Ethiopian People's Revolutionary Democratic Front (EPRDF) from ethnic accommodation to administrative convenience and efficiency.[272] These four ethnic groups have their own languages and have experienced self-administration for the last two decades. Moreover, the new administrative unit, the Segen Peoples Zone, does not reflect ethnic identification but is designated after a big river flowing in the area.

Before the merger in 2011, the Konso people had their own Konso special *woreda*. However, the minority Alle ethnic group also live in their own *kebele* administration in Konso. Based on the 2007 Central Statistics Agency Report, the *woreda*'s population was 235,087. Konso, the language of the Konso people, is spoken as a mother-tongue by the majority of the population and more than 87 per cent of the *woreda*'s population belong to Konso while 9 per cent are Alle (previously called Gewada).

The Dirashe special *woreda* was established for the Dirashe ethnic group but it also constitutes other minority ethnic groups such as Alle/Dobassate, Mossiye, Kusume and Mashole. Its population number was reported to be 30,031as per the 2007 population census. The Burji special *woreda*was designated for the Burji people which accounts for 71,871. The Kore ethnic group was administering the Amaro special *woreda*. It has a population of 149,384.[273] Over all, the four major ethnic groups administered their own affairs in their own self-governing special *woredas* before their merger into the Segen Area People's Zone in 2011.

Assessment of the Practice

The amalgamation of various self-governing ethnic local governments into a single administrative zone is unfortunately not a success story. From the very outset, it was a top-down approach where the regional state decided to implement for so-called integration of the four special *woredas* into a zonal structure for administrative convenience without any historical, linguistic, geographic or legal justifications to merge a completely different ethnic and linguistic communities. There was strong resistance, both during and after the formation of the Segen Peoples Zone, claiming for their separate existence as special *woredas* maintaining their distinct identities.

The creation of the Segen Area People's Zone was triggered by the demands of the Ale people for their own self-governing administrative unit. The Ale are a minority ethnic group divided between Konso and Dirashe Special *Woredas*. Nonetheless, they demanded to have their own administrative units separating from these two *woredas*. The ruling party of the region, the Southern Ethiopian People's Democratic Movement (SEPDM), opted for three options; (i) to join Ale with the neighboring multiethnic South Omo Zone, (ii) to grant its own special *woreda* or (iii) to create a new administrative zone by combining the four special *woredas* including the

[272] Thomas Halabo Temesgen, 'Accommodation of Ethnic Quest for Self-Governance under Ethnic Federal System in Ethiopia: The Experience of Southern Regional State' (2013) 3 International Journal of Research in Commerce, IT and Management 42.

[273] Misganaw Addis Moges, 'Practice of Self-Government in the Southern Nations Nationalities and Peoples' Regional State: The Case of Segen Area Peoples' Zone' (MA thesis, Addis Ababa University 2014).

Ale. The first two options did not work as it was rejected by the South Omo Zone and the second was feared for incurring additional costs. The region then opted for amalgamating the special *woredas* to create a new zone.[274] However, the move was unacceptable for the previously independent *woredas* as it reduced their autonomy. It precipitated public protest and sustained human and material losses since then.

The move of integration may be good, but it has to be made from a bottom-up approach and should not be imposed from the higher authorities. The experience seems a failure in light of the major protests and deaths and displacements that followed government crackdowns. In a federation that was established to accommodate the interests of different ethnic groups for self-government, any move to integrate or split must pass through rigorous public consultation and must respect the demands of the people.

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12.5 Splitting Local Government and its (Un)expected Outcomes: The Case of Amhara National Regional State

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Relevance of the Practice

In Ethiopia, the splitting of local governments has been allowed in order to meet two objectives: first, to ensure the self-government of ethnic groups, and, secondly, to enhance development and public participation through a decentralized governance system. Articles in the Federal Constitution that make passing reference to local governments are Articles 39(3), 50(4) and 88(1). The first objective and its implementation accelerated the claims of self-determination by many minority ethnic groups. Even though, the response of Amhara National Regional State (ANRS) towards the ensuring ethnic self-government is relatively better than other regional states, as it establishes ethnic local governments for four ethnic minorities namely, Awi, Himra, Oromo and Argoba, the claim of Kimant ethnic group is not still materialized despite recognized by both the regional council and the Hose of Federation. This is because the controversy over border demarcation, as the Kimants claim additional three kebeles that are territorially detached from the other sixty nine while the regional government insists to keep the precedence of territorial contingency principle. The splitting practices aiming to achieve the second goal are accompanied by public requests. Delegates of various groups have frequently appeared before the regional state executive office of ANRS to claim new local government status in the hopes of receiving services in a more efficient and effective way. According to regional officials, the creation of local governments by splitting pre-existing ones is a result of insufficient infrastructure. People travel long distances to receive services from their respective governments, which is costly and time-consuming; the practice is hence relevant in bringing government closer to the people, at least physically. In this entry, the term 'splitting' is used to refer to the practice of forming new regular local governments by simply dividing the existing regular *woreda* or zone into two or more. As a matter of fact, the splitting practice is mostly the focus of local government politics in ANRS. Hence, assessing whether or not the splitting practice aligns with the demands and interests of the affected people and brought about the intended outcome regarding the provision of services and genuine popular participation has paramount importance. To this end, practical situations have been reviewed to understand what is happening in localities after splitting. The cases of two *woredas* (Farta, from which Guna Abaegemidir *woreda* was split, and Mecha, which was split into North and South Mecha) is used to show the outcomes of splitting practices.

Description of the Practice

Article 58(3) of the ANRS Constitution gives the final decision-making power over the claims of new local government status to the Council of the Regional Government. According to this provision, the demand for new local government status is expected from the lower levels of local government units. Without prejudice to the fact that the final decision-making power rests on the regional executive government, zones have the power to conduct preliminary investigations over the claims of restructuring and to submit a fundamental direction on the issue.

After 2001, a steady increase in the creation of new local governments, mostly through splitting existing ones, has been witnessed. The following table shows the trend in local government creation in ANRS since the fiscal year of 2003/2004.

Table 2: Number of local governments and city administrations in Ethiopia (2003–2020).[275]

year	no of local governments except zones	no of city administrations
2003/04	114	-
2004/05	118	-
2005/06	118	-
2006/07	118	-
2007/08	139	-
2008/09	151	21
2009/10	151	21
2010/11	165	33
2011/12	166	-
2012/13	166	38
2013/14	166	38
2014/15	167	38
2015/16	169	40
2016/17	169	40
2017/18	169	40
2018/19	182	42
2019/20	186	42
2020/21	190	46
total	190	46

[275] Computed from annual budget allocations for *woredas* and city administrations, using data from the Bureau of Finance and Economic Development (ANRS) of June 2020.

As the table indicates, the creation of new local governments has grown steadily over the years. By 2020, the number of such local government units had increased by 60 per cent since 2002, which is double the national growth in new local governments formed by means of splitting. Indeed, in 2007/08, 2008/09, 2010/11 and 2019 there are notable spikes in this trend. Senior officials of the regional state said that the reason for the relatively high increments in certain years relates to the performance of the regional government in responding to claims coming from the localities. The budgetary implications of the duplication of human personnel and resource-mobilization have often been mentioned. During times when there is an abundance of budget secured as a result of financial support from international development organizations, a greater-than-usual numbers of new local governments have been created.

At least four criteria are set out in ANRS for splitting local government: ethnicity, population size, administrative convenience, and area size. Though it is not determined by the law, the regional executive tried to quantify the criteria by percentage to decide over the claims of *woreda* splitting. According to this criterion, a population number of 200,000 and above would have got 45 points out of a hundred. Similarly, area size, the nature of the landscape, the potential to generate income, and the number of *kebeles* are allocated 25, 15, 10, and 5 points, respectively. In regard to urban local government, the ANRS's legislation not only sets a population threshold different to that of the federal government but includes additional criteria such as potential revenue, the occupation of city residents, and strategic importance. Regulation no 144/2015 provides a clearly defined and quantified threshold for the criteria of population size and revenue potential for each category of urban local government. However, its applicability in upgrading from one category to another remains uncertain. This is due to the fact that the other criteria are expressed in phrases such as 'strategic importance' and 'occupation of city residents' that lack precision and entail subjective decisions. With the exception of population size, there is neither a specific threshold to get those points nor a minimum benchmark for the eligibility of a claim. The absence of clearly defined criteria in regard to both, the re-organization of urban local governments and the splitting of *woreda* governments, leaves fertile ground for elite interests at the local level and subjectivity at the regional-government level.

The legal frameworks does not indicate ways of consulting the local people regarding the practice of splitting and creating new local governments. Although local councils are established to enable political representation and participation, their powers and responsibilities are not stipulated in detail. Neither the state's constitution nor legislation provides for the local councils, with the exception of zones, a power to discuss or make recommendations on local government demarcation. However, in practice, such initiatives are indeed discussed in local councils and presented informally to the zonal and regional executive.

Observation of regional government finds that there are limitations in public participation in regard to claims for new local governments. This also evident in discontentment among the people and in the inefficiency of institutions after splitting has occurred. The local elites, including public servants, merchants and government officials, are crucial in initiating, framing and facilitating requests for new local government status. They call for public participation with some pre-determined outcome, basically the inevitability of splitting. Public gatherings are neither inclusive nor genuine.

The democratic deficit of this local government practice is manifested in complaints and resentment amongst sectors of society within the newly established local government. Such practices in the regional state result in rural *woredas* being cut off from the infrastructural and economic core of their former towns. Consequently, tensions arise between the *kebeles* of people who lost relatively good services and those of people who find themselves closer to a new capital. While this is a problem witnessed in many of the newly established localities, it is most pressing, and still unresolved, in *woredas* cut off from Mecha, in West Gojjam Zone, and Farta, in South Gondar Zone. It is true that many demands are made for new local-government creation and that this could be regarded as public participation, but, as mentioned, these demands for better service are often captured by elite interests seeking to advance their own political and material ambitions.

Data obtained from local informants indicates that there are deteriorating relationships between two woredas that were formerly one, along with disputes between *kebeles* in a newly split *woreda*. The reason for the latter is that some *kebeles* were expecting to be the capital of the new *woreda*. This expectation stems from the promises of elites during the initiation and framing phase. Many *kebeles* from North Mecha *woreda* returned to their former government. This led to fluidity in local government boundaries, which affects the institutional security of each individual unit. Moreover, many people were surprised, as they had not heard about the decision but happened to find themselves living in a new *woreda*. In addition, after having been split, *woredas* either lose or retain their former names, which could threaten the autonomy of local government. The coining of new names might be welcomed or rejected by the people. In some cases, such as Kuara and Menz *woredas*, there was resistance by the public to the splitting processes as many wished to maintain the 'greatness' and traditional name of their district. While such scenarios can be moderated by a suitable public-participation process, there has been a clear lack of institutional mechanisms for involving local communities in the splitting process and communicating decisions made. As things stand, demarcation is hardly transparent, free and fair in the eyes of the public, which tends to be suspicious about the process and outcome of local-government creation.

Assessment of the Practice

It was found that there are multiple bases for splitting and creating local governments in ANRS. In theory, the security of existence of local government is ensured by setting clear criteria and procedures for changing its size and boundaries, but a closer look at the mechanisms of the regional state revealed that there are no clearly defined criteria that have to be strictly adhered to, as opposed to being cherry-picked because they suit the exigencies of particular circumstances. Instead, the splitting of local government has been subject to pragmatic and informal considerations and undergirded by elite-driven negotiations among various networks of interest. Hence, the security of existence of local government as a sphere of level of government is compromised and the interests of the local people are of little, if any, genuine concern.

The creation of new districts is meant to improve service delivery and local democracy by bringing government closer to the people and enhancing public participation. The newly

created local governments are not efficient enough on their own to provide services, a situation that in 2019 prompted the regional state to stop creating new local governments. Local government administrations are also supposed to be autonomous administrative units. However, there are no clear functions and mechanisms of popular participation. All local governments are controlled by ruling-party decisions which overshadow the role of their own legislatures. Hence, it is difficult for them to fulfill their responsibility of ensuring service delivery and grass-roots democracy.

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13. The Structure of Local Government in Argentina

13.1 The System of Local Government in Argentina

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Types of Local Governments

Argentina is a federal country consisting of 23 provinces and the Capital City of Buenos Aires as a federal district. Their autonomy is enshrined in the Constitution of 1853, which was last time reformed in 1994. According to the Federal Constitution, provinces can vote their own constitutions and laws. They have the power to elect their authorities and organize their own administrations, even in areas of justice and security. In addition, provinces have broad constitutional autonomy in fiscal and spending functions. A delineation of powers between central government and the provincial states is based on the general principle that all provinces have the power of those competences not expressively delegated in the Constitution to the federal state.

The third tier is composed of local governments. As the provinces have a political, administrative, judicial, and financial autonomy, the scope of municipal autonomy is determined by the province in which they are located. That translates into a wide range of definitions and configurations for local governments. Several municipal governments, depending on the provinces, have the authority to draft municipal charters (usually depending on the size of their populations). In some provinces, municipalities include only urban areas around cities, leaving rural areas under the jurisdiction of provincial governments. This translates into serious challenges for the delivery of social services. In others, municipal governments may include several cities and rural areas too.

Departments are an administrative division between provinces and municipalities, which do not have policy functions nor fiscal responsibilities. They mainly have a cadastral and statistical role, but in some provinces, they are also electoral districts to elect provincial representatives.

The adoption of federalism and a decentralized system of government that recognized autonomy to subnational units was the result of civil wars in the 1820s, after independence, and the only possible way to solve the political and economic conflicts in a country of enormous territorial extension.

Legal Status of Local Governments

Both the national Constitution, as amended in 1994, and most of the provincial constitutions explicitly recognize the autonomy of municipalities. According to Article 123 of the Argentine Constitution, '[e]ach province dictates its own Constitution, in accordance with the provisions of Article 5 ensuring municipal autonomy and regulating its scope and content in the

institutional, political, administrative, economic and financial order.' The sanction of several municipal charters (*cartas orgánicas municipales*) marks a progressive increase in the decision-making capacity of the municipalities. But this contrasts with limited administrative capacities to provide services (many of them decentralized at the provincial level) and scarce public resources and tax powers to finance their expenses (mostly concentrated at the national level).[276]

(A)Symmetry of the Local Government System

Although the Argentinian Constitution establishes a substantial autonomy for subnational tax powers, in practice the provinces have delegated large amounts of responsibility to the national government for the collection of revenue (income taxes, sales, special taxes and taxes on fuel). The resulting revenue concentration contrasts with a process of decentralization of expenditure whereby the responsibility for key social functions is in the provincial hands. The only activities that are the exclusive competence of the national authorities are those related to defense and foreign affairs. In the areas of economic affairs, public security, and social infrastructure, the national government shares responsibility with the provinces, while the latter have exclusive competence in primary and secondary education and local (municipal) organization and services. The Constitution defines a wide area of public services for which national and provincial authorities can participate in the legislation and provision of public services, although the tendency in the last two decades has been for the national government to decentralize direct administration of those functions to the provinces. Therefore, the provinces are currently in charge of most social expenditures (including basic education, health services, poverty programs, housing) and economic infrastructure. Despite this, the national government maintains a significant regulatory power in many of these areas and manages some programs within these sectors, such as social security, social programs for poorer households, and complementary educational programs that subsidize poorer schools.

Given this decentralization of spending and fiscal centralization, there is a high degree of vertical fiscal imbalance. Argentina addresses this large vertical fiscal imbalance through a complex system of intergovernmental transfers. The most important component of this system is the revenue sharing agreement (called *coparticipación*), which is the process by which part of the revenues collected by the central government are transferred to the provinces. Over time, the system has redistributed revenue from the richest central region to the most backward provinces in the northwest and northeast. It has also favored richer and low-density Patagonian provinces. Despite this, the system has corrected part of the large regional income asymmetries among provinces in Argentina. We have to bear in mind that regional inequalities in Argentina are enormous. Formosa, for instance, has a GDP per capita more than 10 times lower than the City of Buenos Aires (2,256 versus USD 23,439). Although it has corrected regional income inequalities, the revenue transfer system has not had a substantial impact on

[276] Monica Iturburu, 'Municipios Argentinos: Potestades y restricciones constitucionales para un nuevo modelo de gestión local' (2nd ed, Instituto Nacional de la Administración Pública 2000) 33.

provincial and local welfare indicators, as most social functions depend on the provinces (and are strongly correlated with provincial spending, particularly in social areas).

Political and Social Context in Argentina

The main parties that govern the provinces are the Justicialist Party (PJ), *Cambiemos*, which is the alliance governing the national government (formed by the Radical Civic Union, or UCR, Republican Proposal, or PRO, and other minor parties), and a constellation of minor parties, including the Socialist Party and provincial parties. *Cambiemos* governs four provinces (Buenos Aires, Corrientes, Jujuy and Mendoza) and the City of Buenos Aires. The PJ (in one of its several factions) governs 14 provinces (Catamarca, Chaco, Córdoba, Entre Ríos, Formosa, La Rioja, La Pampa, Salta, San Juan, San Luis, Santa Cruz, Tierra del Fuego, Tucumán, and Santiago del Estero). The socialists govern one province (Santa Fe) and provincial parties govern the other four provinces (Chubut, Misiones, Neuquén and Río Negro). Argentina has 1922 municipalities[277] governed by these and other national, provincial or local parties.

According to the last census, Argentina has 40,117,096 inhabitants, out of which more than 91 per cent (36,517,332) live in urban areas and the rest (3,599,764) in rural areas. More than 19 million live in 10 cities of more than 500,000 inhabitants, the largest being the metropolitan area of Buenos Aires (with 12,806,866 inhabitants and 31.9 per cent of the population).

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[277] Iturburu, 'Municipios Argentinos', above, 80.

13.2 The Structure of Local Government in Argentina: An Introduction

Elisabeth Mohle, *Universidad Nacional General San Martin*

Historically, Argentine municipalities performed three types of functions: regulation and control of urban infrastructure and economic activities carried out in their territory, some basic social services (such as primary health), and local government administration. Most of these functions were fulfilled without any form of horizontal inter-institutional articulation because the implementation of the policies was basically local.[278]

However, the decentralization processes implemented in the nineties, where the central government transferred some functions – especially local development – without funding attached,[279] prompted the need to generate mechanisms of inter-municipal cooperation. The most important example of inter-municipal cooperation are interjurisdictional agencies and/or municipal associativism for local development. Specifically the local development agencies work with the mission of designing and implementing a specific territorial strategy, constructing a regional territorial problematic agenda and seeking solutions within a framework of complementarity and public-private commitment.[280]

The limited institutional and fiscal capacity of local governments to deliver the new functions demanded innovative responses which, incidentally, exceeded territorial limits. Examples of these innovative responses can be found in environmental issues as waste management, climate change adaptation and mitigation and the promotion of agroecology.

This emergence of inter-municipal cooperation in Argentina could be attributed to the transformation of the roles, functions, and spheres of action of local governments in the context of neoliberal economic reforms during the 1990s.[281]

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[278] Daniel Cravacuore, 'La cooperación intermunicipal en la provincia de Buenos Aires. Fortalezas y debilidades' in María Elena Laurnaga and Antonio Cardarello (eds), *La geografía de un cambio. Política, gobierno y gestión municipal en el Uruguay* (Ediciones de la Banda Oriental 2001).

[279] Tulia G Falleti, 'Una Teoria Secuencial De La Descentralizacion: Argentina Y Colombia En Perspectiva Comparada' (2006) 46 Desarrollo Económico 317.

[280] Pablo Costamagna and Noemi Saltarelli, 'Las agencias de desarrollo local como promotoras de la competitividad de las pymes. Experiencia del caso argentino' in José L RhiSausi, *El desarrollo local en América Latina. Logros y desafíos para la cooperación europea* (Nueva Sociedad 2004).

[281] José Luis Coraggio, 'Descentralización, el día después—' (Secretaría de Posgrado, Facultad de Ciencias Sociales and Oficina de Publicaciones, Ciclo Básico Común, University of Buenos Aires 1997).

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13.3 Local Government Cooperation against Climate Change

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Relevance of the Practice

We study the Argentine Network of Municipalities against Climate Change (*Red Argentina de Municipios frente al Cambio Climático*, RAMCC) as an example of an organization that promotes cooperation among municipalities to take action against climate change.

Cities are beginning to take an increasing role in relation to the impacts of global warming and deciding actions related to its mitigation and adaptation. In this context, it is important to study how municipalities approach one of the greatest challenges that humanity faces.

The scale and bureaucratic capacities of the vast majority of cities are clearly smaller than those of the national and provincial governments. This means serious problems in access to resources, knowledge, and tools necessary to effectively carry out adequate actions against climate change. This challenge is even greater for rural areas, which tend to be more dependent on agricultural production (and therefore on climatic conditions).

The RAMCC was created in response to this obstacle of economies of scale, capacity building, and access to resources and the local level and in rural areas.

Description of the Practice

RAMCC is a coalition of 222 Argentine municipalities that coordinates and promotes strategic plans to tackle climate change, within the objectives of the Global Covenant of Mayors for Climate and Energy (GCoM).[282] The Network was formed in November 2010 during the First International Conference on Municipalities and Climate Change and became an instrument for coordinating and promoting local public policies to face climate change in cities and rural areas in Argentina.

The municipalities members of RAMCC represent eighteen provinces, a great diversity of regional differences, and encompassing large cities with more than 1 million inhabitants as well as small rural towns. This diversity constitutes an enormous challenge, but at the same time it allows RAMCC to address a heterogeneous variety of environmental challenges.

The network's main goal is to promote and execute municipal, regional, or national projects or programs related to mitigation and/or adaptation to climate change, based on the mobilization of local, national, and international resources. It seeks to: i) reduce greenhouse gas emissions

[282] 'Municipios' (*RAMCC*) <https://www.ramcc.net/municipios.php> accessed 7 June 2020.

to 45 per cent by 2030, ii) reach carbon neutrality by 2050, and iii) increase the resilience of cities to extreme weather.[283]

The tools generated in RAMCC aim at: (i) socializing good practices, tools, and training programs; (ii) support the development of specific Local Climate Action Plans for each city and (iii) access to financing through a trust fund.

RAMCC Trust Fund

Local governments face several obstacles when they need to access funds to carry out actions against climate change (lack of information, insufficient technical capabilities of their human resources, lack of articulation between jurisdictions, among many others). They need technical, administrative, and financial tools that will allow them to access reliable information regarding financing sources, specific requirements of credit organizations, and their own capacities to integrate into an effective national climate change policy.

Faced with this scenario, a group of local government members of RAMCC created the first Argentine trust to manage, support, and implement projects, programs, and policies related to adaptation and mitigation of climate change: the 'RAMCC Trust'.

This trust constitutes an economic, administrative and financial tool available to member municipalities that enables them to make investments that would not otherwise be done by an individual municipality, and allowing the inclusion of all municipal governments that wish to contribute resources to target climate change, as well as being beneficiaries of the resources, funds, and services that the RAMCC Trust manages.[284]

Climate Action Plan in the Cities of the Province of Mendoza

Another concrete example is the implementation of Climate Action Plans in the Province of Mendoza. This is a cooperation between the provincial Secretary of Environment and the RAMCC to design and implement the Provincial Program of Local Climate Action Plans in the municipalities of Mendoza.

In this way, each locality presents a Local Climate Action Plan with the coordination of the provincial government, open to citizen participation to incorporate sustainable practices.[285]The main difference between urban and rural local government's Climate Plans is on what issues they focus. The City of Mendoza works primarily on energy efficiency, sustainable constructions and transport, efficient waste management, urban biodiversity conservation and disaster risk management programs[286]. In contrast, rural municipalities are still working on their plans and focus much more on adaptation and risk management, than mitigation.

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[283] 'Sobre RAMCC' (*RAMCC*) <https://www.ramcc.net/ramcc.php> accessed 7 June 2020.

[284] Alejandro Cejas, 'Fideicomiso RAMCC: un mecanismo para el financiamiento climático local' (*RAMCC*, 20 August 2020) <https://ramcc.net/noticia.php?id=1060> accessed 18 October 2020.

[285] 'Los municipios aplicarán un Programa Acción Climática' (*Mendoza Gobierno*, 7 June 2017) <http://www.prensa.mendoza.gov.ar/los-municipios-de-mendoza-contaran-con-un-programa-provincial-de-planes-locales-de-accion-climatica/> accessed 14 July 2020.

[286] 'La ciudad de Mendoza profundiza sus acciones ante la emergencia climática' (*RAMCC*, 28 July 2020) <https://ramcc.net/noticia.php?id=1043>.

Assessment of the Practice

Climate change is one of the greatest challenges for humanity and cities are fundamental actors to mitigate and adapt to it. However, cities face great challenges to carry out actions to tackle climate change, mainly due to scarce resources and capacities at the local level.

In order to address these obstacles, several municipalities cooperated to create the RAMCC, which allows them to solve problems of economies of scale and access to knowledge, experiences, capacities, and resources to design effective policies against global warming.

The creation of the network is especially important for rural communities considering the differences between them and urban municipalities, their relative capacities, and the climatological challenges they face.

The specific experiences analyzed, the Trust Fund and the Climate Action Plan in Mendoza, show the important role of RAMCC as a space for cooperation for the effective implementation of measures against climate change in Argentine cities. There still is much work to be done to understand and measure the impact and success of the RAMCC in accompanying the different necessities of urban and rural local governments.

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13.4 Micro-Regions in the Province of Catamarca

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Relevance of the Practice

The Argentine Constitution guarantees the autonomy of local ('municipal') governments. In addition, it states that 'the provinces may create regions for economic and social development and establish bodies with powers to fulfill their purposes and may also enter into international agreements' (Articles 123 and 124). However, local governments have not become relevant actors within the political landscape. They function within the framework of national and provincial (state laws), which have financial attributes that local governments do not.

The institutional framework for local cooperation is virtually non-existent. With three exceptions (over 23), provincial constitutions do not mention anything about inter-municipal cooperation nor the creation of organisms. Some provincial constitutions do mention cooperation in specific areas such as energy production or public works.[287]

Hence, experiences of local cooperation are not common in Argentina. This happens despite the fact that experts and academics have presented inter-municipal cooperation as a relevant tool for strengthening local governments.[288] Authors highlight the potential of inter-municipal cooperation to overcome diseconomies of scale in the provision of services or in the performance of public works, favor and undertake joint actions for the development of regions, increase the capacity to negotiate with other government jurisdictions and with contractors, suppliers, companies that provide services at the provincial or national level.

The main challenge that local agglomeration face in Argentina is the lack of trained personnel and technical teams to implement a better government management. This difficulty is exacerbated in medium-sized cities, which incorporate new functions and competences at a rapid pace. On very few occasions these cities can accompany this process with training of their personnel. Most local governments work based on 'demand' and do not have the capacity to establish their priorities in the medium and long term.[289] The low level of tax collection at the local level also results in budgetary difficulties.

On top of these challenges, local governments have expanded their competences. Traditional local government tasks include planning; manage personnel, urban development and planning. A new set of 'new competencies' emerged in recent years. These include a new role of local governments as agents of economic promotion, which comprises the design and implementation of strategies for local development. The latter need requires to generate

[287] Iturburu M, 'Municipios argentinos. Potestades y Restricciones constitucionales para un nuevo modelo de gestión local' (Instituto nacional de la administración pública 2001).

[288] Lorena Coria, 'El rol de las autoridades locales para el desarrollo sostenible: La experiencia de los municipios de la microrregión Andalgalá' (2007) 1 DELOS: Desarrollo Local Sostenible Una revista académica <http://www.eumed.net/rev/delos/00/>.

[289] Ana Cafiero, 'La cooperación descentralizada en Argentina' (Observatorio de cooperación descentralizada 2009); http://biblioteca.municipios.unq.edu.ar/modules/mislibros/archivos/libreria-201.pdf

territorial environments capable to attract, retain and encourage investment and employment; as well as the identification, expansion and endorsement of nuclei of sectoral strength to promote geographic clusters.

This situation is then problematic. Local government cooperation has not increased, even when these units have expanded their competencies and face new challenges.

This said, in the last twenty years, experiences in local government cooperation increased, albeit in a 'non-institutional' fashion but through geographically based cooperation. In this case, municipalities have joined their neighbors in order to address common challenges faced by a defined geographical area. This strengthens cooperation and increases economies of scale, contributing to the achievement of economic, social and territorial cohesion, to increase negotiation capacity with third parties, and to carry out shared public works. By this token, inter-municipal cooperation attempts such as the Catamarca micro-region program have appeared.

Description of the Practice

One particular example of institutional based attempt at fostering inter-municipal cooperation took place in the Province of Catamarca, in the Argentine northwest. The provincial authorities introduced 'micro-regions'. The process of defining the latter was a political decision of the provincial government, and it was implemented 'top-down': the decision to group regions did not come from society but from provincial authorities, which demarcated territorial units with similar population characteristics, each with of less than 10,000 km^2 in extension.

The objective was to achieve a 'sustainable development' through economic and productive growth. The provincial government considered that the provincial capital concentrated almost all productive, social, and cultural activities in the province, and therefore a more careful planning had to be applied.

The more specific objectives were to:

- develop territorial and cultural identity and a sense of belonging, stimulating culture and revaluing heritage in all its forms;
- strengthen human and social capital by enhancing the capacities of society to promote its own development;
- promote balanced and integrated economic development with active policies to promote activities that create employment;
- guarantee the sustainable and adequate management of the environment;
- make essential goods and services more accessible for the population.

The specific actions carried out included, firstly, strengthening of the provision of infrastructure and equipment in the intermediate urban nodes (mid-size cities such as Santa María, Belén, Tinogasta, Andalgalá, Villa Antofagasta, Recreo and Los Altos that served as 'capitals' of the micro-regions). This aimed at guaranteeing essential services to the community and to ensure a more equitable and balanced inclusion of people and places. A second action was to improve internal connectivity by prioritizing three existing route corridors (National

Route 157 Corridor, National Route 38 Corridor and National Route 40 Corridor) and creating three new corridors (East-Paso San Francisco transversal corridor, Andean interconnection corridor and the Paso de San Francisco corridor). This optimized the link between the provincial capital and the internal regional networks and achieved a more fluid articulation of internal activities. The Catamarcan micro-region program thirdly aimed at reinforcing the geopolitical positioning of the province at the regional level.

Further actions undertaken within the program included to:

- stimulate the self-determination capacities of regional areas through devolution of specific administrative capacities and the creation of *Centros de decision* (decision centers, CDD);
- recover and revalue the elements of the cultural landscape to highlight the value of the archaeological and architectural heritage; through the creation of touristic hubs;
- generate economic policies that improve opportunities for regional development through the consolidation of a network of production and consumption centers;
- increase investment in digital connectivity.

Assessment of the Practice

The project had ambitious objectives and was unable to fulfil its expectations. The project started in 2004, and an evaluation of the project[290] in 2011 suggested the following conclusions:

- the micro-regions could not diminish the influence of the Greater Catamarca region;
- the process generated economic growth in the regions, but there was no significant improvement of living conditions;
- the provincial government progressively lost interest in the project, which resulted in fragmented policies;
- partisan differences blocked some progress, which was not uniform throughout the province;
- some of the CDDs actually served as ambassadors of the provincial government, which was not the original intention.

The experience with inter-municipal cooperation is limited in Argentina. Some basic experiences encountered obstacles to pursue their objectives. Some of these obstacles reside in the scant institutional setting that does not include the possibility of local integration. The small size of the majority of Argentine local governments constitutes an institutional weakness that hampers their ability to provide more and better services. The minimum legislated population to constitute a municipality needs to be revised. Institutional designs and legal frameworks also need to be improved. Reforms must tend, on the one hand, to avoid the constitution of new municipalities of unviable size (some very small municipalities were created recently by provincial governments out of demands of local population of 'autonomy' from a larger urban center). On the other hand, the reforms should promote and facilitate the

[290] Interview with Lorena Coria, Doctoral Student, Universidad Nacional de Luján (Buenos Aires, June 2021).

formation of inter-municipal institutions, with broad and growing functions. The diversity of strengths among local governments should be the object of particular concern for public authorities. Unfortunately, there is no discussion at the national level of these issues.

The primary challenge is undoubtedly for the provincial authorities. The role of the National State is more limited but not less important. Although it would only have the right to intervene if municipal autonomy is not assured, the federal government should not give up its guiding role, nor lose the opportunity to influence the establishment of equitable conditions of development for the inhabitants of the different Argentine municipalities.

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13.5 Local Cooperation for Agroecology

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Relevance of the Practice

The most emblematic phenomenon of the green revolution in Argentina was the introduction and approval of the transgenic soybean resistant to the herbicide glyphosate (RR soybean) in the 1990s. The genetically modified seed plus the herbicide glyphosate allowed the crop to be profitable as it lowered production costs. This allowed Argentina to develop the so-called 'revolution of the pampas'. Although the effects on the capacity to increase crops were undeniable, so were the socio-environmental damages. Not only in terms of biodiversity loss, but also in terms of human costs: the agricultural frontier was advancing, displacing peasants who became poor in the cities.[291]

Faced with this scenario, a new approach to agriculture began to emerge: agroecology. This new approach began to promote a comprehensive, open, and interdisciplinary paradigm. First, it was considered as an innovation from a technological point of view based on the understanding of ecological dynamics applied to crops and the management of natural resources. But when it arrived to Latin America, it was combined with the appearance of peasant movements and a political vision of farmers' empowerment.

This process is particularly important at the local level of government because the acute effects and problems associated with the dominant agricultural model are most evident at this level. In this sense, it is of fundamental importance to study how municipalities deal with this problem and react to the emergence and diffusion of answers to these problems as alternative production models.

As the capacities of rural governments are relatively small, they face serious problems to access and mobilize resources, as well as to generate the knowledge and tools necessary to build consistent and effective alternative production models.

Particularly, there are eight key drivers in the process of taking agroecology to a larger scale: (i) recognition of a crisis that motivates the search for alternatives, (ii) social organization, (iii) constructivist learning processes, (iv) effective agroecological practices, (v) mobilizing discourses, (vi) external allies, (vii) favorable markets, and (viii) favorable political opportunities and policy frameworks.[292]

Local cooperation is a fundamental answer to many of these obstacles. And, in this sense, the federal initiative of the National Network of Municipalities and Communities that promote Agroecology (RENAMA) is a crucial actor in the local and cooperative construction of responses

[291] Bruno Reichert, 'Discutir el "campo". Una grieta en el suelo latinoamericano' (*Nueva Sociedad*, January 2021) <https://nuso.org/articulo/soja-campo-America-latina/>.

[292] Mateo Mier and others, 'Escalamiento de la agroecología: impulsores clave y casos emblemáticos' (working paper no 1, Grupo en masificación de la agroecología 2019).

to the negative socio-environmental impacts of the dominant agricultural production model in Argentina.

Description of the Practice

Faced with the economic, social and environmental impacts of hegemonic agricultural production modes, the alternative paradigm of agroecology began to spread through the country and began to be adapted by producers, mainly those excluded by the other system. According to the latest National Agricultural Census (2018), there are 2,324 farms that do agroecology in Argentina, out of an estimated total of 250,000 farms.[293] If the farms that grow organic crops (they do not use transgenics) or biodynamic crops (a specific method of organic farming) are added in total, there are about 5,277 productive units that work in an 'unconventional' way in the country, which means that one of every 50 agricultural holdings in Argentina work under an alternative productive paradigm.

Nevertheless, the massification and escalation of these alternative production modes requires governmental assistance in ways that are not easy to provide by single local governments.[294]

To overcome this problem of scale, in 2016, a group of agronomists, doctors and socio-environmental referents created the National Network of Agroecological Municipalities (RENAMA). As agroecology is characterized by its multidisciplinary and pluri-epistemological character, its meaning and understanding have varied (evolving) over time. It can be seen simultaneously as a scientific approach, as a movement, or as a series of techniques. In this way, the interest, and its adoption by different actors (farmers, educators, researchers, technicians, and politicians) has reflected these different meanings.[295] Consequently, RENAMA is made up of farmers, agricultural technicians, municipalities, government entities, academic and scientific organizations, and grassroots organizations, with the objective of exchanging experiences and knowledge for the transition towards agroecology of the agri-food system.

The organization works through a logic of voluntary cooperation between municipalities and other actors in the face of social demand. Currently, RENAMA is a network that includes 34 Argentine towns (plus one in Uruguay and one in Spain) and groups 180 producers who work on about 100,000 hectares under the agroecological paradigm, with the advice of 85 technicians. The network works on the base of cooperation between the different actors and the promotion of the activity. Local governments take information and policy options from the network to apply them in their communities.

An interesting example is the commune of Zavalla. A town of 7,000 inhabitants located in the heart of the agricultural Pampa, in the south of the Province of Santa Fe. Similarly to every rural town in Argentina, barely a street separates the houses from the cultivated fields.

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[293] National Institute of Statistics and Census of Argentina, 'National Agricultural Census' (*indec*, 2018) <https://cna2018.indec.gob.ar/>.

[294] Mier and others, 'Escalamiento de la agroecología'.

[295] Alexander Wezel, and Virginie Soldat, 'A Quantitative and Qualitative Historical Analysis of the Scientific Discipline of Agroecology' (2009) 7 International Journal of Agricultural Sustainability 3.

The intense use and close exposure of agrochemicals generated a social claim for a legislation that prohibited applications in a peri-urban strip of 800 meters from the inhabited limit. A measure that generated discomfort among producers and thus was very difficult to implement. Trying an alternative, the commune carried out an agroecology pilot test on a four-hectare site, where lettuce, arugula and zucchini were planted, among other crops. But producers were not used to this new way of working, so the first results were not as expected.

In 2019 the commune became part of RENAMA, and an agroecological plan was designed. Now, through an environmental tax, imposed by the local government, the commune subsidizes a fixed monthly amount equivalent to producers who decide to try an alternative production model.

Today Zavalla has some hectares dedicated to agroecological horticultural production, but in the vast majority of the 150 reconverted hectares they make extensive crops that are common in the area, such as corn or wheat. Last season they produced 50 tons of agroecological wheat in the town. Profits doubled production costs, while with conventional wheat, which they used to grow before agroecology, the costs outweighed the profits.[296] For all the actors involved, having technical assistance is key as it is a new mode of production for everyone.

Assessment of the Practice

For a country in which the exports of the cereal and oilseed complexes account for around 40 per cent of the total exported volume, the agricultural production model is not easy to discuss and dispute. But at the same time, its scale generates broad impacts whose negative effects are mainly found in rural cities that suffer from unregulated agrochemical application, where small producers are marginalized, and environmental problems appear.

The construction of alternatives, for now, is an eminently territorial and local process where the articulation first between producers and then between municipalities is crucial. To enable and enhance these cooperation processes, the RENAMA appears to be a fundamental, successful, and growing actor.

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[296] Jorgelina Hiba, 'Red de municipios expande la agroecología en Argentina' (*Diálogo Chino*, 9 February 2021) <https://dialogochino.net/es/agricultura-es/39830-red-de-municipios-expande-la-agroecologia-en-argentina/>.

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14. The Structure of Local Government in India

14.1 The System of Local Government in India

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Types of Local Governments

In India, institutions of local government exist at two levels, local *panchayats* or councils in the rural areas and municipalities in the urban areas. At the rural level, *Panchayati Raj* Institutions (PRIs) consist of three levels: *gram panchayats*, *panchayat samitis* and *zilla parishads*.

A *gram panchayat* can be translated as village council or jury as it is the only grassroots-level institution of PRIs' formalized local self-governance system in India at the village or small-town level. It consists of an elected *sarpanch* (head) and five to twelve elected members. The *gram panchayats* are responsible for the creation of annual development plans, the budget for construction, repairs and maintenance of community assets, *khadi* and village industries[297], adult and non-formal education, public health, poverty alleviation, education, cultural activities, rural housing and electrification, promoting agriculture, social welfare and public distribution scheme.

At the intermediate level, the *panchayat samitis* (block panchayats) operate. They work at the *tehsil* or *taluka* level[298] known as development block and provide a crucial link of communication between *gram panchayat* and district administration. They are also known as *mandal parishad*, *mandal panchayat* and *taluka panchayat* and are primarily made of four-

[297] Village and *khadi* industries are based on the concept of *Swadeshi* wherein the use of labour is central and the use of capital is limited, underlying the concept of self-reliance in the economy. These industries rely on local raw materials and local production at small scale.

[298] There are two constitutional amendments, 73rd and 74th passed in 1992 which provide a whole scenario of the different levels of local governments at rural and urban level. The 73rd amendment states a three-tier system of *panchayati raj* at the village *panchayat* (*gram*), block (intermediate) level (*panchayat samati*) and district levels (*zilla parishad*) for a population of more than 20 *lakh* (2 million). *Gram* or village *panchayat* consists of *gram sabha* and members of the village *panchayat* directly elected by the people and headed by the *pradhan* (elected head) village council (*gram sabha*) consist of all the members of the village. Each *gram panchayat* is assisted by four committees that is *samata samiti* (committee for welfare of women and children, scheduled caste and tribes and other backward classes) *vikas samiti* (committee for development in agriculture), *shiksha samiti* (education) and *lokhit* committee (public health and public works). In between *gram panchayat* and *zilla panchayat* is *panchayat samiti* (committee) which forms the main chain of communication between the two. The next level of local government is *zilla parishad*, consisting of all the elected representatives of *gram panchayat* and elected representatives from territorial constituencies in the panchayat, members of legislative assembly and legislative council

The 74th Amendment consists of three bodies of urban governments – *nagar panchayat* which is primarily constituted when the village transitions from rural to urban, municipal council for smaller urban areas, municipal corporations for larger urban areas. Municipal committees are also assisted by ward committees which makes a two-tier system.

member ex officio bodies bringing together all *sarpanchas* of the development block, the members of parliament (MPs) and MLAs (members of legislative assembly) of the area, and sub-divisional officer (SDOs).[299] The functions of the *panchayat samitis* are agricultural and land improvement, establishment of primary health centers and primary schools, water and sanitation, village infrastructure (construction of roads etc.), establishment of cooperative societies, water and irrigation management, promotion of animal husbandry, dairy and poultry, social welfare, social activities, technical training, poverty alleviation, promotion and development of cottage and skill industries.

The third level is the *zilla parishad* (district council). *Zilla parishad* or the district council is an elected body consisting of members from state legislatures and the Parliament as explained later. The ex officio chief executive officer of the *zilla parishad* is the additional deputy commissioner who is either from the Indian Administrative Services (IAS)or Provincial Civil Services (PCS) appointed in the state. The *zilla parishad* consists of mainly elected members from demarcated constituencies, the chairpersons of *panchayat samitis*, MPs and MLAs. The member of the *zilla parishad* also acts as chairperson of the *parishads* (councils) that fall in their constituencies from which they are elected for a term of five years. The functions of the *zilla parishad* are planning and administration of development projects for the district, delivery of services and facilities to the village, promotion of agricultural projects such as training new techniques of farming, horticulture, rural housing, electrification, animal husbandry and dairy, promotion of small-scale industries, health and hygiene, education and social welfare. In all the levels of local governments, there are reserved seats for women, scheduled caste, scheduled tribes and other backward classes.

All the institutions of local self-government operate under the principle of democratic decentralization. The rationale of democratic decentralization was to create PRIs in a multi-level framework of governance which are autonomous, democratic and financially strong. It was a step away from a top- down approach to local governance in order to provide self-administration to people in the rural areas. The twenty-nine functions and responsibilities of the PRIs which have been stated above are all enshrined in the Indian Constitution in the Article 243G. The functions are listed in the eleventh Schedule of the Constitution.

At the urban level, there are three types of local bodies, the *nagar nigam (*municipal corporation), *nagar palika* (municipality) and *nagar panchayat* (town *panchayat*). The status of an area decides the provision and implementation of urban local bodies. For an area transitioning from rural to urban, a city council is required. In small urban areas a municipality is required and in large urban areas a municipal corporation.[300] The functions and powers of urban local bodies vary from state to state. Municipal corporations work and directly interact

[299] The districts in a state are divided into sub-divisions and the sub-divisional officer (SDOs) oversees these divisions. The SDO is responsible for the administration of these divisions in the districts. There can be two kinds of roles. One in which they are in charge of office work and another, in which they are not bound in an office but are overseeing a range of works such as communicating with people, overlooking implementation of government schemes.

[300] Transitioning areas are defined based on how fast a town is developing due to industrialization or agricultural growth or secondary services. The criteria of population and the level of administrative functions is considered too, as big cities such as Delhi, Mumbai and others will have a municipal corporation and smaller towns will have municipalities.

with the state governments. The head of the corporation is the mayor and the principal executive officer is the municipal commissioner. Municipalities interact with the respective state government through the district collector. The head of the municipality is the president elected by the members of the *palika*. The state government appoints officers such as health or sanitation Inspectors to provide assistance to the president. City councils have a chairman and ward members. The functions assigned to urban local bodies are urban planning and management, provision of health services, education, water management, waste disposal and sanitation, public infrastructure, birth and death registrations, poverty alleviation and delivery of social services.

Legal Status of Local Governments

To realize the goals of democratic decentralization, the government amended the Constitution and passed the 73rd and 74th Amendment Act in 1992. The important aspects of the act were the three-tier system of *panchayati raj* for all states exceeding the population of two millions, the holding every five years of *Panchayat* elections, the reservation of seats for women, scheduled castes and scheduled tribes, the appointment of a state finance commission to make recommendations in cognizance with the financial powers of the panchayat and the establishment of district planning committees (DPCs) to prepare development plans for the district as a whole. It also foresaw the establishment of a state election commission to help state governments conducting periodic elections to the PRIs. Similarly, for urban local governments, the 74th Amendment provides a three-tier structure of governance with the municipal wards as the territorial constituencies forming the basic unit of urban local governance.

The scope of powers and functions enshrined in the Constitution envision PRIs to function as institutions of local self-government and to operationalize the devolution of powers which is central to the principle of democratic decentralization. The scope and powers entrusted to PRIs base themselves in the ideals of economic development and social justice. In accordance with the constitutional amendment, the state governments repealed the then existing acts. The 73rd Amendment Act was further extended to the scheduled areas and areas predominantly occupied with tribal population. It was extended through the provisions of *Panchayat* Extension to Scheduled Areas Act, 1996.

For the urban local bodies, 74th Amendment Act was adopted in 1992 enjoining the government of the day to ensure continuity of the municipalities through a periodic five-year election. Similar to the *Panchayati Raj* System, the urban local bodies have a three-tier system, including the above-mentioned municipal corporations, municipalities and town *panchayats*. The composition of these councils is decided by state governments respectively. There are reservations of seats for women, scheduled castes, scheduled tribes and other backward classes.

(A)Symmetry of the Local Government System

The rural and urban government bodies do not have exactly similar scopes of responsibilities. The former are more entrusted with tasks of being regulators, administrators and providers of various services at the local level. The latter have two sets of parts to play. One, the municipal corporation must deliberate on matters related to budget, taxation, pricing of services and others, and two, the municipal commissioner is the executive head and exercises control on various departments such as finance, health etc. For example, the urban local bodies have to look at the jurisdictional domain of various urban areas, their judicial powers, implementation of policies and plans as per the 74th Constitutional Amendment. Despite their differences regarding modes of functioning and the devolution of the powers and authority, both rural and urban local bodies aim at enabling people's participation as a sign of democratic citizenship.

Political and Social Context in India

India has a multiparty parliamentary system of democracy with representatives at the local, state and national levels contesting elections and participating in democratic decision- making process. Both national and state level political parties are involved in the local level governance through their elected representatives in both rural and urban forms of local government. Local government in India is a state subject, however, the central government holds a supervisory role to guide, encourage, engage and assist the states to promote local government and development. Political participation in *panchayati raj* elections has a long tradition of great leaders like Jawaharlal Nehru, Sardar Vallabhbhai Patel and Subhash Chand Bose who took active leadership in municipal politics. Thus, politics at local government provides a gateway to national level politics and thereby initiates an active involvement of national and regional parties. The presence of national, state and regional parties at the level of local government maintains a strong party presence which has its bearing on national and state level politics. Political parties are the essence of parliamentary democracy and their role in local governments strengthens the roots of democratic decentralization. According to the World Bank report, in India 65.97 per cent live in rural areas[301] and 34.03 per cent of the population lives in urban areas.[302]

Local governments have had a tremendous effect in the realization of democracy at the grassroots and at the level of municipalities in the urban areas. Conducting elections at the lowest tier of government has added to the vibrant political culture of India. The trickling down of democratic decentralization and power has entrenched the roots of democracy, however, its substantive realization has many hurdles to cross.

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14.2 The Structure of Local Government in India: An Introduction

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The term *panchayati raj* in India signifies the system of rural self-government. It has been established in all the states of India by the acts of the state legislatures to build a grass root democracy in independent India. It is entrusted with the task of developing rural development in different sectors directly accountable to the district and sub-district level administration. It was constitutionally mandated as per the provisions of the 73rd Constitutional Amendment Act of 1992. The act provides for a three-tier system of *panchayati raj* in every state that has *gram panchayat* at the village level, *panchayat samiti* at the block level and *zilla parishad* at the district level. All the members of *panchayats* at the village, intermediate and the district level shall be elected directly by the people. Further, the chairperson of *panchayats* at the intermediate and district levels shall be elected indirectly by and from the elected members of the intermediate and district levels.

However, the chairperson of a *panchayat* at village level shall be elected in such a manner as the state legislature determines. The act provides for the reservation of seats for scheduled castes and scheduled tribes in every *panchayat* in proportion of their population to the total population in the *panchayat* area. The act provides for the reservation of not less than one third of seats for women. The act provides for a five-year term of office to the *panchayat* at every level.

The term urban local government in India signifies the governance of an urban area by the people through their elected representatives. There are eight types of urban local government in India. The urban local government provisions have been added in the 74th Amendment Act, 1992.The eight types are:

Municipal Corporations

Municipal corporations are created for the administration of big cities like Delhi, Mumbai, Kolkata, Hyderabad, Bangalore and others. They are established in the states by the acts of the concerned state legislatures, and in the union territories by the acts of the Parliament of India. A municipal corporation has three authorities, namely, the council, the standing committees and the commissioner.

The council is the deliberative and legislative wing of the corporation. It consists of the councilors, directly elected by the people, as well as a few nominated persons having knowledge or experience of municipal administration. The council is headed by a mayor. He is assisted by a deputy mayor. The standing committees are created to facilitate the working of the council, which is too large in size. They deal with public works, education, health, taxation, finance and so on. They make decisions in their fields. The municipal commissioner is responsible for the implementation of the decisions taken by the council and its standing committees. Thus, he is the chief executive authority of the corporation appointed by the state government.

Municipality

The municipalities are established for the administration of towns and smaller cities. Like the corporations, they are also set up in the states by the acts of the concerned state legislatures and in the union territory by the acts of the Parliament of India. They are also known by various other names like municipal council, municipal committee, municipal board, borough municipality, city municipality and others.

Like a municipal corporation, a municipality also has three authorities, namely, the council, the standing committees and the chief executive officer. The council is the deliberative and legislative wing of the municipality. It consists of the councilors directly elected by the people. The council is headed by a president/chairman. He is assisted by a vice-president/vice-chairman and presides over the meetings of the council. The standing committees are created to facilitate the working of the council. They deal with public works, taxation, health, finance and so on. The chief executive officer/chief municipal officer is responsible for day-to-day general administration of the municipality. He is appointed by the state government.

Notified Area Committee

A notified area committee is created for the administration of two types of areas—a fast developing town due to industrialization, and a town which does not yet fulfill all the conditions necessary for the constitution of a municipality, but which otherwise is considered important by the state government. Since it is established by a notification in the government gazette, it is called a notified area committee. Though it functions within the framework of the State Municipal Act, only those provisions of the act apply to it which are notified in the government gazette by which it is created.

Its powers are almost equivalent to those of a municipality. But unlike the municipality, it is an entirely nominated body, that is, all the members of a notified area committee including the chairman are nominated by the state government. Thus, it is neither an elected body nor a statutory body.

Town Area Committee

A town area committee is set up for the administration of a small town. It is a semi-municipal authority and is entrusted with a limited number of civic functions like drainage, roads, street lighting, and conservancy. It is created by a separate act of a state legislature. Its composition, functions and other matters are governed by the act. It may be wholly elected or wholly nominated by the state government or partly elected and partly nominated.

Cantonment Board

A cantonment area is a delimited area where the military forces and troops are permanently stationed. A cantonment board is established for municipal administration for civilian population in the cantonment area. It works under the administrative control of the Defense Ministry of the central government. A cantonment board consists of partly elected and partly nominated members.

The military officer commanding the station is the ex-officio president of the board and presides over its meetings. The vice-president of the board is elected by the elected members from amongst themselves for a term of five years. The sources of income include both tax revenue and non-tax revenue. The executive officer of the cantonment board is appointed by

the President of India. He implements all the resolutions and decisions of the board and its committees.

Township

This type of urban government is established by the large public enterprises to provide civic amenities to its staff and workers who live in the housing colonies built near the plant. The enterprise appoints a town administrator to look after the administration of the township. He is assisted by some engineers and other technical and non-technical staff. Thus, the township form of urban government has no elected members. In fact, it is an extension of the bureaucratic structure of the enterprises.

Port Trust

The port trusts are established in the port areas like Mumbai, Kolkata, Chennai and so on for two purposes: (i) to manage and protect the ports; and (ii) to provide civic amenities. A port trust is created by an Act of Parliament. It consists of both elected and nominated members.

Special Purpose Agency

In addition to these seven area-based urban bodies (or multipurpose agencies), the states have set up certain agencies to undertake designated activities or specific functions that 'legitimately' belong to the domain of municipal corporations or municipalities or other local urban governments. In other words, these are function-based and not area-based. They are known as 'single purpose', 'uni-purpose' or 'special purpose' agencies or 'functional local bodies.' Some such bodies are:

- town improvement trusts;
- urban development authorities;
- water supply and sewerage boards;
- housing boards;
- pollution control boards;
- electricity supply boards;
- city transport boards.

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14.3 Decentralization and Democratic Governance

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Relevance of the Practice

New Delhi is a typical example of urban sprawl, where the surrounding rural areas are engulfed by unplanned urbanization. In this context, the rural villages surrounding a big metropolis get transformed spatially, demographically, and socially. In the case of Delhi, the surrounding rural villages have lost their rural self-governance and the practice of conducting elections has been neglected. Here the rural villages are administered by the urban local body (Municipal Corporation of Delhi – MCD). To conclude, it is a kind of forced urbanization and the pressure of urbanization has undermined the right of rural local self-governance.

The Delhi Village Development Board (DVDB) has been set up by the State Government of Delhi to provide necessary infrastructure and services to rural and urban villages in and around Delhi. This multi-stakeholder body tries to foster organic development of rural and urban villages in Delhi.

Description of the Practice

The National Capital Territory (NCT) of Delhi is divided into three urban regions: the Municipal Corporation of Delhi (MCD), the New Delhi Municipal Council (NDMC) and the Cantonment Board. The MCD is one of the largest municipal bodies in the world which caters civic services to about 11 million people. It uniquely provides civic services to both urban and rural villages located in the NCT. Due to rapid urbanization and progressive economic development, the rural population and the number of rural villages in NCT of Delhi have been in a declining trend. As per census, in 1951 there were 304 rural villages with 18 per cent rural population. According to the census 2011, the rural villages fell to 112 and the rural population declined to 2.5 per cent. At present the rural area amounts to 369 sq. km. (25 per cent) of the total NCT area of 1,483 sq. km.

In this context, the practice of holding elections to the rural self-government institutions was discarded. The last Delhi's rural local self-government election took place in 1983. The rural population elects councilors from their areas to the MCD. In this process, the democratic decentralization has been lost as the rural villages of Delhi could not hold *gram sabhas*, which deliberately addresses village-specific issues.

In 2017, the State Government of Delhi set-up the DVDB (Delhi Village Development Board) for integrated development of rural and urban villages in NCT of Delhi. The DVDB advises the government on issues concerned with the infrastructural development works in all rural and urban villages of Delhi. DVDB has the scope of prioritizing projects, the identification of deficiencies, examination of overlapping functions of different agencies and the timely review of project implementations. As a body, the DVDB consists of members from various levels of

government: members of parliament (MPs) and members of legislative assemblies (MLAs) of Delhi, executives of Delhi state administration, executives of Delhi's district administration and zonal chairpersons of the MCD.

The functions of the DVDB are the following:

- to study the deficiencies in the existing infrastructure in Delhi rural villages;
- to examine the nature and extent of overlapping functions amongst organizations and departments of the government;
- to review, from time to time, the implementation of the projects and the schemes.

The following nature of works (infrastructure/capital) are further recommended by DVDB in the rural and urban villages of the NCT of Delhi:

- construction of approach roads/link roads/village roads;
- construction of drainage facilities;
- development of cremation grounds, parks, playgrounds, libraries, etc.;
- development of ponds/water bodies;
- other need-based works like drinking water facility, street lights, etc.

The above-mentioned capital works recommended by the DVDB are executed through various agencies like I&FCD (Irrigation & Flood Control Department), MCD, NDMC, DJB (Delhi Jal Board) etc. The demands for development works in rural villages are received through the respective members of the board, i.e. elected public representatives like concerned MLAs of the rural areas. Upon reception, the proposals of works are scrutinized in terms of feasibility and estimated cost. Thereafter, the proposals are placed before the DVDB that recommends and prioritizes the works for execution through an appropriate agency.

Assessment of the Practice

As the DVDB board was constituted in 2017, it is too early to assess the outcomes of the activities of the board. One of the best practices of the DVDB is the reclamation of a polluted wetland. Najafgarh drain is a wetland located in the rural part of south-west Delhi. It was once a vibrant ecosystem that thrived with the endangered Siberian crane. Presently it is Delhi's most polluted water body due to direct inflow of untreated water from surrounding urban areas. In 2018, the DVDB had proposed the reclamation and landscaping of the wetland. This would lead to rejuvenation of the water body and its ecosystem.

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15. The Structure of Local Government in Australia

15.1 The System of Local Government in Australia

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Types of Local Governments

Australia is a federation with three levels of government: the Commonwealth (federal/ national), states and territories; and local government. Local government is established through the separate constitutions of each state and one territory. Therefore, although councils perform similar functions, there are effectively seven different governance systems across the country.

The size of councils in Australia varies dramatically. The largest is Brisbane City Council in Queensland which serves a community of just over one million people, covers an area of 133,809 ha[303] and has an operating budget of over AUD 3 billion.[304] In stark contrast, Sandstone Shire Council, in Western Australia, has a population of 81 residents living in an area covering 3,266,650 ha,[305] comparable to the size of Belgium at 3,300,000 ha.[306] Sandstone's expenditure in 2020 was AUD 5.6 million.[307]

Reflecting the country's British administrative heritage, local governments across Australia are typically referred to as a 'council', 'city' or 'municipality', 'shire' or 'town' depending on factors such as their size, location, or history. 'County councils' also exist as incorporations of, and controlled by, two or more local governments; established to deliver services usually across rural areas.

Currently there 537 local governments in Australia. This has been reduced from its peak of 1,000 due to ongoing structural reform aimed primarily at improving efficiency and effectiveness. Reduction has mostly been obtained through the process of amalgamation.

Despite often being strongly resisted by local communities and councils, amalgamations have been a significant policy in most Australian jurisdictions over the last two decades. Opposition to amalgamations has been based on numerous factors, such as concerns about loss of local identity and scepticism about purported efficiency gains. Both arguments were central to opposition to the most recent round of council large scale mergers that took place in New South Wales in 2016. At that time the state government pushed a highly controversial program

[303] Information retrieved from the Australian Bureau of Statistics (2019).
[304] Information retrieved from Brisbane City Council (2020).
[305] Information retrieved from the Australian Bureau of Statistics (2019).
[306] Information retrieved from World Bank (2015).
[307] Information retrieved from Shire of Sandstone (2020).

that was only partially finished, and ultimately abandoned, after community and council resistance derailed the process in a number of locations.

Local government in Australia has traditionally performed a regulatory role, including planning and building approvals, dog and cat management, and food and health inspections. Whilst they tend to have a narrower remit than in many other comparable countries, they also play an important role in community infrastructure such as the provision of local roads and waste management. In recent decades many councils have also extended their economic and community services to include childcare, youth programs, libraries and sport and recreation facilities, and community health activities.

Legal Status of Local Government

Local government is currently not formally recognised in the Australian Constitution. Whilst there has been attempts to amend this, including two referendums, its legal status remains dependent on state legislation. Many of its powers and responsibilities are subordinate to state and national governments, and there is often significant overlap of policy and programs.

These structural arrangements place limits on local government service delivery responsibilities and earnings. Local governments raise revenue from a range of sources including user charges, fines, developer contributions and income from properties, with utilities, waste and recycling services representing the most significant portion of own-revenue raised. However, the only form of tax they can charge is rates. Larger councils have significant income earning capacity and are able to generate around 80 per cent of their income, including waste and recycling charges. In contrast, much smaller councils are increasingly dependent on state and federal government grants.

Commonwealth grants have played a significant role in funding local government since the mid-1970s. However, the historic interpretation of the Australian Constitution was such that funds can only go *via* the state authorities. In this context, funding from the Commonwealth for local government purposes is 'tied', meaning that the state and territories do not have any discretion in how it is to be used. This arrangement was made more complex by a 2009 High Court of Australia decision (*Pape v Commissioner of Taxation*) regarding the Commonwealth's powers to authorise one-off payments to taxpayers. That decision was seen by many to limit the Commonwealth's ability to directly fund local government and remains contentious.

(A)Symmetry of the Local Government System

Australian local governments (councils) are led by elected officials. Generally, elected members act as formal decision-makers for strategic plans, policies and budgets prepared by the executive leadership staff of a council. The nature of these plans is often set out in state and territory legislation.

One form of elected official is the councillor. In addition to their strategic decision-making duties, councillors are also responsible for appointing and overseeing the performance of the

general manager/chief executive officer in accordance with an employment contract. This has become a contentious issue in several locations, with some local governments experiencing a high turnover rate amongst their chief executives. This has created numerous concerns, ranging from claims of councillors excessively interfering in operations, to perceived tenure uncertainty making it difficult to attract quality staff.

Another form of elected official is the mayor. The mayor is typically a ceremonial figure and in most cases is chosen from within the cohort of councillors to act on a rotational basis. There are, however, some differences across the country. For example, mayors in Queensland (and now increasingly in other jurisdictions) are mostly directly elected and have wide powers to prepare major policies and budgets.

Voting in local government elections is compulsory in all locations, excluding South Australia, Tasmania and Western Australia. Councillors are usually members of a political party and local government elections are party political, with the major political parties being represented and generally holding a majority. This is particularly the case within metropolitan areas. In fact, local government is often seen as a training ground for political aspirants. In rural areas, candidates are more likely to run independently, although they may be a member of a political party on a personal level.

Political and Social Context in Australia

The geography of Australia, and its cultural, social and economic history, present specific challenges to local government. This has led to councils lacking a uniform capacity to deliver services.

Rural and regional Australia is facing wide-ranging challenges including an ageing local population, poor infrastructure, limited education and employment opportunities, the drift of young people to urban centres, and more. In many rural towns, local councils provide a significant role as a major employer and service provider within the community therefore their sustainability is central to community wellbeing. This is less likely to be the case in a metropolitan location. Therefore, the role of local government within the community varies greatly, depending on a number of external factors.

The Australian Local Government Association (ALGA), the peak body for councils, identified 5 priority areas in its 2020-23 Strategic Plan which provide a useful guide to issues of contemporary importance to the sector. These are: financial sustainability; roads and infrastructure funding; waste; community resilience and climate change.

The Commonwealth has supported local government through a series of grants programs, as previously mentioned. Much of that funding is for infrastructure. For example, the current main initiatives focus on roads (AUD 7.3b between 2000 and 2019) and regional and community infrastructure. However, in 2016 the total value of Commonwealth grants equated to just 7 per cent of the amount spent by local government nationally. In its 2019 national election proposals, ALGA called for further funding for these programs in addition to health and wellbeing, digital, and Indigenous community funding.

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15.2 The Structure of Local Government in Australia: An Introduction

Carol Mills, *Institute for Public Policy and Governance, University of Technology Sydney*

Reforms to Australia's local government systems over recent decades have often focused on structural change, particularly around increasing scale. For example, in the 1990s, the Victorian Government dismissed all local governments in order to redraw boundaries and drastically reduce the number of councils. It was then voted out of office as voter discontent with the swiftness of these and other dramatic reforms became a major state election issue. Similarly, in 2008, the Queensland Government halved the number of local governments and a small number of the amalgamated councils have since demerged. In 2015-16, the New South Wales Government sought to reduce the number of local governments but the reform process remained incomplete. It was abruptly halted due to a mix of local community discontent (although the amalgamations in metropolitan areas were largely supported by the wider community), a change of state political leadership, and court challenges by a small number of local governments faced with merger. Despite these challenges in May 2019, 42 councils in NSW were merged into 19 organisations.

The driving force behind these moves to structural reform has largely been ideological, the notion being that smaller local governments are less efficient. While all local government reform to date has been 'done to' local government, it is interesting to note the reluctance or perhaps inability for significant self-initiated reform by the sector. Despite advanced financial modelling and optimistic projections, there is currently no Australian evidence to support the claims that larger local governments are necessarily more efficient. This is a topic currently being explored by the Institute for Public Policy and Governance of the University of Technology Sydney. There is more evidence that larger local governments can promote strengthened strategic leadership capacity but this has been difficult to measure and warrants further research.

It is important to note that not all of Australia's territory is covered by local government. Some remote 'unincorporated' areas are administered by state and territory governments, and the Australian Capital Territory – the home of Australia's national capital – does not have a formal system of local government and local services are delivered by the Territory Government.

As for cooperation between local governments, councils in most jurisdictions form regional governance collaborative structures, either voluntarily or through incentivisation. These generally come together on a sub-regional scale to share service delivery, for advocacy or strategic planning. In 2017 legislation was introduced in New South Wales (NSW) for Joint Organisations of councils in non-metropolitan areas, facilitating the establishment of regional strategic priorities, regional leadership and intergovernmental cooperation.

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15.3 Amalgamations in New South Wales

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Relevance of the Practice

On 12 May 2016, the New South Wales (NSW) Government announced the amalgamation of 42 local governments into 19 new councils. The stated objective was to strengthen the local government sector by increasing financial sustainability and efficiency. However, local government amalgamations not only require a re-drawing of boundaries, but also a re-establishment of local representation, decisions about alignment of services across the former council areas, and creation of an amalgamated workforce. It was also difficult to see how the merger of two financial struggling rural councils could immediately result in a high functioning, sustainable new entity.

Further, the amalgamations in NSW focused on simply collapsing existing historical boundaries rather than taking the opportunity to strategically realign councils around contemporary economic or social communities or sub-regions.

The study of this practice is relevant to researchers as it will help them identify and discuss the relative merits of larger versus smaller local government organisations, drivers of efficiency, the role of incentives, evaluative tools, and other similar topics. Particular areas which could be considered include: the question of the responsiveness of service delivery versus efficiency; the effects of amalgamation on local representation and community engagement; and, differences in the challenges of amalgamation faced by urban versus rural councils.

Description of the Practice

The new council structure in NSW has been in place since 2016. Local government amalgamations took place across the state, covering urban and rural/regional areas from metropolitan Sydney to the more remote areas of the state. These newly created organisations have been in operation for approximately four years. Some have stabilised, while others are in financial difficulty and a small number are still looking to de-amalgamate. The next round of local government elections is due to take place in September 2021 and this will be the first opportunity to gauge community views on the performance of the new entities.

Assessment of the Practice

The stated objective of the local government amalgamation process in NSW and other states was to strengthen the financial sustainability and efficiency of the sector. Whether this objective has been achieved is still a contested question. An analysis of the reform process to date would provide insight as to whether the sector is on track toward achieving these goals.

In addition, these mergers have implications for other aspects of local service delivery, representation and democracy. For example, in NSW, the number of councillors for a local government area is capped at 15 (Section 224 of the Local Government Act 1993). The result is often that when a council is merged the number of residents one councillor represents can increase dramatically. The implications of this change for local representation and decision-making are currently unknown.

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16. The Structure of Local Government in Malaysia

16.1 The System of Local Government in Malaysia

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Types of Local Governments

Under the Federal Constitution of Malaysia 1957, there are three levels of government: federal, state and local. Local government is designated under Schedule 9 as a state matter. Nonetheless, local government is governed by uniform legislation in the form of the Local Government Act 1976 (LGA) and other statutes such as the Street, Drainage and Building Act 1974, and the Town and Country Planning Act 1976 (TCPA). It should be noted that this uniformity only applies to the 11 states of West (otherwise known as 'Peninsular') Malaysia, and not to the East Malaysian states of Sabah and Sarawak on the Island of Borneo, which have different legal systems from that of West Malaysia, as well as different legal and administrative history, statute laws generally, and extent of state autonomy compared to the states of West Malaysia.[308] Accordingly in this report, to avoid laborious double coverage and potentially confusing, varied responses on each issue, this report is confined to West Malaysia, although federal statistics necessarily apply to Malaysia as a whole, and cannot usually be broken down.

The historical development and the present structure of local government are set out in detail in report section 4. Malaysia has three types of local governments, namely, city councils (18), municipal councils (38), and district councils (94). Apart from these three types of local council, there are six special-purpose local governments designed as 'development authorities'.[309] There is only one level of local government, and local councils are accordingly not placed under higher-level authorities other than the state and federal governments, and there are no intermediate organisations of any kind.

These types of council are somewhat differently structured but perform the same functions. District councils, which cover rural areas, are the most recently created, and it is only since the 1976 reforms that all rural areas in West Malaysia have become areas governed by local authorities.[310] District councils will be seen in this report to be under-privileged compared to the two kinds of urban council, being relatively poorly endowed and empowered in practice compared to the other two types of local government. This is in spite of the fact that their functions are exactly the same, albeit applied to smaller populations. Accordingly, it is difficult to differentiate between rural and urban local government in the absence of any clear markers

[308] Local government in Sabah is governed by the Local Government Ordinance 1961, and the equivalent legislation in Sarawak is the Local Authority Ordinance 1948, the Kuching Municipal Ordinances 1988, and the City of Kuching North Ordinance 1988.

[309] See below, Section 3 on the (A)Symmetry of the Local Government System.

[310] For more detail on the 1976 reforms, see the introduction to the Structure of Local Government in Malaysia, report section 4.1.

and a lack of literature encountered in this project that is devoted to district councils as opposed to all councils. To take just one example, the issue of practice regarding public-private partnerships is distinguished[311] between states that are part of the federal government's consortia arrangements and states that are not; there is no distinction between urban and rural councils. The urban-rural divide in terms of treatment is a deep and historic one in Malaysian local government, and is of course a very symptomatic of countries like Malaysia that have been in the throes of rapid development and the intense urbanization that goes with it. Despite the fact that, as we shall see, local governments exercise a wide range of powers, a number of factors inhibit the autonomy of local governments. These factors will be examined further in this report, especially in report section 5 on inter-governmental relations (IGR).

First, local government elections are not required by the Constitution, and have been suspended since 1965, so that there is no local *self-government*, and no *right* as such to local self-government.

Secondly, as a consequence of this, local councillors are appointed by the state governments, and appointments are usually, although not always, made on the basis of party allegiance to the party in power at the state level; this does not seem to depend on whether that party is in government or in opposition at the federal level. Accordingly, local government is stitched into the patronage-based, clientelist system that characterizes Malaysian politics, rendering it especially unlikely that local councillors will decide against the desires of the state government.[312] This factor is critical.

Thirdly, state governments have powers under the LGA, Section 103, to give directions of a general character to local governments; this power is expanded even further on occasion in practice to directions of a specific character.

Fourthly, policy on local government is coordinated amongst the various states by the National Local Government Council, a federal body set up under Article 95A of the Constitution, which gives much power to the federal government to control the operation of local government despite it being a state matter.

Fifthly, as is that case in most countries, it is universally acknowledged that local government finance faces considerable challenges, except in some wealthier areas such as Penang and Selangor. Local government finance is discussed further in report section 4 on local government structure.

Taken together, these five factors restrict considerably the freedom of operation of local governments. Under report section 5 on IGR the report introduced as an example the 'SPICE' episode, set out in detail in a recent book by a former Penang councillor, Lim Mah Hui. In this episode the state government went beyond its powers, in making decisions regarding a contract to build a new conference centre, that were properly within the jurisdiction of the local government.[313]

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[311] See report section 3.2. on Urban Cleansing and Privatisation.

[312] Lim Mah Hui, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020).

[313] ibid.

Legal Status of Local Governments

List II of the Federal Constitution's Ninth Schedule recognises local government as function of the state governments, but, acting under a provision in the Constitution (Article 76) for effecting uniformity amongst the states, Parliament passed the LGA in 1976, and this statute governs local government in West Malaysia. Accordingly, the local government system is legally and constitutionally entrenched, even though there are no elections.

Local government authorities are legal persons in the form of bodies corporate and may sue or be sued in their own rights as well as being subject to judicial review under administrative law with respect to their acts and decisions. In a recent example, a district council was held to have exceeded its powers by amending a valuation list and charging rates to a company not included in the original list.[314] Powers not specifically allocated to the federal power under the Constitution lie with the states; however, local government powers have to be specifically granted by statute and they are subject to the overriding principle that local authorities cannot act ultra vires, that is, beyond the powers they are given by statute. Local government powers nonetheless include any powers that are *reasonably incidental* to the statutory powers they enjoy. This is specified in the LGA, but is also a well-known principle in common law systems.[315]

(A)Symmetry of the Local Government System

Local government is the lowest level of Malaysia's multi-layered system of government, employing only 7 per cent of all public employees. Nonetheless, local government functions such as development control, public housing, roads and transport, parks and public places, and public nuisances are extremely important aspects of both urban and rural living and the environment.[316] The three types of local authority represent a basically symmetrical system, all local authorities performing the same functions. They are all under state control, except for the Federal Territory of Kuala Lumpur, which is under federal jurisdiction. There are six special-purpose development authorities focused on development in specific areas at the local level, which are under federal, not state, control. These are the Federal Territories of Putrajaya and Labuan, Pengeran and Johor Tenggara Local Authorities in Johor, the Tioman Development Authority in Pahang, and the Kulim Hi-Tech Industrial Park Local Authority in Kedah. The Iskandar Regional Development Authority is also discussed under report section 4 on local government structure, but this authority acts only in a facilitative way and does not exercise statutory powers over specific local government functions in its area.

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[314] *Majlis Daerah Hulu Selangor v United Plantations Bhd* [2021] MLJU 1205, Federal Court. For a striking recent example of judicial review, see *Perbadanan Pengurusan Trellises* & others *v Datuk Bandar Kuala Lumpur* & others [2021] 2 CLJ 808, Court of Appeal. This case is discussed in detail in report section 6 on people's participation in local decision-making. And for the juristic nature of local authorities, see LGA, Sec 13.

[315] LGA, Sec 101(hh); see Andrew Harding, 'Planning, Environment and Development: A Comparison of Planning Law in Malaysia and England' (2003) 5 Environmental Law Review 231.

[316] Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/Bloomsbury, forthcoming 2022) Chapter 5.

Political and Social Context in Malaysia

Currently more than two thirds of Malaysians live in urban areas, and these (municipal and city councils) correspond to most of Malaysia's 'local government areas', that is, those areas (now encompassing all of Malaysia's territory) that have local authorities as defined by the LGA, Section 3. Over the last four decades Malaysia's developmental state under the 'Vision 2020' policy has instrumentally recreated the country as an industrialised one, transforming it from a largely agricultural society into an urban and suburban one.[317]

Rural areas are under the authority of district councils, which are still administered with respect to local functions by something resembling the colonial system of district officers.[318] District officers are appointed by, and are responsible to, either the state government or the federal government, depending on the state in which the authority lies. The district officers are chairs of the district councils, which are advised by various committees of specialists. The districts, that is, rural areas, have never at any point had representative local government. Nonetheless, the district councils perform equivalent functions to those of municipal and city councils. They are also under-funded compared to urban authorities. This is typical facet of uneven development in many countries. As Singaravelloo reports,

> 'Financial strength is proportional to the size of the local authority. Larger local authorities have a larger population and economic base that provides the revenue needed to finance their activities. Smaller local authorities, however, especially district councils, have smaller populations and economic activities that can only contribute a small amount to their revenue. Examples of local authorities with a critical population size in 2010 were Majlis Daerah Lenggong (13,378), Majlis Daerah Pakan (Sarawak) (15,139), Majlis Daerah Pengkalan Hulu (15,878), Majlis Daerah Kuala Penyu (Sabah) (18,958), Majlis Daerah Jelebu (26,608), Majlis Daerah Labis (32,540), Majlis Daerah Cameron Highlands (34,510). The smaller revenue base is not even sufficient to provide the basic services that local authorities are assigned to deliver.'[319]

The National Physical Plan and the National Urbanisation Plan[320] emphasize urbanization, which is seen as Malaysia's major priority and problem. This indicates that rural areas are of low political concern. It is suggested that any reintroduction of local government elections and

[317] Andrew Harding, 'Law and Development in Malaysia: A Vision Beyond 2020?' in Salim Ali Farrar and Paul Subramaniam (eds), *Law and Justice in Malaysia: 2020 and Beyond* (Thomson Reuters 2021).
[318] Jagdish Sidhu, *Administration in the Federated Malay States* (Oxford University Press 1980).
[319] Kuppaswamy Singaravelloo, 'Local Government and Intergovernmental Relations' in Noore Alam Siddiquee (ed), *Public Management and Governance in Malaysia: Trends and Transformations* (Routledge 2013) 211.
[320] ibid. 214.

any revisiting of state and local government powers should embrace district as well as urban councils, and address squarely the needs of rural communities.[321]

Local councils consist of between eight and 24 persons who are appointed by the state governments from amongst prominent citizens resident in the locality for terms of three years.[322] Councillors have therefore tended to reflect the interests of the political party or parties in power at the state level; in West Malaysia at least, political parties operate at the national level and there are no purely local parties, although obviously some parties are perceived as being stronger in some specific areas or originated therefrom (e.g. Parti Gerakan is associated with Penang). With regard to Kuala Lumpur, since it is a federal territory, the *Datuk Bandar* (mayor) is appointed by the federal government for a period of five years, and the *Dewan Bandaraya Kuala Lumpur* (Kuala Lumpur City Council) is placed under the Prime Minister's Department.[323]

Reforms to the local government system, especially regarding elections in some urban areas, were promised by the Pakatan Harapan (PH) government, which left office on 1 March 2020. The present Perikatan Nasional (PN) government has not stated any intention in this regard, but meanwhile the country has been under emergency rule (from 12 January to 1 August 2021) due to the Covid-19 pandemic. Under the Emergency (Essential Powers) Act 2021, all elections were suspended; this ordinance has now been revoked.[324]

Despite the stability enforced by the Malaysian Government's largely successful efforts to improve the economic standing and opportunities of the majority Malay/Muslim population (around 60 per cent of the population of 32 million), there still exists a strong ethnic social division which in recent years has tended increasingly to be expressed via religious affiliation (Muslim and non-Muslim).[325] Under the Constitution, Article 160, a Malay is defined in terms of adhering to Islam as well as using the Malay language and Malay customs. This ethnic factor has had a considerable impact on local government, as successive governments have declined to reintroduce local elections in spite of strong demands, especially in mixed urban areas, for local democracy.[326] The often-stated reason is that local democracy is likely to inflame inter-ethnic tensions.[327] Nonetheless, the 14th general election in May 2018 was conducted entirely without violent incident anywhere in Malaysia, indicating a level of political maturity that belies the fear of ethnic violence, most evident in the tragic events of 13 May 1969 (see below), reemerging.

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[321] The most recent proposals in this regard, by the PH government in July 2018, mentioned only reintroducing local elections in some densely-populated urban areas; in any event these were not acted upon. See, further, Danesh Prakash Chacko, *Reintroduction of Local Government Elections in Malaysia* (Bersih & Adil Network Sdn Bhd. 2021).

[322] LGA, Secs 3 and 13.

[323] Federal Capital Act 1960, Secs 4 and 7.

[324] Emergency (Essential Powers) Ordinance 2021, Secs 12-13.

[325] Dian AH Shah, *Constitutions, Politics and Religion in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge University Press 2017) 10.

[326] Mah Hui, *Local Democracy Denied?*, above.

[327] This issue is discussed in detail in report section 6 on people's participation in local decision-making in Malaysia.

Since significant changes in the law and socio-economic policy in 1971, spurred by the 13 May incident, the majority community (styled *bumiputera*) community, comprising Malays and natives of Sabah and Sarawak, have benefited from special quotas in certain areas such as education and employment opportunities.[328] This system has impacted local government in various ways discussed later in this report.

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Mah Hui L, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020)

Phang Siew Noi, *Local Government System in Malaysia* (Dewan Bahasa dan Pustaka 1996)

[328] There is vast literature on this issue but see, e.g., Lee Hwok-Aun, *Affirmative Action in Malaysia and South Africa: Preference for Parity* (Routledge 2021); Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/ Bloomsbury, forthcoming 2022) Chapter 3.

16.2 The Structure of Local Government in Malaysia: An Introduction

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Malaysian local government along its present lines can be traced back to the British occupation of Penang, which later formed, with Malacca and Singapore, the colony of the Straits Settlements. From 1801 local authorities were established gradually in the colony, and later in the states of Peninsular Malaya, but only as and when it appeared necessary in a particular urban setting. As independence loomed after 1945, experimentation with democracy was undertaken at the level of urban local government. By the time of the Federation of Malaya's independence in 1957 there were, however, no fewer than 289 local authorities, mainly district councils, major city councils being elected.

Two major changes have been made to local government since 1957.[329]

First, in 1965, local government elections were suspended as an emergency measure, and have not since then been reinstated.[330] At the same time a Royal Commission of Inquiry on Local Authorities was established, which recommended in 1968 (the 'Nahappan Report') the continuance of local elections and a reduction in the number of local authorities. Unfortunately, the proposed reforms were overtaken by an episode of inter-ethnic violence in May 1969. In 1971 the Development Administration Unit (DAU) of the Prime Minister's Department rejected the Nahappan Report's recommendation for reinstating local elections, arguing that elected local government, which facilitated the domination of the haves over the have-nots, and provided for 'over-democratised over-government at the local level', was no longer consonant with the objectives of a developmental state.[331] Accordingly, there is no enforceable right to local self-government in the Constitution, although it is clear that local government itself is a constitutional topic, and the Constitution provides for a National Local Government Council.

The passing of the Local Government Act 1976 (LGA) was the second major reform, designed to implement the other main recommendation of the Nahappan Report. The LGA, preceded in this by the Local Government (Temporary Provisions) Act 1973, regularised local authorities in Malaya, which by 1973 had grown in number from 289 to an unwieldy 373, in five different categories. With implementation of this legislation during 1973–88, and an equivalent exercise in Sabah and Sarawak, the total number of local authorities in the whole of Malaysia was eventually reduced to 138 and the categories to three: municipal councils, city councils, and

[329] For the reforms of the 1970s, see Malcolm W Norris, *Local Government in Peninsular Malaysia* (Gower 1980).
[330] Elections were suspended by the Emergency (Suspension of Local Government Elections) Regulations 1965. The Local Government (Temporary Provisions) Act 1973 abolished all elected local authorities and gave the power to appoint local authorities to the state governments; see now Local Government Act 1976, Sec 15; and see Paul Tennant, 'The Decline of Elective Local Government in Malaysia' (1973) 13 Asian Survey 347. The issue of reintroducing local government elections is discussed further in report section 6 on people's participation in local decision-making in Malaysia.
[331] Johan Saravanamuttu, 'Act of Betrayal: The Snuffing out of Local Democracy in Malaysia' (*Aliran Monthly 2000*) <https://aliran.com/archives/monthly/2000/04h.html>.

district councils. As was explained earlier, all three types of local government authority carry out the same functions, and there are no intermediate authorities between the local and state governments. At present there are 156 local authorities, of which 38 are municipal councils, 18 are city councils, which are led by a *Datuk Bandar* (mayor),[332] and 94 are district councils. There are six special local authorities under federal control as well as three federal territories (Kuala Lumpur, Putrajaya, and Labuan).

References to Scientific and Non-Scientific Publications

Norris MW, Local Government in Peninsular Malaysia (Gower 1980)

Prakash Chacko D, Reintroduction of Local Government Elections in Malaysia (Bersih & Adil Network Sdn Bhd. 2021)

[332] For full information on these, see Malaysian Government Guide, 'Local Authorities, Malaysia' (*Lawyerment,* 2019) <www.lawyerment.com/guide/gov/Local_Authorities>.

16.3 Iskandar Development Region

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Relevance of the Practice

Development has been a major preoccupation since independence in 1957. Typically of Asia's developmental states, of which Malaysia is a good example, centres of autonomy have been the object of persistent, although not wholly successful, attempts to subordinate them to the developmental aims of successive federal governments, as well as marshalling virtually all branches of the state as well as private interests behind the development agenda.[333] In this process, the federal government has experimented with what one might call the spatial geography element in development by finding ways of using the territory under its ultimate control (noting that land itself is nonetheless a state matter) to spark economic activity. Examples are the creation of the Multimedia Super-Corridor and Cyberjaya as Asia's answer to Silicon Valley, and the moving of the federal government itself to a new capital at Putrajaya in the same area, to the South of Kuala Lumpur, linking with Kuala Lumpur International Airport.[334] These projects, in an exercise of political power at the federal level, in effect overrode both state and local governments' powers. In addition, the federal government has experimented with growth corridors, growth triangles, special economic zones, development authorities, and development regions. This study examines Iskandar Development Region Authority/ 'Iskandar Malaysia' (IDRA-IM) as an example of how new structures might serve development purposes and potentially alter the nature and ultimately the structure of local government.

Description of the Practice

The federal government established the IDRA-IM in 2007. Its five territories of operation overlap geographically with that of local authorities in the region, mainly the city councils of Johor Bahru (MPJB) and Iskandar Puteri (MPIP). IDRA-IM is located at the very southernmost tip of the entire Eurasian land mass, with Singapore just one kilometre away across the strait that separates it from the State of Johor. The location is strategic as part of a growth triangle between Malaysia, Singapore and Indonesia, although the Indonesian element in this project has proved minor.

IDRA-IM's main purpose is to attract investment into the region by cooperation both between federal, state and local governments, and with other countries, especially Singapore. As a former Chief Minister of Johor put it, 'be they local or foreign direct investments from all

[333] Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (Hart Publishing 2012) Chapter 2.
[334] Michael Likosky, *The Silicon Empire: Law, Culture and Commerce* (Routledge 2005).

sources including Singapore, it is the [IM] which will have jurisdiction over issues pertaining to investments'.[335]

Technically this statement is incorrect, as legal jurisdiction still lies with the relevant authorities. The practice developed here is that of defining the powers of IDRA-IM (and it is an acknowledged model not just for Malaysia but for the entire Southeast Asian region) as those of advising the state and local government authorities on investment, not usurping their powers.

Under Section 4 of the 2007 act, the objective of IDRA-IM is to 'develop the region into a strong and sustainable metropolis of international standing'. Its precise functions, defined extensively in Section 5, are essentially in brief to develop policies and plans for development, and give advice to the decision-makers. Since it is co-chaired by the Prime Minister and the Chief Minister of Johor, and the Finance Minister is also a member, its influence is obviously very strong, despite its lack of legal powers. The Sultan of Johor also has much influence over its activities and takes a keen interest.[336] The mayors of the city councils sit on IDRA-IM's Advisory Committee, so the local authority also has a strong say in deliberations.

As an official interviewed in one study of IM in 2015 stated:

> 'We adopt a persuasive strategy because the final decision goes to the local council and the Johor state. Sometimes they have their own plans, and sometimes they have their hands tight [sc. tied] because there is someone bigger behind them, so it is not a forward straight engagement.'[337]

Assessment of the Practice

The structure indicated fulfils the purposes of bringing resources and expertise to bear on galvanising development in a region of large potential growth, creating a space for policy innovation, for example on climate change,[338] while leaving undisturbed the normal process of local government decision-making. The local authorities have of course many areas and many functions lying beyond IDRA-IM's interests.

Although there are acknowledged risks and difficulties to be negotiated, the structure adopted departs from the previous developmental strategy of override to engage with dialogue and consultation and has met with practical success in attracting investment, which was however

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[335] Datuk Abdul Ghani Othman, quoted in Elisabetta Nadalutti, 'To what Extent Does Governance Change because of Sub-Regional Cooperation? The Analysis of Iskandar Malaysia' (2016) 19 International Relations of the Asia-Pacific 1. See also Agatino Rizzo and John Glasson, 'Iskandar Malaysia' (2012) 29 Cities 417; Elisabetta Nadalutti, 'Regional Integration and Migration in Southeast Asia: The Rise of "Iskandar-Malaysia"' in Leila S Talani and Simon McMahon (eds), *The Handbook of the International Political Economy and Migration* (Edward Elgar 2015) 399.

[336] Nadalutti, 'To what Extent Does Governance Change because of Sub-Regional Cooperation?' 22-5.

[337] ibid. 20. Contrary to the examples of public participation in the drafting of development plans outlined under section 6, on the specific project of the Iskandar Development Region there is no public participation.

[338] Jose de Oliveira, 'Intergovernmental Relations for Environmental Governance: Cases of Solid Waste Management and Climate Change in two Malaysian States' (2019) 233 Journal of Environmental Management 481.

slower in coming than was anticipated at the outset. Most investment comes from China and Singapore.

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DBS Asian Insights, 'Iskandar Malaysia, a Tale of Two Cities' (DBS Group Research 2013) <https://www.guppyunip.my/SectorBriefing01_IskandarMalaysia.pdf>

17. The Structure of Local Government in Canada

17.1 The System of Local Government in Canada: An Introduction

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Types of Local Governments

Canadian federalism divides governing responsibilities among three levels of government: federal, provincial, and local. However, the Canadian Constitution gives the provinces sole jurisdiction over municipalities, which results in significant inter-provincial variation among local government systems. While the federal government in recent years began to provide money through joint federal-provincial programs for services that are ultimately delivered by municipalities (primarily hard infrastructure), there is typically no direct federal policy or regulatory involvement with the municipal level of government.340 One side effect of this lack of federal involvement is that it is difficult to determine how many local governments there actually are in Canada. A comprehensive survey of available data from numerous sources, conducted in June 2021 by researchers at Western University,341 indicates that there were 3,533 local governments in Canada as of 2020. This is a significant decrease from the total of 4,432 in 1995, which reflects the results of a large-scale wave of provincial imposed consolidations in several provinces around the turn of the millennium. Despite this consolidation, most municipalities in Canada are small and rural. A report based on the 2016 census finds that only 723 had a population of 5,000 or greater. By contrast, 24 municipalities had over 200,000 residents, while three municipalities (Toronto, Montreal and Calgary) had over 1 million inhabitants. Toronto is Canada's largest municipality, with a population of 2.9

[339] Acknowledgements: Data regarding number of municipalities in Canada, as well as the analysis of rural-urban demographic and economic differences in Ontario, were compiled and produced by Amanda Gutzke at Western University. Our sincere thanks for her excellent work.

[340] Erin Tolley and William R Young, 'Municipalities, the Constitution, and the Canadian Federal System' (Government of Canada 2001) <http://publications.gc.ca/Collection-R/LoPBdP/BP/bp276-e.htm#Municipalities> accessed 25 July 2019.

[341] These data were collected and analyzed as part of another research project, led by Zack Taylor and Martin Horak.

million as of July 2018.[342] Just as the country's 10 provinces and three territories[343] vary in population size, so too do their municipal populations. Ontario tends to have larger municipalities as a result of its history of amalgamations imposed by the province, many of which took place in the 1990s.[344] Ontario currently has 444 municipalities.

In some cases, urban municipalities have distinct status under provincial law. For example, Vancouver, Winnipeg, Montreal, and Saint John are Charter Cities, which means that they are governed by their own piece of legislation – or 'Charter' – rather than being subject to the broad, province-wide legislation that governs the activity of other municipalities.[345] The City of Toronto is likewise governed by stand-alone provincial legislation. However, in general the degree to which these charters grant powers and resources over and above those of other municipalities is limited.

Table 3: Types of municipalities in Canada's four most populous provinces.[346]

Province	Types of Municipality
Ontario	Village
	Township
	Town
	Municipality
	City
	County
	Regional Municipality
Quebec	Village
	Township
	United Township
	Town

[342] 'Municipalities in Canada with the Largest and Fastest Growing Populations between 2011 and 2016' (*Statistics Canada*, 8 February 2017) <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016001/98-200-x2016001-eng.cfm> accessed 1 August 2019; 'Municipalities in Canada with Population Decreases between 2011 and 2016' (*Statistics Canada*, 8 February 2017) <https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016002/98-200-x2016002-eng.cfm> accessed 1 August 2019; 'Toronto at a Glance' (*City of Toronto*, undated) <https://www.toronto.ca/city-government/data-research-maps/toronto-at-a-glance/> accessed 1 August 2019.

[343] Canada's three territories (Nunavut, the Northwest Territories, and Yukon) are located in the far north. Despite their large geographical size, they have very small populations, totaling only about 110,000 in all three territories, which is less than the population of the smallest province (Prince Edward Island, 150,000 inhabitants).

[344] Andrew Sancton, *Canadian Local Government: An Urban Perspective* (2nd edn, OUP 2015) 150, 152.

[345] 'Power of Canadian Cities- The Legal Framework' (*City of Toronto*) <https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/cd/gg/add_pdf/77/Governance/Electronic_Documents/Other_CDN_Jurisdictions/Powers_of_Canadian_Cities.pdf> accessed 25 July 2019; John Stefaniuk, 'Municipal Powers and their Limits' (TDS Law) <https://www.tdslaw.com/site-content/uploads/municipal-powers-and-their-limits-2.pdf> accessed 25 July 2019.

[346] Sancton, *Canadian Local Government*, above, 7-8; 'Types of Municipalities in Alberta' (*Government of Alberta*, undated) <https://www.alberta.ca/types-of-municipalities-in-alberta.aspx> accessed 25 July 2019.

	Municipality
	City
	Parish
	Regional Government
	Metropolitan Community
	Regional County Municipality
British Columbia	Village
	Town
	District Municipality
	City
Alberta	Summer Village
	Village
	Town
	City
	Specialized Municipality
	Municipal District
	Improvement District
	Metis Settlement
	Special Areas

Generally, Canadian municipalities are responsible for providing physical services including water supply, waste management, local infrastructure management, sewage treatment, planning and development services, libraries, parks and recreation, local police, and parking.[347] These local government tasks are administered through general purpose municipalities (variously called cities, towns, villages, etc., depending on size), sometimes in conjunction with special purpose bodies. The table above compares the largest four provinces by population to illustrate variation in the legal types of municipalities. In addition to these, there are numerous local government bodies that do not have municipal status – such as British Columbia's regional districts, which are multi-purpose service federations of municipal governments.

In some provinces, including Ontario, Quebec and Alberta, there is a single tier of local government in some areas, and two tiers of local government in other areas. Upper-tier governments in Ontario, for example, are either called counties or regional municipalities, with the latter typically found in large urban areas. Upper-tier municipalities are comprised of the lower-tier governments within their boundaries. They provide region-wide services like arterial

[347] 'The Three Levels of Government' (*Parliament of Canada*, undated) <https://lop.parl.ca/about/parliament/education/ourcountryourparliament/html_booklet/three-levels-government-e.html> accessed 25 July 2019.

roads; transit; policing; sewer and water systems; waste disposal; region-wide land use planning and development; and health and social services.[348]

Legal Status of Local Governments

Canada's Constitution specifies the terms of Canadian federalism. It assigns responsibility for local governments to the provinces. This means that the provincial governments have full jurisdiction over the local governments in their territory. Section 92 of the Constitution Act of 1867 specifies the powers of the provinces and Section 92(8) gives each provincial legislature the power to make laws for the municipal institutions under its jurisdiction. Municipalities are often referred to as 'creatures of the province' because they rely on the provinces for their legal existence.[349]

There is significant variation among the provinces in terms of the structure of municipal legislation. Historically, provincial legislation has tended to lay out every power granted to its municipalities; if a specific power is not listed, municipalities do not possess that power. However, in recent years this has shifted, and most provinces now have legislation, such as that implemented in Alberta in 1995 and Ontario in 2001, which grants municipalities the same powers as a 'natural person' unless specifically excluded by the legislation. This gives municipalities the same rights as businesses to enter into contracts, own property, and make investments. Moreover, British Columbia's provincial government sets only broad legislation within which municipalities have the authority and flexibility to respond to each community's unique and changing needs. The Government of British Columbia views municipalities as autonomous and accountable to their democratically elected municipal councils.[350]

Both urban and rural municipalities in all Canadian provinces have some legal authority to act in the following functions: fire protection; animal control; roads; traffic control; solid waste collection and disposal (except in Prince Edward Island); land use planning and regulation; building regulation; economic development; tourism promotion; public libraries parks and recreation; cultural facilities; licensing of businesses; emergency planning and preparedness; rural fences and drainage; regulation and/or provision of cemeteries; airports (excluding major airports formerly operated by the federal government); and weed control and regulation of cosmetic pesticides.

Additionally, the following functions are typically delivered by urban municipalities: public transit; regulation of taxis; water purification and distribution; sewage collection and treatment; downtown revitalization; and regulation of noise. Generally, urban municipalities

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[348] 'Ontario Municipalities' (*AMO*, undated) <https://www.amo.on.ca/AMO-Content/Municipal-101/Ontario-Municipalities.aspx> accessed 25 July 2019.

[349] Tolley and Young, 'Municipalities and the Constitution', above; Sancton, *Canadian Local Government*, above, 27.

[350] For a comprehensive overview of Canadian municipal legislation, see Zack Taylor and Alec Dobson, 'Power and Purpose: Canadian Municipal Law in Transition' (2020) 47 IMFG Papers on Municipal Finance and Governance; 'Municipalities in British Columbia' (*British Columbia*, 2019) <https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/systems/municipalities> accessed 25 July 2019.

are also responsible for policing, although in some provinces special purpose bodies take care of this function. The exception is Newfoundland and Labrador, where policing is taken care of by the Royal Newfoundland Constabulary. Moreover, the Royal Canadian Mounted Police (RCMP) (or a provincial police force, as in the case in Quebec and Ontario) enters into contracts with some urban municipalities to provide policing, and it is typical for the RCMP or provincial police to provide policing in rural areas.

Ontario is unique in that the province mandates that its municipalities deliver certain social services. This includes income and employment assistance through the Ontario Works program and subsidized childcare with provincial oversight and financial assistance. Additionally, Ontario municipalities are required to provide subsidized social housing, with limited financial assistance from the province. Municipalities in other parts of the country do not have the same statutory responsibility to provide these social services.[351]

(A)Symmetry of the Local Government System

The fact that the provinces have under the Canadian Constitution sole jurisdiction over municipalities gives rise to considerable inter-provincial variation. Although municipal powers and responsibilities thus vary by province, common core functions include planning, regulating, protecting, and providing infrastructure services for the built environment.[352]

In some cases, there is also asymmetry within provinces in terms of how local government is structured, as different laws may exist for urban and rural municipalities. As noted above, several of Canada's largest urban municipalities are governed by charters that outline specific institutional arrangements for that municipality, and/or grant it additional powers and revenue sources. Toronto, for example, was granted charter status in 2007, giving it additional revenue raising tools beyond the property taxes and provincial transfers that most municipalities rely on. However, it should it be noted that Charter Cities do not have additional constitutional protections. A municipal charter can be changed by the province at any time. Indeed, there is much disagreement surrounding the utility of granting cities such additional powers, as such powers have typically been limited and are often not fully used.[353]

General municipal statutes and special charters are not the only laws that apply to municipalities. Indeed, since provincial governments set parameters for municipal action in a multitude of policy fields, ranging from planning and environmental services to policing and housing, the cope of municipal action is shaped by dozens, if not hundreds of different statutes in each province.[354] In addition, in some provinces, provincial governments may enact laws that apply only to particular municipalities or groups of municipalities – that is, single

[351] Sancton, *Canadian Local Government*, above, 22-23.

[352] Taylor and Dobson, 'Power and Purpose: Canadian Municipal Law in Transition', above.

[353] Harry Kitchen, 'Is Charter City Status a Solution for Financing City Services in Canada – Or is that a Myth?' (University of Calgary School of Public Policy SPP Research Paper 9-2, 2016) <https://www.policyschool.ca/wp-content/uploads/2016/03/charter-city-status-kitchen_0.pdf> accessed 26 July 2019.

[354] ibid 8.

municipalities can apply to their provincial government to request private statutes as a remedy for a particular local problem for there is no other legal recourse.[355]

Political and Social Context in Canada

All Canadian municipalities are governed by a democratically elected council.[356] Ward systems are commonly used, especially in large municipalities; Vancouver is Canada's only large city where councillors are elected at-large. With the exception of the City of Vancouver and larger municipalities in the Province of Quebec, local government is non-partisan. The provinces of British Columbia and Quebec are the only two provinces that have legislation that allows for the existence of political parties at the local level.[357] The fact that local government tends to be non-partisan, and that provincial party systems also tend to be quite distinct from the federal party system, means that the broader political context within which municipalities operate is marked by only weak political links among levels of government. This lack of vertical political integration, together with the weak legal status of local governments, made them the target of politically expedient decentralization in the fiscally lean 1990s. At that time, structural fiscal pressure on the welfare state produced a cascading decentralization of policy and fiscal responsibility through the Canadian federation, and municipalities had to cope with the imposition of unfunded or partly funded policy mandates from the provincial level. The result was intergovernmentally induced fiscal stress at the local level, which has only in recent years begun to be mitigated by increasing fiscal transfers.

Many scholars suggest that local governments, with their weak legal status, are primarily 'policy takers', rather than 'policy-makers', in the Canadian context.[358] There are certainly cases where Canadian municipalities do make policy independently of the provinces. To a significant extent, their ability to do so depends on their population size and their local property tax base. Since rural municipalities have both a small population and a weak property tax base, their autonomous policy-making capacity tends to be very limited. For both reasons, there is thus a policy capacity divide among Canadian municipalities that closely mirrors the rural/urban divide.

Like many post-industrial countries, Canada is highly urbanized. Almost 72 per cent of the population lives in urban areas with over 100,000 people, and more than a third of all Canadians live in the three largest urban areas (Toronto, Montreal and Vancouver).[359] The Canadian population is thus concentrated primarily in a handful of large urban areas, whose

[355] Sancton, *Canadian Local Government*, above, 31.

[356] However, upper-tier governments in two-tier systems (e.g., Greater Vancouver and Ontario's regional municipalities) sometimes have indirectly elected councils composed of representatives of lower-tier municipalities.

[357] Sancton, *Canadian Local Government*, above, 173, 180, 186, 188.

[358] ibid 251.

[359] Calculated from Statistics Canada Census 2016 data reports.

population is growing quickly. By contrast, the population of rural Canada is (in most regions) growing much more slowly,[360] and rural areas are on average older, whiter and poorer.

Table 4: Selected Demographic and Economic Indicators in Ontario, by Type of Census Division.[361]

	Metropolitan	Mixed	Non-Metropolitan
Population change (2011-2016)	+ 5.57%	+ 4.54%	+ 0.92%
Visible minority population (2016)	43.5%	13.5%	2.6%
Average household income (2016)	$78,477	$73,258	$65,748

An analysis of 2016 census data conducted for this report paints a picture of the demographic and economic contrasts between rural and urban areas in Ontario, Canada's largest province by population (table above). The data are divided into three kinds of census divisions (CDs) – metropolitan CDs, which are located in urban areas with more than 100,000 people; non-metropolitan CDs, which are fully outside settlements with more than 100,000 people; and mixed CDs, which include a combination metro and non-metro areas. As is clear from the table, non-metropolitan – that is, rural and smaller-town – CDs grew much more slowly in population than others between 2011 and 2016; they were also much whiter, with only 2.6 per cent of the population identifying as visible minority, as opposed to 43.5 per cent in metropolitan CDs; and they were poorer, with an average household income that was only 83.7 per cent of the metropolitan average. These demographic differences, which reflect an economic base that has increasingly transitioned towards post-industrial urban productive sectors, set the context for the distinct governance challenges faced by rural and urban local governments in Canada in recent years.

For some time now, rural areas in the urban periphery of large cities in Canada have experienced some out-migration of urban residents facing high housing prices in the city. It appears that the Covid-19 pandemic has rapidly intensified this trend, to the extent that may fundamentally change the rural-urban dynamic in the longer run. Of course, it is too early to tell if the trend will be sustained. There is not even reliable data on the scale of the out-migration over the course of the pandemic yet. However, it was notable that *all* the experts and practitioners interviewed for this research noted this out-migration as a major development and a source of significant challenge, as well as potential opportunity, for rural areas. Interviewees all agreed that the structural driver of the out-migration is the very high cost of housing in large urban centers, most notably Toronto and Vancouver. With the Covid-19 pandemic entrenching work-at-home possibilities for white collar professionals, and

[360] Between 2001 and 2016, the rural Canadian population grew by 5.5%, while the overall national population grew by 16.9%. Even this modest rural growth, however, is largely concentrated near urban areas. See Federation of Canadian Municipalities, 'Rural Challenges, National Opportunity: Shaping the Future of Rural Canada' (2019).
[361] All data are calculated from Statistics Canada 2016 census of the population data tables.

simultaneously enhancing the appeal of low-density rural living, this structural trend has rapidly acquired more force.

Speaking about dynamics in the Toronto area, one policy analyst said: 'Especially with the last year, housing has just moved out of the [Toronto area] and it's encroaching on a lot of these different communities. People who would have loved to have lived in downtown Toronto, but simply can't afford to are buying homes in Oxford County' – about 150km from Toronto.[362] While the experts interviewed for this project all focused on the Ontario context, media reports suggest similar dynamics surrounding other large urban centres.

This influx of new residents and money brings some benefits to rural areas, such as more budget money for municipalities that rely heavily on property taxes and development fees. As one interviewee noted, 'from a property tax perspective, from a development perspective, it's pretty significant, (…) you go to some of these places, there's a lot of nice new playgrounds and parks and stuff like that. If you go to Innisfil [a rural community one hour north of Toronto], they built one of the nicest libraries I've ever seen. It's like a monument, incredible. And they're like, "yeah, that's development dollars"'.[363]

The other side of that same coin, of course, is that housing affordability is quickly becoming a major problem in rural communities that are relatively near to urban centres. 'This notion that affordability is only an urban issue, it really needs to dissipate', said one respondent. Those households that cash out of hot urban property markets have been driving up housing prices in rural areas at an unprecedented rate, especially since the beginning the Covid-19 pandemic. One interviewee noted that median house prices went up 40 per cent or more during 2020 in many rural communities that are within a two-hour drive of the Toronto area.[364] Another challenge that comes with the influx of what one interviewee called 'rural gentrifiers'[365] is that they tend to want more municipal services in communities that have long provided just the basics, putting upward pressure on property taxes.[366]

Most respondents also noted that the new urban out-migration is leading to cultural and lifestyle tensions in rural areas that are experiencing high rates of influx. 'It's gonna be a little bit like it was after the Second World War, when a lot of European immigrants showed up in these communities,' said one interviewee. 'They haven't seen that kind of change in a generation in two generations really, and they may have a lot of people coming to town that don't look like them, don't engage in the same economic activities that they're used to, that have different expectations. And they may want to set up cricket pitches, not baseball diamonds'.[367] Another respondent noted of the new arrivals from urban areas: 'You know, they need to have a big box store, they want some things from you know from the supermarket and

[362] Interview with local government expert, Rural Ontario Institute (20 July 2021)..
[363] Interview with local government expert, York University (10 July 2021)..
[364] Interview with local government expert, Guelph University (28 July 2021).
[365] ibid.
[366] Interview with local government expert and consultant, Toronto (13 June 2021).
[367] ibid.

stuff, and [long-time residents] are complaining that all these weird products are showing up in the supermarket right like avocados and (…) gluten-free food'.[368]

It is far too early to tell how extensive this out-migration to rural areas will ultimately be, and whether it will continue after the Covid-19 pandemic. However, it appears that a significant shift in rural-urban dynamics is underway in the parts of rural Canada that are relatively close to major metropolitan centres, with possibly far-reaching knock-on effects on rural governance issues.

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[368] Interview with local government expert, York University (10 July 2021).

17.2 The Structure of Local Government in Canada: An Introduction

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As noted in report section 1, the structure of local government varies greatly by province across Canada, more so even than the structure of local financial arrangements. As a result, we will only focus on Ontario in this introductory section. The basic outlines of Ontario's local government structures were established by the Baldwin Act of 1849. It laid out a rural governance model that consisted of upper-tier counties, each of which included a number of lower-tier municipalities (townships, villages, etc.) that managed strictly local affairs. In addition, it established provisions for the creation of single-tier 'separated cities' once a settlement reached 10,000 in population. The growth of urban areas under this system of local government was dealt with by provincially authorized annexations through which separated cities gradually absorbed surrounding countryside. This basic structure of local government remained largely unchanged until the 1950s. Indeed, even today, over half of Ontario's population lives either in two-tier rural municipalities, or in one of 31 single-tier cities.

Starting in the 1950s, however, the Ontario provincial government began to respond to rapid and large-scale urban growth (primarily in the Toronto area) in a different way, by establishing two-tier systems of local government designed to finance and coordinate urban development. The primary rationale for these innovations was enhancing capacity for planning, infrastructure development and service delivery. The first such system was the Metropolitan Toronto – a federation of 13 formerly autonomous municipalities established in 1954. This was followed in the early 1970s by a wave of provincially-created 'regional municipalities' that covered most of the large urbanizing areas in the province, including those that surrounded Metropolitan Toronto.

A further major wave of structural change came in the late 1990s. At this time, a conservative provincial government – emphasizing efficiency and cost reduction rather than increased local government capacity – embarked on a massive program of municipal amalgamations. Amalgamations occurred in both rural and urban areas, with many formerly two-tier rural systems being amalgamated into single-tier municipalities. The provincial government imposed these structural reforms in a top-down manner, with relatively little local consultation. As a result, between 1995 and 2002, the number of municipalities in Ontario decreased from 850 to 444 (which is also the current number).[369]

Many of the amalgamations of the late 1990s faced local political opposition, which was largely unsuccessful, since the province has full control over local government structure. Doubtless the most controversial amalgamation was that of Metropolitan Toronto, the two-tier system from 1954, which was merged into a single, large City of Toronto. No significant structural reform to local government has taken place in Ontario over the last 20 years.[370]

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[369] André Côté and Michael Fenn, *Provincial-Municipal Relations in Ontario: Approaching an Inflection Point* (Institute on Municipal Finance and Governance 2014) 11.

[370] The reasons for this are discussed in report section 4.1. Beyond Municipal Amalgamations in Ontario.

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17.3 Beyond Municipal Amalgamations in Ontario

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Relevance of the Practice

As discussed in the introduction to report section 3 on local government structure, in the late 1990s the Ontario provincial government forcibly amalgamated many municipalities, both rural and urban, citing the need to reduce waste and duplication in an era of government cost-cutting. The number of municipalities in Ontario was reduced by nearly 50 per cent in the process. However, since then, the Ontario government has engaged in no significant local government structural reform at all. Instead, the province has moved towards direct regulation and single-issue multilevel governance initiatives to address pressing urban governance issues and has taken little significant action to address rural governance issues. Understanding why this shift has occurred can give LoGov researchers insight into the conditions under which structural reform initiatives may reach their political limits as responses to localized urban and rural challenges.

Description of the Practice

The 1990s amalgamations in Ontario affected both rural and urban municipalities. As noted above, the primary rationale given by the provincial government at the time was that these amalgamations would save money and make local governments more efficient. However, there has been little subsequent evidence that amalgamations resulted in cost savings.[371] On the contrary, amalgamations tended to increase costs, since amalgamated municipalities faced upward pressure on labour costs for municipal employees, and political pressure to harmonize service levels up to those in the most generously serviced pre-amalgamation municipality.

The 1990s amalgamations also had other shortcomings, which manifested differently in urban and rural areas. The most contentious amalgamation – the one that produced the new City of Toronto – created a huge municipality with nearly 3 million people. Given non-partisan local politics and ward-based elections, decision-making has been slow and cumbersome in the new city, and successive mayors and councils have swung wildly in terms of policy priorities. At the same time, the new city cannot address city-regional governance coordination, since it still contains less than half of the population of the urban area, and the outer suburbs continued to be governed by the two-tier regional municipal systems set up in the 1970s.

Meanwhile, outside large cities, amalgamation often fused small and medium sized towns with surrounding rural areas. Experts interviewed for this research disagreed regarding the relative merits of these amalgamations. While some emphasized that amalgamated rural areas had

[371] Lydia Anita Miljan and Zachary Spicer, *Municipal Amalgamation in Ontario* (Fraser Institute 2015).

more fiscal capacity to build badly needed infrastructure,[372] others noted that the fusion of towns and countryside has brought the differing policy priorities of pre-existing units into direct conflict, leading to a volatile and contentious local politics.[373] The most notable example here is the amalgamated Municipality of Chatham-Kent, which covers a large land area (2,500 km^2) and includes several towns as well as large rural areas of farmland.

The various problems and shortcomings of the 1990s amalgamations have discouraged subsequent Ontario provincial governments from pursuing further structural reform to local government boundaries. In the Toronto area, it appears that a city-regional level of government is no longer a politically viable option. The Toronto area contains more than half of Ontario's population, meaning that the political reaction to structural reform is an important consideration. Even in the late 1990s, calls for a city-regional authority were ignored because residents in the suburban municipalities, which had helped to elect to provincial government at the time, opposed institutional links to Toronto's urban core. In addition, a city-regional authority, if established, could constitute a dangerously powerful counterweight to the provincial government itself. As a result, since the early 2000s the provincial government has dealt with growth and governance pressures in the Toronto area in two other ways: 1. By establishing comprehensive growth management legislation for the Toronto region (the 'Places to Grow Act' and the 'Greenbelt Act', both initially passed in 2005); 2. By establishing and funding issue-specific multilevel governance initiatives, the most prominent of which is Metrolinx, a regional transportation body tasked with constructing and coordinating a higher-order regional transit system.

Meanwhile, in rural areas the experiences of amalgamated municipalities like Chatham-Kent have likewise made further structural reform politically unattractive. However, Ontario's rural areas and smaller towns lack the decisive population weight that Toronto's suburbs have in provincial electoral politics. As a result, the provincial government has paid little political attention to the challenges faced by rural local governments. In this context, new governing and policy initiatives have mainly emerged collaboratively in a bottom-up fashion from local governments themselves. they're succeeding not because of existing structures, but kind of despite them. One example is the SWIFT rural broadband internet initiative, a major project to develop a broadband network throughout rural south-western Ontario. The project has been spearheaded by the Western Ontario Wardens' Caucus, an association of rural local government officials. Another example is the rapidly spreading practice of service sharing; the vast majority of small and rural municipalities now share a variety of services with each other in order to deal with their individual capacity limitations, and municipal officials meet regularly in a variety of fora to learn from each other and identify new service sharing opportunities. [374]

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[372] Interview with local government expert, York University (10 July, 2021).

[373] Interview with local government expert, Rural Ontario Institute (20 July, 2021).

[374] Zachary Spicer, 'Cooperation and Capacity: Inter-Municipal Agreements in Canada' (2015) 19 IMFG Papers on Municipal Finance and Governance <https://munkschool.utoronto.ca/imfg/uploads/318/1623_imfg_no.19_spicer_online.pdf> accessed 26 July 2019.

Assessment of the Practice

What we have discussed above is really a bundle of practices related to issues that have in the past been managed in Ontario through periodic boundary reforms imposed by the provincial government. As we have seen, there is a marked contrast between a new form of provincial interventionism in urban governance and development in the Toronto area, on the one hand; and provincial neglect of rural issues, on the other hand. On growth management and infrastructure development in the Toronto area, the province has achieved some success, with patterns of development densifying in recent years, and new transportation infrastructure being rolled out. However, in a context where there is no authoritative regional governing body, progress on both fronts has been slow, as provincial initiatives have encountered conflicting and changing political priorities in a fragmented local governance system. In terms of local governance and infrastructure capacity in rural areas, one expert interviewed for this project noted a 'real lack of provincial leadership',[375] while another emphasized that the increased emphasis in recent years on place-based policy for urban areas has not been matched by the rise of a rural 'lens'.[376] A long history of neglect, the respondent noted, creates 'sort of a bit of distrust, so that certain communities that do have the capacity to kind of work around existing [provincial] legislation to get what they want done, in broadband, for example, are pursuing that themselves. They're succeeding not because of existing structures, but kind of despite them'.[377] While benign provincial neglect has opened up a space for bottom-up collaborative action, the weak fiscal resources of most rural municipalities, as well as tight constraints on human resources (),[378] mean that this collaborative space remains tightly constrained.

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[375] Interview with local government expert, Rural Ontario Institute (20 July 2021).
[376] Interview with local government expert, Guelph University (28 July 2021).
[377] ibid.
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Argentina

SALGA
South African Local Government
Association South Africa

Jawaharlal Nehru University
India

University of Technology Sydney Institute
for Public Policy and Governance Centre
for Local Government
Australia

National University of Singapore
Centre for Asian Legal Studies
Asia Pacific Centre for Environmental Law
Singapore

University of Western Ontario
Centre for Urban Policy and Local Governance
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