

GHANA LOCAL GOVERNMENT ACT 1993

A Comparative Analysis in the Context of the Review of the Act

Prepared by
Dr. Gabriele Ferrazzi

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Local Government and Poverty Reduction Programme (LGPRSP), 8th Avenue Extension, North Ridge, Accra. PO Box 9698 KIA, Accra, Ghana. Date: 31 October 2006.

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ABBREVIATIONS

CG	Central Government
DA	District Assembly
DCE	District Chief Executive
EC	Executive Committee (of the DA)
GoG	Government of Ghana
GTZ	Deutsche Gesellschaft Für Technische Zusammenarbeit
LG	Local Government
LGA	Local Government Act (Act 462 of 1993, or generic)
LG	Local Government
LG-PRSP	Local Governance and Poverty Reduction Support Programme
LGSA	Local Government Service Act 2003 (Act 656)
LI	Legislative Instrument
MLGRD(E)	Ministry of Local Government, (and) Rural Development and Environment
NALAG	National Association of Local Authorities of Ghana
NDPC	National Development Planning Commission
OECD	Organization of Economic Cooperation and Development
PNDC	Provisional National Defence Council
RCC	Regional Coordinating Council

INTRODUCTION

In the context of the ongoing review of the Republic of Ghana Act 462 - Local Government Act of 1993 (LGA)¹, the consultant (henceforth referred to as “reviewer”) was asked by the Local Governance and Poverty Reduction Support Programme (LG-PRSP)² to undertake a brief desk study of the LGA to identify some of its strengths and weaknesses as an input to the review process (see terms of reference in Appendix 1). It is of course not possible for one individual to be helpful on all of the complex issues that make up an LGA instrument; this requires an intensive effort with many experts and stakeholders. This initial review merely seeks to flag issues concerning the architecture of the LGA and issues that may need particular attention. It should also be made clear at the outset that there is much that is good about the LGA, and some of these strengths will be noted. However, this review naturally focuses on observable weaknesses of the LGA as these are likely to feature dominantly in the review process and will become the focus of a possible revision in the future.

Comparators countries familiar to the reviewer are used in the analysis (see Table 1 for the most used comparators). These are largely from unitary states, but also some federal states. In the latter, the formative units of the state (e.g. provinces) essentially act as a unitary state toward other tiers of subnational government. The reviewer also draws on good practices as found in the literature and the reviewer’s own views on what constitutes good practices as derived from professional experiences.

Any comparative effort in this complex field is hindered by the fact that LGAs are not well disseminated internationally, as are constitutions for instance. Scholars or international LG associations have yet to mount any significant analytical effort to gather and analyze the LGAs or the overall legal framework that influences LG. What exists in terms of overall principles for local self-government are useful (see for example the European Charter of Local Self-Government³) but these are much too general to guide policy makers in shaping or adjusting the form, scope, and specific content of LGAs. It is hoped that this gap will be closed in the future.

A key point made early in this review is that the LGA can only be understood within the larger matrix of legal instruments influencing LG. Unfortunately, a comprehensive analysis of this kind is beyond the scope of this initial foray. Other relevant laws were obtained (notably the Constitution, and the Local Government Service Act). Notably missing are some of the key sectoral laws that should complement any LGA.

The issues covered in the review were enumerated in the Terms of Reference for this assignment. The report is not an exhaustive review of all provisions of the LGA, but rather a targeted examination of the most crucial issues that need to be addressed in any LGA. For most topics, the reviewer gives an overall impression of how this is treated in the LGA, pinpoints key provisions, analyzes these, and ends with some suggestions for the LGA review effort.

¹ The text of the LGA reviewed was provided in scanned form by LGPRSP.

² LGPRSP is a bilateral programme jointly undertaken by the MLGRDE and GTZ.

³ European Charter of Local Self-Government, Strasbourg, 15-October-1985, obtained from <http://conventions.coe.int/treaty/en/Treaties/Html/122.htm>

Because the review is undertaken with particular reference to international practice, the term “local government” is used to refer to all subnational levels of government that have a political representation. In Ghana, that includes the district assembly and lower levels of government, but excludes the regional councils.

The depth of analysis for each topic depended on the coverage of the issue in the LGA itself, the availability of comparators familiar to the reviewer, and the availability of relevant legal instruments that could shed further light on the LGA provisions. For this reason, and others mentioned above, the report is rather tentative in places, but the reviewer nonetheless hopes that it can provide helpful information, analysis, and practical recommendations for the LGA review effort.

I. LEGAL FRAMEWORK FOR THE LGA

The sections that follow seek to situate the LGA in the larger legal framework that influences LG. The LGA can only be effective if it is well lodged within a well developed and respected national legal framework.

Constitutional Umbrella

Chapters #2 and #20 of the Constitution are devoted to territorial units and decentralization/local government (LG) respectively, encompassing 20 main provisions, each with one or more sub-articles. These cover broad principles of governance, such as Art. 240 (1) (“Ghana shall have a system of local government and administration which shall, as far as practicable, be decentralized”), but also a broad range of administrative issues, such as territorial structures, functions and taxing powers.

The coverage of LG is comparatively extensive in scope. It is not nearly as voluminous as the South Africa treatment of provincial and local governments (two chapters and 62 articles), but is more detailed than some countries (e.g. Yemen – 4 articles), and similar to others in developing nations (e.g. Indonesia) or OECD unitary states (e.g. Italy, France).

Notable features of the Ghanaian constitutional provisions are:

- Functions and funds transferred by Central Government to local government are to be dealt with by laws (Art. 240 (2)a.)
- Local government should have adequate financial resources (Art. 240 (2)c.)
- Local government should have control over their staff (Art. 240 (2)d.)
- People are to be given opportunity to participate in local government (Art. 240 (2)e.)
- District Assembly has legislative and executive power (Art. 241 (3))
- Appointment of District Chief Executive by the President (Art. 243 (1))
- District Chief Executive acts also as representative of central government (Art. 243 (2)c.)
- District Assemblies Common Fund to receive not less than five percent of national revenues (Art. 252(2))
- Auditor-General audits the accounts of the District Assemblies annually and submit audit reports to Parliament (Art. 253)
- Further “decentralization” of “Central Government” functions is foreseen to occur as governed by laws (Art. 254)
- Regional Co-ordinating Council are established, with a membership that includes the appointed District Chief Executives (Art. 255)

The intent of the Ghanaian Constitution is to give some teeth to local governance. In Box 1, the reviewer has noted the essential features of local government, as understood in the international context (paraphrasing the vast literature on decentralization and LG charters established by international LG associations). These features are largely reflected in the Constitution (Chapter 20), in particular the broad principles enunciated in Articles 240(1), 240(2)c.-e., and 241(3). Admittedly, these principles are in some instances somewhat muted

by the added caution “as far as practicable,” but the intent of the provisions nonetheless shines through.

There is some tension in the constitutional provisions between the desire to give LG significant autonomy, and the concern to retain some control. The key means selected to retain control are the Presidential appointment of the District Chief Executive (DCE) and 30% of the District Assembly members, the establishment of Regional Coordinating Councils (RCC), and national audits of LG. These are fairly common features, though not the only ones necessary, and whether they still give room for genuine local autonomy depends on how they are wielded in practice.

Box 1: Essence of local government

Successful decentralization entails giving local government a clear mandate, architecture, and functions, and considerable discretion over the use of its funds and implementation, to obtain alignment with local preferences. The discretion given to local government is meaningful when adequate financial resources are provided, and when consideration of spending needs is tempered with a sufficient measure of locally raised taxes to pay for services rendered. With the scrutiny of tax payers, and a public that not only elects a council but insists on direct participatory democracy, local government is expected to be responsive, and yet spend within its means, and to search for efficiencies and innovation in the delivery of services. Through an appropriate national policy and legal framework, local government is also provided with ongoing guidance and mechanisms for working in concert with national institutions to pursue national goals.

As with many constitutions, there are gaps and lack of clarity in Ghana’s Constitution. To begin with, it is not clear if the entire **Chapter 2** dealing with the creation and adjustment of regions has anything to do with local government. It appears that the focus is entirely on regions in the sense of the 10 administrative regions of Ghana, which are administered by Regional Coordinating Councils (also taken up in **Art. 255** of **Chapter 20** dealing with local government and its relationship to Regional Coordinating Councils). It is unusual to see an entire chapter of a constitution devoted to administrative aspects of subnational level administration (non-political) that might normally be found in a law or even an

executive instrument.

Turning to what definitely concerns LG, it is not immediately clear if the broad principles that are tied to the term “local government” imply that they pertain equally to other levels of local government besides the district; urban councils, town councils, area councils, unit committees (in Ghana often called “district sub-structures”). Such scope of application might indicate to some that there is no hierarchy and little integration of systems (e.g. civil service) between levels of local government. That may or may not have been the intent of the Constitution’s drafters.

The relationship between the RCC and district assemblies is also not clear, nor are the modes of decentralization possible. **Art. 254** seems to hint at agency/delegation (where the Central Government continues to hold on to the “provision” responsibility) but may in fact refer to further “devolution” (where provision responsibility is transferred to LG, with the Central government only retaining some policy guiding instruments).

The financing provisions are also of dubious value. Selecting 5% as the floor for transfers from national revenues seems arbitrary, as there is no inkling in the constitution of the functional load being placed on local government. A strongly worded principle that functions ought to be matched/accompanied by sufficient financial resources would be more appropriate. The setting of a low minimum amount can trap local government at this level,

inhibiting the development of local government. Some countries apply such a proportion floor, but place it in a law like Indonesia (the block grant is 26% of net national revenues as indicated in the national budget) and the Philippines (40% of national internal revenue taxes). Placing the floor in a law makes it more amenable to explanation and adjustment.

Suggestions for the LGA review:

In concluding this brief overview of the constitutional provisions on decentralization and local government, several points need to be stressed. There has been a good effort to capture the essential features of local government in the Constitution, but more effort will be needed to ensure that the Constitution can act as a proper guide to government/legislators in realizing the vision embedded in the Constitution. The nature of LG (structure, scope and autonomy) needs to be better defined and guided by the Constitution, and should reflect an updated national consensus. Some of the substantive themes briefly touched upon in this sub-section will be picked up in subsequent sections.

LGA and its Larger Legal Frame

The size of the LGA and its larger legal matrix

The LGA contains 14 parts, encompassing 164 provisions (sections) and eight schedules, covering 74 pages of text. This is a reasonably detailed Act, but certainly not as elaborated as some others that have been constructed or revamped within the following decade, as shown in Table 1:

Table 1: Comparison of texts of Ghana LGA with similar Acts

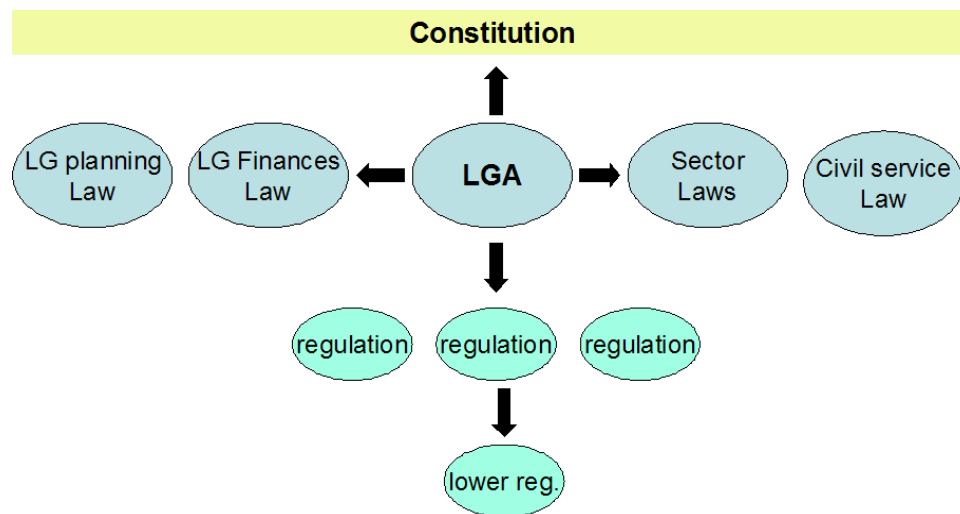
Country	Title of Act/Law	Parts/ Chapters	Main Provisions /Sections	Pages (actual or estimated)
Cambodia	The Law on The Administration and Management of Commune/Sangkat 2001	10	90	18
Yemen	Law Concerning the Local Authority 2000	9	174	43
South Africa	Municipal Systems Act 2000	12	124	65
Ghana	Local Government Act 1993	14	164	74
Nepal	Local Self-Governance Act 1999	29	268	81
Indonesia	Law on Regional Government	16	240	117
Namibia	Local Authorities Act 1992	18	96	120
	Regional Councils Act 1992	9	46	55
Balochistan (Pakistan)	The Balochistan Local Government Ordinance 2001	19	196	209
Ontario (Canada)	Municipal Act 2001	17	495	290

This comparison is only useful if the LGA is seen within the matrix of legal instruments that govern local governments. These are shown graphically in Figure 1, and include:

- Constitution
- Legal instruments stemming from the LGA
- Laws on financing
- Laws on planning

- Laws on audits
- Laws on administrative procedures
- Laws on civil service
- Laws on election processes
- Laws on political parties
- Laws governing sectors (health, education, water, agriculture etc.)
- and more...

Figure 1: LGA in the larger legal matrix for LG



The variability in the texts lengths of LGAs depend largely on the division of topics and depth of treatment chosen among all of the above possible legal instruments. The choices made are very particular to the context. There are some policy and legal principles and procedures that can help to make the overall framework coherent, but it must be said that many countries fall short in their application.

With the conceptual understanding indicated by Figure 1, in addition to the LGA, the following Acts and subsidiary instruments (among others) also influence LG:

- Local Government (Urban, Zonal and Town Councils and Unit Committees) Establishment Instrument of 1994, LI 1589;
- Financial Memoranda for District Assemblies (2004);
- Local Government District Tender Board Regulations (LI 1606);
- National Development Planning (System) Act 1994 (Act 479);
- National Development Planning Commission Act 1994 (Act 480);
- District Assemblies Common Fund Act 1993 (Act 455);
- Local Government Service Act 2003 (Act 656) (LGSA);
- Financial Administration Act (Act 654);
- Public Procurement Act (Act 663);
- Internal Audit Agency Act (Act 658);
- Institute of Local Government Studies Act 2003 (Act 647);
- Individual Acts to establish District Assemblies;
- Sectoral Acts and subsidiary instruments (specifics not known to reviewer).

While the scope of this review does not extend to these Acts, some comments will be made on some of these in the relevant sections of the review, in particular the Local Government Service Act 2003 (Act 656) (LGSA), which supersedes provisions of the Civil Service Law 1993 (PNDCL 327) pertaining to local government service.

Follow through on subsidiary legal instruments

In terms of the subsidiary legal instruments that are to follow the LGA, and excluding those used by the LGs themselves (e.g. bylaws), the list is surprisingly short (Table 2).

Table 2: Required or possible legal instruments emanating from LGA provisions

Topic	Article of LGA	Instrument
Declare and name a district	1(2)	Executive instrument
Establishment of DA, Sub-Metropolitan District councils, Urban or Zonal Councils, Town or Area Councils, Unit Committees	3	Legislative instrument
Establishment of Metropolitan District Assemblies	26(2)	Legislative instruments
Guidelines for DA charging fees	34	Legislative instrument
Local Government Service	37(1)	Act
Declaration of DA default, dissolution or suspension of DA	43	Executive instrument
Procedure for issuing permit by District Planning Authority; activities not requiring a permit	49(2)	Regulations
National building regulations pertaining to DA bylaws on building	63	Legislative instrument
Income sources in Sixth Schedule of LGA	86(4)	Legislative instrument
Control and management of DA finances	91(1)	Written instructions
Rates for property assessment	100	Guidelines
Effecting any provision in the LGA	158	Legislative instrument
Amend Schedules of LGA (except seventh)	159	Legislative instrument

The Ontario LGA lists over 50 instances where a Minister may issue regulations to frame municipal action. The recently revised LGA for Indonesia has over 30 provisions requiring subsidiary regulations (in this context used generically to mean the existing range of legal instruments subsidiary to law). Yemen come in at about 20 provisions that need another legal instrument to attain elaboration.

The surprising small number of provisions (10) calling for subsidiary regulations (and one provision calling for a complementary law) in the Ghana LGA is somewhat deceptive. The scope of the legislative instruments in [Articles 158](#) and [159](#) actually give unlimited scope for the issuing of legislative instruments to put into effect the provisions of the LGA, and even to amend the first six schedules of the LGA. The two legislative instruments listed above (LI 1589 and LI 1606) are not explicitly called for in the LGA, and have been prepared under the umbrella of [Article 158](#). There may be many more that have been issued since.

This unusual construction has some advantages (flexibility, ease of drafting – sidestepping contentious details) but raises possible problems down the road. It is difficult to know what

regulations have followed suit over the years as these are not specified or demanded in the LGA; the public does not easily know which provisions are current. Also, regulations will possibly be created ad hoc and may not respect the intent of the LGA. There may be a resulting “instability” of policies, and insufficient democratic scrutiny/approval that all may work to threaten the effectiveness and legitimacy of the law.

It should also be noted that some of the above instruments are qualified by the term “may” and so it is difficult to say if they really ought to come into being or not. Whether the mentioned subsidiary regulation is necessary or optional, the reviewer does not have the information at hand to determine if there has been the intended follow through, and whether the instruments respect the wording and intent of the LGA. That should be part and parcel of an assessment of the LGA.

Conflict between legal instruments

One of the most problematic issues in crafting an LGA and realizing it on the ground is the frequent duplication and inconsistency seen between provisions in the LGA and sectoral laws/regulations. The harmonization of all of the above legal instruments can be aided if a political decision is made (by government/parliament) to have an overarching law that sets out the main features and roles of local government- typically the “LGA”. However, the LGA cannot cover all relevant provisions, and probably should not try to do so. It is common to have this law limit itself to key principles and procedures, and to have some detail on the machinery of local government. More detailed treatment of finances, electoral processes, specific assignment of functions and other issue are often addressed in complementary laws/regulations.

To the extent that the Constitution already provides principles and some decisions on the nature of local government, it becomes easier to develop a coherent body of laws governing LG. Where the Constitution is vague, contradictory, or silent on key issues, and political agreement is lacking, it is likely that conflicting streams of legislation/regulation will ensue, particularly between decentralization/LG law (e.g. LGA) and laws on finance, civil service and laws governing sectors. The reviewer has noted a distinct lack of harmonization of these laws in decentralization efforts of Indonesia, Cambodia, Nepal, Pakistan, and Yemen. In some cases, even where Constitutional provisions are clear, the laws themselves blatantly veer from these provisions; this indicates a larger challenge of “rule of law” in some countries.

Quality and Legitimacy of Legal Text of the LGA

The LGA is generally clear, but does suffer from the following shortcomings:

- It is imbalanced in terms of content
- Inconsistent organization
- Poorly crafted language or formulation
- Inconsistency with tenor or provisions of Constitution

The LGA does not actually deliver what it promises; it is vastly more about the District Assembly than local government as a whole. Only Articles 3, 15, and 66 make reference to local government other than the District Assembly, and these are not sufficient to give any

sense of how they are to operate. In fact, the Regional Coordinating Council (Art. 140-146), which is not “local government” but a deconcentrated level of administration) features more prominently in the LGA than local governments other than the district (urban councils, town councils, area councils, unit committees). This heavy slant towards the DA appears to run counter to the Constitution, which affords some key governance features (Article 240(2)a.-e.) to all local government.

Imbalance is also evident in the detailed treatment of some topics, that might better be addressed in subsidiary regulations, and light treatment or outright neglect of topics that need policy certainty. The provisions on the rates for property taxes is one example of the former, and the few provisions on the creation, dissolution or adjustment of district boundaries is an example of the latter.

The organization of the LGA makes it difficult for the reader to follow through a particular topic. For instance, the creation of LG, dissolution of LG, and boundary adjustment of LG is probably best treated sequentially in one chapter. In the same vein, the treatment of LG organizational structures in Article 38 equates departments (organizations) as if they were one and the same as LG functions. This is both a matter of poor organization of the law and of improper conceptualization.

Had a proper balance been struck in the treatment of all levels of local government, then the LGA might have best been organized more by management topic (functional assignment, supervision, financing, planning, etc.) rather than the DA centric mix it now contains. The treatment of functions of local government is a case in point; it is particularly chaotic, revealing shortcomings in conceptualization, coverage, and organization.

While many provisions in the LGA are sufficiently clear in their meaning, some are obscure or grammatically deficient, forcing the reader to divine their intent. For instance 21(2)f.(v) calls for the Executive Committee “to recommend to the DA the monitoring and evaluation of all policies, programmes and projects”. It would seem that the EC is more likely to advise on policies or approaches for monitoring and evaluation, and recommend actions resulting from findings of implemented monitoring and evaluation activities.

In addition to the serious neglect of other local governments, the LGA seems incompatible with the Constitution in the provision enabling the DA to delegate functions to other lower levels of local government. Lacking any explanation to the effect that this delegation cannot relieve the DA of the responsibility for the provision of the functions it has been assigned by the “Central Government,” the provision is in contravention of Art. 240(2)(a) that requires functions to be assigned to local government by the Central Government through laws.

Suggestions for the LGA review:

The policy makers (guiding body) behind the review of the LGA should begin their work by analyzing the problems met in decentralization, and developing principles and expected results that might shape a future revision. This review should encompass all the key building blocks of decentralized governance and make linkages to all of the relevant legal streams influencing the LGs. An effort should be made to link the Ghana approach to decentralization to international understandings/typology of decentralization, differentiating between deconcentration, delegation, and devolution (see Appendix 2, and the section on functional assignment). Ideally this analysis and vision should be captured in a discussion paper that becomes the basis for consultation.

The review team should also clearly lay out all of the legal instruments that have been prepared based on explicit or implicit provisions of the LGA, to determine the current state of regulation in a systematic way. Issues of legal principles, coherence, and fit with relevant legal streams should be part of the review.

In the ideal case, the constitution itself might be improved where necessary, to create a stable policy umbrella for LG. This may not be feasible in the short term however, and some second-best options may have to be accepted in the short to mid-term.

Once policy makers have agreed on directions for the review, it is important to spend the time needed to undertake analysis and policy formulation, and to later enlist the best legal expertise available to translate substantive points into proper legal form for any proposal that is carried to the drafting stage. The shortcomings mentioned in this section should be reduced as much as possible. A mechanism to harmonize relevant laws (especially in the sectors) also must be anticipated.

II. DECENTRALIZATION GUIDANCE/OVERSIGHT

Neither the Constitution nor the LGA stipulates how the implementation of decentralization reforms is to be managed and coordinated. Many countries have found it useful to establish a body that gives decentralization its initial impetus in accordance with the new legislation, and refines decentralization policy on an ongoing basis. This kind of body is different from the mechanisms established to supervise and support LG on an ongoing basis. It is policy oriented, and draws its information and recommendations in part from the ongoing supervisory system.

Oversight bodies of this kind always include the executive side of central government, but may also include other key actors; politicians, experts, or LG representatives. Examples of such bodies that have legal justification in LGAs are provided in Table 3.

Table 3: Existence of decentralization guiding bodies rooted in the LGA

Country	Decentralization Coordinating Body in the LGA	Membership
Cambodia	National Committee for Support to Communes/Sangkats	Part of the Supreme Council for State Reform; Ministers and one Director –General
Yemen	Law Concerning the Local Authority 2000	Ministerial committee, competent ministers - chaired by the Prime Minister
Nepal	Monitoring Committee	Central Government and politicians (including opposition members)
Indonesia	Council for the Deliberation of Regional Autonomy	Central government, representatives of regional government, and selected experts
Philippines	Oversight Committee	Senate, House of Representatives, Central government, LG Leagues

The oversight bodies may be temporary (e.g. Yemen) or permanent (e.g. Indonesia), although the temporary bodies seem to be “renewed” on their expiry date if they are seen to still be needed.

In some countries, this oversight body precedes decentralization legislation and may not actually be mentioned in the LGA (e.g. the Decentralization Policy Implementation Committee in Namibia that played a role in the Decentralization Implementation Plan of 2001 but was subsequently not included in the LGA).

The mandate of such a body may also be broader than decentralization. In Pakistan for instance, the National Reconstruction Bureau was struck by the federal government (and later added to the Prime Minister's Secretariat) to guide state reforms, and was the prime mover in the 2001 decentralization effort.

In the late 1980s, Ghana established a Decentralization Oversight Committee under the office of the PNDC Member and Chairman of the Committee of Secretaries. This role later reverted to the Ministry of Local Government and Rural Development (MLGRD)⁴. There was furthermore a Presidential Advisory Committee on Decentralization established in 2005. The reviewer does not know how helpful these bodies are perceived to have been during their

⁴ Ministry of Local Government and Rural Development (1999). Comprehensive Development Framework – Decentralization, November.

tenure. There is no guarantee that such a body will be successful in overcoming resistance (particularly among sectoral departments) and that its members will all work from the same script. Even so, countries are attracted to these bodies for good reasons - in principle, this inter-ministerial body (or one of even broader membership) can provide political muscle and a coherent vision to keep decentralization on track.

The participation of local government representatives in such a body may be helpful, but the absence of LG representatives does not necessarily lead to sub-optimal results, provided there are other mechanisms to consult with LG and their associations in the development of LG policies. It is notable that Indonesia had explicitly required associations to be represented in the Council mentioned in Table 2 in the 1999 LGA, and subsequently has left the matter vague in the 2004 law (the representatives may be individual governors or regents rather than formal representatives of regional government associations). Some efforts are being made however to develop policies in consultation with the associations.

Suggestion for the LGA Review:

A significant revision of the LGA is an important and weighty undertaking. It requires coordination across Ministries and linkages to various policy/legal streams. Should a revision be undertaken, the GoG may benefit from (re)establishing a temporary inter-ministerial body to guide the effort, and should consider including NALAG in this group. Appropriate expertise also needs to be drawn into the process, either from within the guiding group or from outside for specific analytical and policy formulation efforts. The guiding body would also have the responsibility for ensuring that stakeholders are consulted in the review and that this is done in an appropriate way.

This guiding body, perhaps in modified form, could be embedded in the LGA and guide the transformation that is called for in the revision of the LGA. The LGA provision may limit the duration of this body, or give it an ongoing life. In the latter case, it would need to be properly connected with the regular supervisory system for LG.

III. TERRITORIAL STRUCTURE

Territorial divisions and their relationships

General remarks:

The relationships between levels of government are not adequately addressed in the Constitution or the LGA. The few provisions in the LGA that relate to local government other than the DA are vague or can lead to multiple interpretations of the architecture of local government, some seemingly incompatible with the intent of the Constitution.

Key provisions:

Chapter 2 of the Constitution contains several provisions on the “territories” of Ghana, but deals only with large administrative regions. **Article 240(2)** of the Constitution accords to local governments “functions, powers, responsibilities and resources”; support for “the capacity of local government authorities to plan, initiate, co-ordinate, manage and execute policies in respect of all matters affecting the people within their areas”; and a “sound financial base with adequate and reliable sources of revenue”; staff that is “subject to the effective control of local authorities.” **Article 241(3)** of the Constitution states that “Subject to this Constitution, a District Assembly shall be the highest political authority in the district, and shall have deliberative, legislative and executive powers.”

Art. 21(2)e. of the LGA states that “The DA Executive committee is expected to “develop and execute approved plans of the units, area and towns and sub-metropolitan districts.”

Analysis:

The title of **Chapter 2** of the Constitution is very misleading, suggesting that all of the territorial divisions will be addressed, when in fact only the administrative regions are treated. The use of the term “territories” connotes, internationally, some kind of political autonomy. Regions in Ghana are essentially deconcentrated entities of the central government, with no autonomy in the sense discussed in the context of local government as understood internationally.

In **Chapter 20**, the Constitution seems to indicate equal status among local government in **Article 240(2)**, in terms of key features. But the picture is cloudy when different parts of the Constitution are examined. Since the district is understood to mean an “area” (geographic entity- at least in the LGA definition), this suggests that the Constitution, in **Article 241(3)** was referring to any and all local government units (at the very least) found in the district when it set the DA as the “highest political authority”, implying that there is a hierarchical relationship between the DA and other units of local government.

The few references in the LGA to non-DA local government (urban councils, town councils, area councils, unit committees) seem to suggest also that there is some kind of hierarchy in LG structures. If the articles on the delegation of functions from DA to other LGs are also thrown into the mix (see below), it further reinforces the notion of hierarchy, one that is left rather unexplained however.

Suggestions for the LGA review:

It may be best to revisit the Constitutional provisions on the territorial structure of Local Government. The emphasis on the “region” can be greatly reduced in the Constitution, and a more detailed treatment of local government levels and how they relate to each other added. In doing so, policy makers should draw from a number of international experiences that

indicate what degree of “autonomy” can be given in multi-level local government and the means by which hierarchy can be achieved where necessary or avoided where not desired.

Forming, Adjusting, and Dissolving LG Units

General remarks:

The guidance in the Constitutions is focused on regions, and the LGA does not provide sufficient details on LG itself.

Key provisions:

The Constitution states in [Art. 241 \(2\)](#) that “*Parliament may by law make provision for the redrawing of the boundaries of districts or for reconstituting the districts.*”

In the LGA, the President has the dominant role in creating districts ([Art. 1.\(2\)](#)). The President considers the advice of the Electoral Commission for new district creation ([Art. 1.\(3\)](#)), and the latter applies criteria contained in [Art. 1.\(4\)](#). The Minister must use a “*legislative instrument*”⁵ to establish a District Assembly “*for each district.*” ([Art. 3](#))

Analysis:

The above legal construction does not seem consistent. It would appear that the Constitution sought to give Parliament the main role in reshaping districts. Yet the LGA gives the dominant role to the executive, with the President only needing an executive instrument to create districts ([Art. 1.\(2\)](#)). The Minister may then establish a district assembly with the use of a legislative instrument ([Art. 3](#)). The requirement for two kinds of legal instruments, and the division of labour between the President and Minister, in the creation of a district versus a district assembly does not seem to have a logical basis.

The use of either an executive or legislative instrument contradicts the Constitution, which calls for a law ([Art. 241\(2\)](#)). The short time (21 days) given to the Parliament to review the legislative instruments prepared by the executive may not allow them to give them the same scrutiny as given to bills. In many countries, the legislative side has the ultimate say, through an Act/Law, in the creation of new local governments on the scale of a Ghanaian district (laws are required in Indonesia, Namibia, Philippines, Canada). In some cases a referendum in the affected LG is also needed to approve the changes (see for example [Art. 441](#) of The Philippines’ LG Code of 1991). There are however countries where LG can be created and reshaped by executive instruments alone (e.g. Republican Decrees in Yemen; Royal Decree in Cambodia, Presidential notice in Namibia). Because territorial structure is so determining in defining the nature of LG capacity and autonomy, it is good practice to have decisions made at a political (i.e. legislative) level.

In the Ghanaian case, a possible check and preparatory analysis comes from the Electoral Commission. However, the chair/deputy chair of the Electoral Commission is appointed by the President, making this a weak check. The official functions of this Commission as outlined in the Electoral Commission Act 1993 do not explicitly cover this task of recommendation on district creation, and the make up of the Commission may not be suitable

⁵ “A Legislative Instrument is a formal legal document issued by the Executive or independent authority, which has been approved by a resolution in Parliament” The Parliament of Ghana, [The Legislative Instruments](#), http://www.parliament.gh/const_legislative.php. [Art. 11\(7\)](#) of the Constitution states that any Order, Rule or Regulation made under a power conferred by the Constitution or any other law, shall be laid before Parliament, published in the Gazette and come into force after twenty-one sitting days of Parliament, unless two-thirds or more members of Parliament vote to annul it.

to the analysis and recommendations that must be made to the President. The Commission can bolster its capacity by forming committees that involve external members, and thus in principle provide sound expert advice to the President in the creation of new districts, but the reviewer does not have the information available to assess whether this is feasible in the Ghanaian context.

The separate establishment of a District Assembly, following the creation of a district, must be effected by a legislative instrument. Since the legislative instrument has to be agreed by Parliament (even if it is crafted by the executive and rushed through Parliament), then it seems appropriate to also establish the District Assembly by law, that is via the Parliament when the latter establishes the district, making the entire process accord with the constitutional requirement that districts be established by law. In other words, separating the creation of the “district” from the “district assembly” seems unnecessary.

Looking beyond the text itself, it is clear that districts have been growing in number, from 110 in 1993 to 138 in 2006. When 110 districts were in place, the average district population was 159,300⁶. The reviewer cannot calculate what the new average might be today, and assess whether the new districts have enhanced abilities to discharge their responsibilities and bring about the outcomes desired of decentralization. It has been shown in Indonesia, through a World Bank study, that a district of 500,000 is twice as efficient administratively as one of a 100,000⁷; that should be a red flag for Ghanaian policy makers. It might be wise to undertake a similar study in Ghana, comparing the performance of new and older districts, against a normative framework on the expected nature and functions of districts.

In view of the above, and on the basis of a more holistic assessment of this topic, the reviewer notes that the section on district formation lacks complementary provisions typically found in LGA around the world (or in subsidiary regulations expressly stated in the LGA), namely:

- How some of the criteria in [Art. 1.\(4\)](#) on district creation are made operational.
- How new district proposals are prepared and reviewed.
- When districts can be dissolved and who can dissolve them (legal instrument).
- How district boundaries can be changed (e.g. for purposes of urban expansion).
- What role districts have in forming and shaping smaller units of LG.

Suggestions for the LGA review:

In a possible revision, consideration should be given to clearly making new districts/DAs a decision of Parliament formalized by law. The LGA should have sufficient treatment of the process for establishing, merging, and dissolving districts (or adjusting boundaries). While the process is highly political and the decision will ideally be one taken in Parliament, the LGA should specify that an administrative review is necessary in all cases of district creation, dissolution, or merger. The broad features of the methodology should be embedded in the LGA, and elaborated in an executive instrument.

The formation and reshaping of lower levels of government should also be clearly addressed in the LGA, with consideration given to allowing the District significant discretion within a

⁶ Appiah, Francis et al. (2000). Fiscal Decentralisation and Sub-National Government Finance in Relation to Infrastructure and Service Provision in Ghana, World Bank, pg. 11.

⁷ See Hofman B., Kaiser K. The Making of the Big Bang and its Aftermath- A Political Economy Perspective, Jakarta, World Bank; 2002.

general national framework. The latter approach assumes that some degree of hierarchy between the DA and lower level LG is desired.

IV. FUNCTIONAL ASSIGNMENT

Mode of decentralization/typology of functions

General remarks:

Neither the Constitution nor the LGA sets out with any clarity how decentralization is understood, and there is no explicit connection to the mainstream international typology (deconcentration, delegation/agency, devolution).

Key provisions:

The Constitution **Art. 245** states that “*Parliament shall, by law, prescribe the functions of District Assemblies.*” **Art. 254** “*Parliament shall enact laws and take steps necessary for further decentralization of the administrative functions and projects of the Central Government but shall not exercise any control over the District Assemblies that is incompatible with their decentralized status, or otherwise contrary to law.*”

LGA **Art. 20(3)(d)** “*The District Chief Executive shall be the chief representative of the central Government in the district.*”

Analysis:

The few provisions in the Constitution and LGA that seem to apply are at best tangential, leaving the reader to interpret what might have been the overall framework for decentralization. The overall tenor of the Constitution seems to favour an interpretation that “devolution” is the intended mode of decentralization. The stipulation on the use of “laws” to effect transfers of functions would be in line with this view.

If other modes of decentralization are also to be in force, then these should be made explicit and a consistent elaboration seen throughout the Constitution and laws. In this respect, if **Articles 254 and 255** meant to introduce delegated or deconcentrated modes of decentralization, then this intent needs to be realized with clearer language.

Suggestions for the LGA review:

The review team should make explicit the modes/typology of decentralization it is working with, and ideally embed these modes within the Constitution (second best: in the LGA). By doing so, it may be easier to join the now separate Chapters of the Constitution (Chapter 2 on territories, which implicitly is focused on one aspect of decentralization, i.e. deconcentration, and Chapter 3 on decentralization/LG, which implicitly addressed all three modes of decentralization as understood in international practice/literature).

Functions of the district

General remarks:

There is little clarity or certainty (in the Constitution or the LGA) in the assignment of functions and how this was achieved or will be achieved. This is particularly the case for LG other than the DA. There is no distinction between functions that must be carried out (“mandatory functions”) and those that are at the discretion of LG, nor any clear mechanism to ensure compliance with intended levels of performance on “key/core functions.”

Key provisions:

The Constitution **Art. 245** states that “*Parliament shall, by law, prescribe the functions of District Assemblies which shall include - (a) the formulation and execution of plans, programmes and strategies for the effective mobilization of the resources necessary for the overall development of the district; (b) the levying and collection of taxes, rates, duties and fees.*”

In **Art. 2**, the LGA gives the following task to the Electoral Commission: “*review areas of authority of unit committees, town, area zonal, urban and sub-metropolitan district councils and district, municipal and metropolitan assemblies and make such recommendation as it considers appropriate to the President.*”

Articles 10(3)a-I,(4)(5)(6) provide general functions and responsibilities of the District Assembly, which are broad and stated in a permissive fashion.

Art. 13(1) lists seven legal instruments for which the DA is the executing authority.

Art. 15(1) allows the DA to “*delegate any of its functions to such sub-Metropolitan District Council, Town, Area, Zonal or Urban Council or Unit Committee or such other body or person as it may determine.*”

Art. 30(1) states that “*the Minister may authorize a District Assembly to provide omnibus transport services.*”

Art. 161(1) “*Every branch, division or unit of the Department or organizations specified in the districts of Ghana and in existence on the coming into force of this Act, shall cease to exist in the districts.*” **Art. 161(2)** “*The functions previously performed by the branches, divisions, or units of the Department or organizations specified in the Eighth Schedule to this Act shall be transferred to the relevant Departments of the District Assembly.*”

Article 6.(e) of the Local Government Service Act 2003 (LGSA) gives the Local Government Service Council the power to “*set performance standards within which District Assemblies and Regional Coordinating Councils shall carry out their functions and discharge their duties.*” Article 6.(f) gives the Council the power to “*monitor and evaluate the performance standards of District Assemblies and Regional Coordinating Councils.*”

Art. 36. of the LGSA amends the LGA by repealing **Art. 146(1)** and deleting the following from the Eighth Schedule: *Forestry Department; Office of the District Medical Officer of Health; National Fire Service; Department of Games and Wildlife.*

Analysis:

Differentiating between function and organization

Articles 161 (1)(2) of the LGA indicate the difficulties that policy makers face in distinguishing between function and form (organizations). Oftentimes, they will more easily relate to organizational structures as these are visible and less abstract. The dissolution of some “departments” in the regions, as if this was a means of sorting out functions, typifies this tendency.

A more principled approach to functional (re)assignment would have recognized that central government (CG) organizations that existed in the districts prior to 1993 stood in a relationship of “deconcentration” to their headquarters in the capital. In some cases perhaps some measure of operational autonomy may have been given and the relationship may have approached that of delegation/agency. In any case, the dispersed offices of the Departments could not be said to have the function of provision⁸; that rests with the CG. The functions of provision are discharged by one or more CG organization(s)⁹ and the latter may make use of

⁸ Over the last two decades, policy makers have become increasingly aware of the distinction between provision and production, where non-government entities may produce a service but nonetheless refer to standards and other policy imperatives of the local government, who remains the “provider.”

⁹ The department names and mandates may change over time in keeping with cabinet structure decisions – but the functions live on and adhere to the central government.

deconcentrated offices to discharge part of these functions. These offices then receive deconcentrated tasks relating to the functions held by CG (rarely are the dispersed offices delegated the entire function). In the case that these dispersed offices are abolished, their dissolution does not say anything about the functions that continue to be held (or are no longer held) by the CG, and what functions now reside in the LG that may physically take over the offices. A separate mechanism is required to formally transfer functions from the CG to the LG as these functions do not inhere in the dispersed CG organizational structures that had been set up by the CG to assist in their implementation.

As the Constitution states, if the state intends to transfer functions from the Central Government to the LGs, it must do so explicitly through laws. The deconcentrated offices can only be folded into the DA as physical assets, funding, and human resources – functions do not reside there. And it would not be proper to expect that the DA would now stand in the same relationship to central governments as the latter's dispersed offices; DAs should not be deconcentrated arms of central government (see the discussion on the DCE for the dual role of district executive and central government representative – that is a nuanced discussion that takes nothing away from the key points being made in this section).

Architecture of functional assignment to the DA

If the organizational changes are not at all helpful in delineating the new functions of the LGs, the other provisions in the LGA do not shed much more light. [Article 10](#) appears to provide broad mandates that are consistent with a “general competence” approach to functional assignment. This permissive formulation stands in contrast to an “*ultra vires*”/positive-negative lists formulation ((see Appendix 3 for a detailed discussion in the international context). Even so, there are some specific functions thrown into [Articles 13\(1\) and 30\(1\)](#). This mixture is rather peculiar, and raises the question of why other sectoral functions are also not listed.

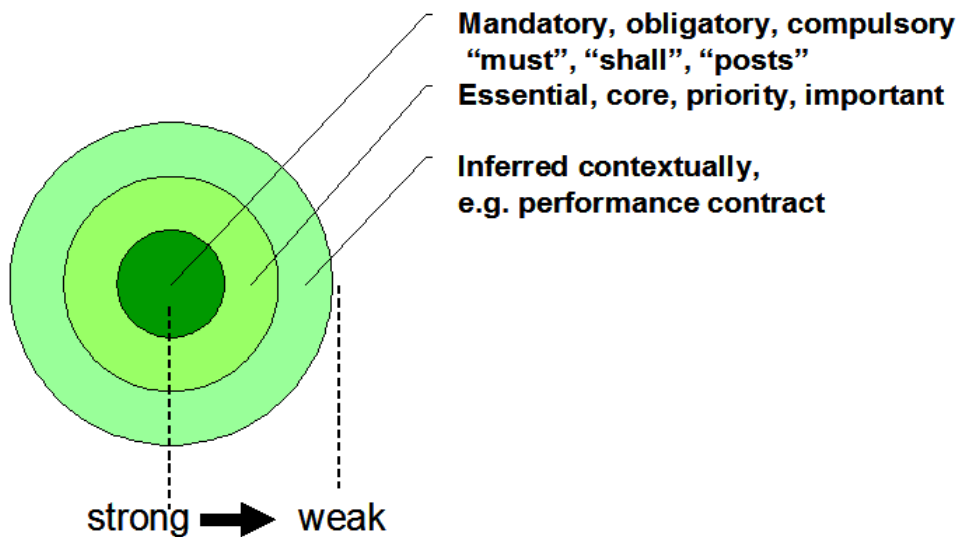
The general competence architecture is increasingly popular in OECD countries, but general competence does not mean that the CG is “hands-off”; it only means that LG is encouraged to take on whatever it needs to do within broad sectors or fields of activity, provided it does not contravene higher level laws/regulations or the “public good”. The Ontario Municipal Act 2001 and the Cambodian Law on The Administration and Management of Commune/Sangkat 2001 have a general competence formulation. Nepal instead has a positive list that has the appearance of being “mandatory” and also gives the appearance of working within an “*ultra vires*” understanding.

But a general competence formulation in an LGA is only part of the story. Outside of the LGA, Ontario has an additional set of municipal sector standards and other sectoral laws/regulations with LG policies, functional assignment and standards that impose obligatory function or performance obligations on LG. Many countries have some clarity and distinction between what LG may do (usually cast permissively, and sometimes in general competence form) and what they must do (see Figure 2 for some strong and weak terms used to convey prescription). Some countries however only state what a LG may do, and then provide little direction on what it must do (Namibia for instance).

Countries that employ obligations in functional assignment include Canada, Bulgaria, India, Germany, Nepal (all using some strong term such as the “Mandatory/Obligatory”), Pakistan (as conveyed by the term “shall”) and the Philippines (using “posts”). Some of these

countries are able to maintain a general competence formulation even with the presence of such obligatory positive lists (they do not fit the rigid “*ultra vires*” case).

Figure 2: Prescriptive formulation in assignment of functions

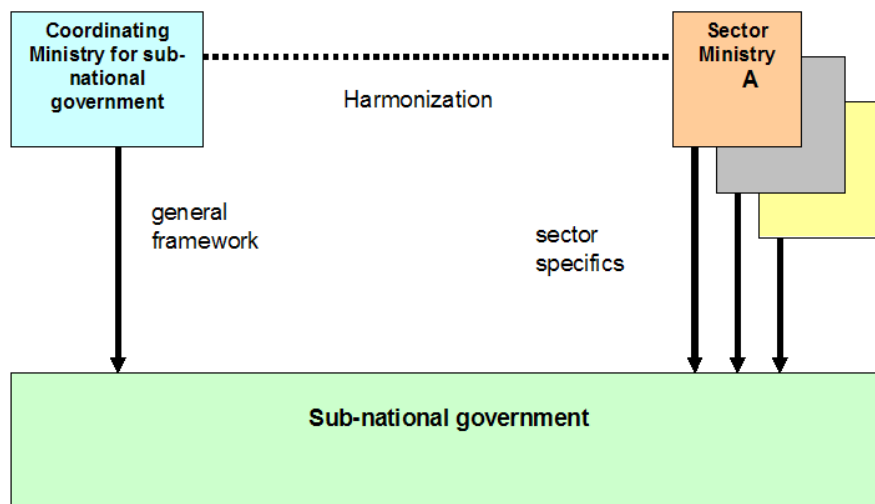


The overall “LG systems” in OECD countries are not neat and tidy, but they have developed incrementally over many decades, and work reasonably well; the LGA for Ontario is more or less complementary with sectoral legal streams. In the Cambodian case, which is typical of many developing countries that have forged ahead with decentralization through a progressive LGA cornerstone as a first significant step, the sectoral streams have not been adjusted to provide the complementary laws/regulations needed to make the system coherent. And herein lies the danger in using a general competence formulation in an LGA: if it is not complemented by reasonable obligations (via a positive list of functions or specific services) on what is expected of LG (usually placed in sectoral streams as shown in Figure 3), then the state loses important levers to guide LGs. Ultimately it finds other levers, but these tend to be intrusive, ad hoc or counter to key provisions of the framework (e.g. directives, specific financial grants with input conditionalities), undermining the entire notion of general competence/LG autonomy.

The Ghanaian LGA is not the only weak instrument in functional assignment. The Constitution itself conceptualizes the functions of LG as coming from the “Central Government.” This view may be excused if the state (complex of institutions, including the legislative and executive branches) has formally placed functions with the Central Government through laws (as when the Cabinet is formed with specific mandates), but even then it is possibly off-base. It is common-place but conceptually misleading to think of governmental functions in a unitary state as residing with the central government. In a more fundamental sense, it is actually the state that bears the functions, based on mechanisms that give it sovereignty and legitimacy. This is a useful point to remember, since it means that the promises made to the people in the Constitution fall on the state to realize. It is the state that decides the role of the “local state” in discharging certain functions. This is necessarily to be done through laws (involving the legislative side – aided by the executive) that are consistent with the Constitution. Hence devolution of functions fundamentally originates with the state, not the Central Government, even if the latter is discharging the functions at the time a

decision is taken to devolve the functions to LG. Approaching functional assignment from this perspective allows policy makers to recognize the importance of “getting it right” in the Constitution, in terms of rights and obligations of the state, and taking great care to shape the state-LG relationship so as to safeguard the state’s interests as this local player is brought into the effort to discharge the obligations of the state towards its citizens.

Figure 3: Typical streams of sub-national government regulation



It is not possible for the reviewer to verify if Ghana is aligned with the above normative approach to functional assignment. Indications are that it may not be. Some of Ghana’s sectoral laws predate the 1993 decentralization reform (e.g. Education Act 1961) making it unlikely that this sector has been aligned with the LGA or is complementary to it. If the assignment of functions is subsequently found in post-1993 “policy” documents (such as the Education Strategic Plan, 2003-2015) this may signal that interim or pragmatic solution has been found, but it is poor law making as it veers from Constitutional provisions and good practices.

In practice, for some functions, the soundness of the legal architecture is not an issue. It may be a common perception or working assumption that District Assemblies have the responsibility to build, equip and maintain schools. But in addition to basic education, there also needs to be clarity and consensus on who is responsible for adult literacy, early childhood education, technical/vocational education, and others. Within each of these sub-sectors of education, it is important to have clarity on the specific functions or tasks assigned to LG. For instance, in terms of basic education, CG and LGs need to be clear on their respective roles in setting curriculum, testing students, setting the school term and hours, setting of teacher qualifications, recruiting and placing teachers, setting of standards of quality and access (e.g. students-teacher ratio), mechanisms for parent/teacher involvement in school management etc. Most of these details should be placed in sectoral laws/regulations.

The uncertainty in functional assignment in Ghana is evident in the varied understandings of stakeholders and observers. Some refer to the “86” functions decentralized to the DAs,

though it is not at all clear how this figure is obtained¹⁰. Reference has been made to 10 functions, that are actually (wrongly) expressed as “sectors”.¹¹

On the positive side, fuzziness allows ministries to proceed at their own pace and apply an asymmetric approach to effecting the transfer of functions, in line with perceptions of readiness or ability to provide capacity development. However, this delay in applying the cornerstone decentralization law (and Constitution!), and uncertainty in who is responsible for a given service, may frustrate districts and citizens and reduce accountability. Moreover, it is generally difficult for most central governments to handle complex asymmetry. Some degree is found in OECD countries (e.g. Ontario, Canada) but the asymmetries are exceptions to the rule of common functions among municipalities.

A positive feature of the LGA is that it seeks to introduce a mechanism to review the assignment of functions, giving the Electoral Commission this role ([Art. 2](#)). While the intent is sound, in clarifying or adjusting functional assignment, policy makers may also need to revisit this mechanism for reviewing the state of affairs. As discussed in the previous section, an inter-ministerial team may be more appropriate.

Suggestions for the LGA review:

A more fundamental approach to functional assignment is needed to add clarity and legal coherence. Attention should be paid to the fit of the LGA with sectoral laws/regulations, and balancing a general competence formulation in the LGA with adequate obligations that make clear what LG must do in essential/core public services (e.g. standards of service performance).

Functions of LG units below the district

General remarks:

The non-DA roles and functions of LG represent an underdeveloped aspect of the LGA.

Key provisions:

[Art. 15\(1\)](#) allows the DA to “*delegate any of its functions to such sub-Metropolitan District Council, Town, Area, Zonal or Urban Council or Unit Committee or such other body or person as it may determine.*”

Analysis:

It may well be that the roles and functions of the non-DA LG in Ghana are well laid out in a legislative instrument that is subsidiary to the LGA (if so this is not available to the reviewer). However, it is good practice to provide a frame for these roles and intergovernmental relationships in the Constitution or the LGA, and in this respect some revision is desirable.

Additionally, what is outlined in the LGA is potentially problematic. [Art. 15\(1\)](#) opens up the danger of the DA shedding (or assuming it has shed) its responsibility for the provision of a

¹⁰ Ministry of Local Government & Rural Development (1999). Comprehensive Development Framework – Decentralization, November, pg. 8.

¹¹ See ISODEC (2005). Budgeting and Accounting Structures of District Assemblies by the Centre for Budget Advocacy, pg. 65. It is patently inconceivable that an entire sector such as health or education can be devolved to the DA.

public service which it once held, by turning it over to other lower levels of local governments, or even the private sector and individuals. If the DA has been entrusted by the Central Government/State to provide a particular function/service, then the DA should only be able to delegate the production part of the function/service. Art. 15(2) sets limits on the delegation (the receiving entity cannot legislate, levy rates or borrow money) but this limitation is not sufficient to clarify that the DA is still responsible for the provision of a particular public service that it delegates to other LG.

As mentioned in the section on the Constitution, this delegation mechanism, as it stands, also contradicts the Constitutional provision (Art. 240 (2)(a)) that the transfer of functions is to be effected by law, and must come to LG from the Central Government.

To adhere to the Constitution, the functions given to the DA should be seen to remain with the DA. Production (implementation) aspects of these functions would be “delegated” (agency tasks) to the other levels of LG in accordance with some principles (e.g. available capacity, matching with resources). This allows for asymmetry, which has its challenges, but at this level asymmetry is more justified and probably more easily handled.

Suggestions for the LGA review:

Ideally, the roles of the lower levels of LG should be made clear in the Constitution, and the LGA. The revision should therefore be based on an analysis of the opportunities and impediments faced by these levels in promoting development. The relationship between the DA and these levels of government (versus higher level relationships with the lower levels) should be particularly clear, in terms of formation and shaping of number of units, boundaries, functions, financing, supervision and capacity development support.

V. LG FINANCING

General remarks:

There is very little guidance in the LGA on the financing mechanisms for the DAs, and none for lower levels of LG. The LGA refers to the District Assemblies Common Fund Act 1993 on grants.

Key provisions:

In [Art. 240 \(2\)c](#). The Constitution states that “*there shall be established for each local government unit a sound financial base with adequate and reliable sources of revenue.*” This is followed by [Art. 252 \(1\)](#) “*There shall be a fund to be known as the District Assemblies Common Fund.*” [Art. \(2\)](#) “*Parliament shall annually make provision for the allocation of not less than five percent of the total revenues of Ghana to the District Assemblies for development.*” [Art. \(3\)](#) “*The moneys accruing to the district Assemblies in the Common Fund shall be distributed among all the District Assemblies on the basis of a formula approved by Parliament.*” [Art. \(4\)](#) “*There shall be appointed by the President with the approval of Parliament, a District Assemblies Common Fund Administrator.*”

The LGA states in [Art.86\(2\)](#) that “*The District Assemblies Common Fund Administrator shall distribute monies from the District Assemblies Common Fund to District Assemblies in accordance with the provisions of the District Assemblies Common Fund Act 1993.*”

[Schedule 6](#) of the LGA sets out 10 categories of fees, charges and taxes. This schedule can be modified by “*The Minister in consultation with the Minister for the time being charged with responsibility for national revenue...by legislative instrument*” [Art. 86\(4\)](#).

[Art. 88](#) states that “*A District Assembly may raise loans or obtain overdrafts within Ghana of such amounts, from such sources, in such manner, for such purposes and upon such conditions as the Minister in consultation with the Minister responsible for Finance, may approve; except that no approval is required where the loan or overdraft to be raised does not exceed C 20,000,000.00 and the loan or overdraft does not require a guarantee by the Central Government.*”

[Art. 94](#) states that “*A District Assembly shall be the rating authority for the district,*” and [Art. 95](#) “*District Assembly shall make and levy sufficient rates to provide for that part of the total estimated expenditure to be incurred by it during the period in respect of which the rate is levied and which is to be met out of money raised by rates.*”

Analysis:

The LGA is remarkably short on the intergovernmental financing principles and mechanisms. The only general principles and provisions guiding the District Assemblies Common Fund Act 1993 are those found in the Constitution ([Art. 240\(2\)c](#)). These are generally procedural however and do not provide any sense of the values or objectives being pursued (e.g. horizontal and vertical equalization, discretion of LG, matching functions with resources). The setting of the size of the DA Common Fund at 5% of national revenues seems arbitrary and unconnected with anticipated functional load on DAs.

The borrowing provisions are underdeveloped, but at least they are positive (Pakistan provinces for instance do not allow LG to carry debt; communes/sangkat in Cambodia are also prohibited). Perhaps the provisions of the Ghana LGA are addressed in subsidiary regulations, but the LGA should probably enhance its provisions to make clear some basic principles and mechanisms for borrowing, such as clarifying the role of the CG in guaranteeing the loans, access to market credit, and who will develop the safeguards for LG borrowing.

The provisions in the LGA are weighted heavily toward locally generated revenues, and there is much detail on the “rates” (on premises, property or people), more detail than is generally found in LGAs (these details are usually reserved for subsidiary regulations). The revenue

discretion given to the DAs in applying the rates seem considerable, though they may be limited in practice by ability to pay¹².

Suggestion for the LGA review:

A proper assessment of the financing framework requires analysis of the combination of the Constitution, LGA and District Assemblies Common Fund Act 1993, and possibly legislative instruments that flow from these. In undertaking a revision, consideration should be given to clarifying the financing for all LG levels in the Constitution and LGA, at least in terms of broad principles and objectives being pursued. The LGA should be more balanced in terms of grants, borrowing, and local revenue provisions, leaving the details for the District Assemblies Common Fund Act 1993 or subsidiary regulations.

Ideally, the new provisions would have development and recurring costs covered from a combination of local revenues and a block grant that allows for considerable LG discretion. This discretion would however require, as a check, a well crafted supervision system to ensure that service performance expectations are set and pursued by LG.

¹² Rates collected by the Accra Metropolitan Assembly during 1999 were about 14.86% of total revenues (see ISODEC, 2005: pg. 32).

VI. LG SUPERVISION/SUPPORT

General remarks:

The supervision section of the LGA is on the right track. Some important levers for controlling LGs have been included in the LGA, and sanctions are made explicit. Some gaps exist on both supervision and support roles.

Key Provisions:

Art. 10(1) of the LGA calls on the District Assembly to “supervise all other administrative authorities in the district.” Art. 21(1)d. calls on the Executive Committee of the DA to “recommend, where it considers necessary, in the case of departments outside the supervision of the Assembly which are in the districts, to the appropriate government Ministry, Department or Agency the appointment and replacement on stated grounds of officers within the area of authority of the District Assembly.”

Art. 20(3)c. “The District Chief Executive shall be responsible for the supervision of the departments of the Assembly.”

Art. 42(1) “The President may cause to be investigated the performance of any function by a District Assembly...and give directions as appropriate.” Art. 43(1) “the President may, where it is necessary in the public interest by executive instrument, declare a District Assembly to be in default, and may by the same or another executive instrument a) direct the District Assembly for the purposes of removing the default, to perform such of its functions in such manner and within such time or times as may be specified in the executive instrument; or b) transfer to a person or body as he may think fit such of the functions of the District Assembly in default as may be specified in the executive instrument to be performed on behalf of and in the name of the defaulting District Assembly.” Art. 42(2) “the President may by the same or another instrument, dissolve or suspend the District Assembly concerned for such time as he may think fit or prohibit it from the performance of such of the functions of the District Assembly as may be specified in the executive instrument.”

Art. 47(1) “The National Development Planning Commission shall prescribe the format of district development plans.” (2) Subject to subsection (1) of this section, all proposed district development plans shall be submitted through the Regional Coordinating Council to the National Development Planning Commission for approval.”

Art. 80(1) Every bye-law made by a District Assembly shall be submitted to the Minister for approval or rejection. Art. 80(3) “The Minister may delegate his powers...to the Regional Coordinating Council.”

Art. 24. of the LGSA states that the Departments of District Assemblies shall “(a) be responsible for the implementation of the decisions of the District Assemblies; and (b) provide quarterly reports on the implementation of decisions of the Assemblies to the Executive Committees of the respective District Assemblies through the offices of the District Assembly.”

Analysis:

The CG has retained some important levers to ensure LG compliance, with the most determining being the power to dissolve or suspend the DA or place its management in the hands of a third party. In some countries, this CG power has, upon its introduction in the LGA, raised objections from LG/associations and observers (e.g. in Pakistan and Indonesia). But the reviewer notes that this power is justifiable and in line with international practice (it is seen in most LGAs); it simply needs to be used judiciously and in the context of prior support efforts and proportional and escalating sanctions (the Cambodian LGA for instance makes these principles of application fairly clear).

Both “preventive” (advance review/approval, as in the case of district plans) and “repressive” (after the fact) forms of supervision appear to be given to the CG. This is typical of many countries (e.g. Indonesia). The CG also has the option of delegating power of supervision to

the RCC. It is not known to the reviewer to what extent this delegation has been achieved, but it would seem to be a key mechanism to make supervision effective.

At the district level, the DA is on the one hand given the widest possible reach in its supervisory function in [Art 10\(1\)](#) and [Art. 10\(5\)](#), in the context of coordination (though it is not clear what is meant by “administrative authorities”). These articles combine to indicate that the DA has the power to influence all actors undertaking development in the district. However, [Art. 21\(5\)](#) seems to undermine this view by acknowledging that there are “departments outside the supervision of the Assembly.” The presence of deconcentrated offices of CG in the district is still a reality but this should not mean that the DA cannot have a well defined and limited supervisory role over these offices, particularly if the DCE is in fact acting as the representative of the central government. This comprehensive span of supervision (over decentralized and deconcentrated entities) is a construction that is not unknown (e.g. pre-1999 Indonesia) and is sound in principle.

As far as departments under the direction of the DA are concerned, the mechanisms for ensuring accountability is in part developed through a quarterly reporting system that is outlined in the LGSA. It is not clear why the LGA was itself not adjusted to add details now seen in the LGSA; from the perspective of LG and the public it is not helpful to disperse too many critical aspects of decentralized governance in too many laws.

The financial penalties mentioned in the Ghanaian LGA are numerous (they usually are paired with prison sentence penalties). These may age rather quickly in view of inflation, and may be better placed in subsidiary instruments that can be more easily updated. The fine of Cedis 2,000/day in [Art. 132](#) of the Ghana LGA may not have the force in 2006 which it had in 1993. It is notable, with regard to the diminishing value of fines, that Canadian provincial LGAs also contain stated fines, but that Cambodia, for instance, does not.

One of the missing pieces in supervision in the Ghanaian LGA is a mechanism (or more than one) to inform the public of the progress of the LG on development and governance. Countries with provisions to share information (accountability reports, annual reports) with the public include Cambodia, Canadian provinces, Indonesia. This is by no means a ubiquitous provision in LGAs throughout the world (Yemen does not have it, nor did Indonesia in its 1999 reforms) but it is fair to say that such a requirement is becoming more common in LGAs and is considered good practice.

Another missing piece is a lack of performance targets and tracking mechanism for key services provided by LG. If services are transferred to LG, and the bulk of financing transfers is to come from a block grant (as it is hoped at some point in the future), the high level of responsibility and discretion given to LG needs to be balanced with some clear expectations of performance in the reach and quality of service delivery. The supervision system should specify how service performance is monitored by the central government and what levers are open to it to ensure local level effort and compliance.

Turning to the support side (one of the uses or required follow-up of supervision), LGAs often include sections dealing with capacity development. In these sections they may state principles that will govern these efforts. Some determine to establish a typology of jurisdictions –related to administrative capacity or challenges of development (e.g. Nepal). These designations are intended to help in tailoring capacity development efforts. In some cases the capacity development function is part of the oversight role played by the

decentralization guiding body examined in section II of this report (e.g. in Cambodia). In the case of the Ghana LGA, there are no provisions that deal with capacity development.

Suggestions for the LGA review:

The LGA could benefit from some enhancements in the areas of LG supervision/support. These relate to adding clarity to the roles of the RCC and DA in supervising levels of LG beneath them; clarifying the role of the DA with respect to remaining deconcentrated offices of CG; specifying expected service delivery and reach; ensuring public scrutiny of LG decisions and results; bolstering the LG support provisions; updating or shunting fines amounts to regulations.

VII. LG CIVIL SERVICE AND ORGANIZATIONS

General remarks:

A fulsome degree of district autonomy is introduced by the Constitution and LGA, through a local civil service, own structures, and removal of deconcentrated offices. The LGSA confirms these directions but also backtracks (perhaps rightly) on the dismantling of some deconcentrated offices. On a particularly worrisome note, CG retains responsibility for paying for the civil service's operational costs.

Key provisions:

Article 240 (2)(d) of the Constitution provides that as far as practicable, persons in the service of local government shall be subject to the effective control of local authorities.

Articles 37(1)(2) of the LGA call for a separate law to establish a "*Local Government Service which shall form part of the public services of Ghana*", and gives the right to the DA to "*have such staff as may be necessary for the proper and efficient performance of its functions.*" **Art. 38(1)** directs the DA to "*establish the departments specified in the First Schedule of this Act.*" and **Art. 38(2)** states that "*The Minister may with the prior approval of the President amend the First Schedule to this Act.*"

Art. 161 (1) "*Every branch, division or unit of the Department or organizations specified in the Eighth Schedule of this Act which has been established in the districts of Ghana and in existence on the coming into force of this Act, shall cease to exist in the districts.*"

On the 18th February, 2003, the Local Government Service Act (LGSA) came into being, fulfilling the requirements of **Article 37** of the LGA.

Art. 17. (1) of the LGSA states that "*Government departments in any region of the Civil Service shall be known as Departments of the Regional Co-ordinating Council.*" **Articles 19./20.** establish a Coordinating Directorate of the District Assembly, responding to the District Chief Executive. The DA is limited to responsibility for the "*career progression and discipline of the officers in the Office of the District Assembly.*" (**Art. 20.(5)**).

Art. 23. (1) states that the "*Departments of a District Assembly, shall be headed by heads of Department of the District Assembly who shall be responsible for the efficient and effective performance of the functions and responsibilities assigned to the Departments.*" And **Art. 23 (2)** adds that "*The heads of Departments shall be answerable to the District Chief Executive through the District Coordinating Director.*"

Art. 36. amends the LGA by repealing **Art. 146(1)** and deleting the following from the Eighth Schedule: *Forestry Department; office of the District Medical Officer of Health; National Fire Service; Department of Games and Wildlife.*

Art. 28. states that "*The expenses of the Service, including the administrative expenses, salaries, allowances, operational and other expenses of the Service, as well as retirement benefits payable in respect of persons employed by the Service, shall be a charge on the Consolidated Fund.*"

Analysis:

It is rather inconsistent to treat the RCC as part of "local government", giving it a civil service of its own, unless perhaps the RCC are embryonic forms of representative regional government of the future; this metamorphoses is not foreshadowed in policy or law. As it stands, the RCC is a deconcentrated administrative and coordinating agency that is very much under the control of the central government - rather than being a political-territorial body.

The formation of a LG civil service is a positive development. However, it may not lead to more efficient LG formations, in part because of LGA Art. 28 which seems to introduce disincentives for rationalizing the district civil service. When the CG pays for the staffing/operations, it must then seek ways of rationing these resources and doing so equitably, but its information is generally not as good as local information. The incentives

for rationalizing LG should come primarily from local citizens, and the grant systems should seek to be at least neutral in relation to the size and efficiency of the local civil service.

The establishment of LG structures should allow LG considerable discretion (within a general guiding frame). The guidance provided by [Art. 38\(1\)](#) seems to suggest that the nomenclature of the LG departments must reflect those of the CG departments. This mimicry could result in rigidities at LG level that do not allow for merging and reconstituting LG departments in ways that reflect functions, geography, clients and other administrative/technological factors.

In the related [Art. 38\(2\)](#), it is also not clear if the government (Minister in this case) is empowered to change the name of the departments or recombine them, or can create or dissolve them at will, suggesting in the latter case that it is in fact giving or withdrawing functions of the DA. This potential confusion between functions and form (organizations) should be avoided.

Suggestions for the LGA review:

In treating the staffing and organizational side of LG, the LGA should put forward a frame that is not overly restrictive, providing incentives for the LGs to be innovative and seek efficiencies. The issue of shaping LG organizational structures should not be confused with the assignment of functions. Ideally, key provisions on staffing and organizational issues should be in one LGA rather than separate laws (as is now the case with the introduction of the LGSA).

VIII. LG PLANNING AND FINANCIAL MANAGEMENT

General remarks:

The provisions for planning, budgeting, and auditing are quite well developed, but the planning/budgeting system is rather centralistic and there are still missing provisions, e.g. the specific plans required of LG (such as land use plans, annual/mid term development plans) and participatory approaches.

Key Provisions:

Art. 10(5) states that the DA “shall coordinate, integrate, and harmonize” its programs and those of “Ministries, Departments, public corporations, and other statutory bodies and non-government organizations.” Where conflict arises between the DA and these bodies, or individuals, this is to be resolved by the Regional Coordinating Council” (**Art. 10(8)**).

Art. 12(1) states DA “shall perform planning functions assigned to them under any enactment for the time being in force.” Moreover, the instrument establishing the DA “may confer additional functions upon the Assembly and may provide for the relationship between that Assembly and the Regional Coordinating Council.” (**Art. 12(2)**)

Art. 46(1) “For the purpose of national development planning, each District Assembly is by this Act established as the Planning Authority for its area of authority.” **Art. 46(2)** “The District Assembly as the Planning Authority for the district shall perform any planning function conferred on it by any enactment for the time being in force.”

Art. 47(1) “The National Development Planning Commission shall prescribe the format of district development plans.” **Art. 47(2)** “Subject to subsection (1) of this section, all proposed district development plans shall be submitted through the Regional Coordinating Council to the National Development Planning Commission for approval.” **Art. 47(3)** “A District Assembly may with the prior written approval of the Commission make modifications to an approved district development plan.”

Legal provisions for the preparation of district budgets are presented in section **Art. 10(3)(a)(ii)** of the LGA. It states among others that, “a District Assembly shall be responsible for the overall development of the district and shall ensure the preparation and submission through the Regional Coordinating Council- (i) of development plans of the district to the commission (NDPC) for approval and; (ii) of the budget of the district related to the approved plans to the Minister of Finance for approval.” The mandate for the preparation of the district budget is reinforced in **Art. 92(3)**, “the budget of the district shall include the aggregate revenue and expenditure of all departments and organisations under the District Assembly and the District Coordinating Directorate.”

Art. 91 states that “the Minister may, after consultations with the Minister responsible for Finance, issue written instructions...for better control and efficient management of the finances of District Assemblies.”

Art. 120 provides for the establishment of an Internal Audit Unit of the DA, mandated to prepare and submit quarterly audit reports to the Presiding Member (PM) of the district assembly with a copy to the MLGRD, the DCE and RCC. **Art. 121** further provides that “the accounts of a District Assembly... shall each year be audited by the Auditor- General...and reported...to the Minister, Parliament and the District Assembly.”

Analysis:

The LGA does not contain a list of plans required to be prepared by all LG. This would seem to be an indispensable part of any LGA (which could be elaborated in a separate planning law/regulation). The district planning process appears to culminate in an approval of the district plan by the National Development Planning Commission (NDPC). It is not clear if the NDPC has found a way to delegate this task to the RCC; it is hard to imagine the CG reviewing 138 annual or mid-term plans, let alone DA initiated modifications. In a similar

vein, it is not clear why the DA budgets need to be approved by the Ministry of Finance; the added value of having an RCC seems to be negated by this centralized procedure.

Art. 46(1) underscores the centralism in the planning system when it begins with “For the purpose of national development planning...” Why would DA planning exist primarily for that purpose? Rather than for district development planning? (that of course is in kept in line with national policy imperatives through various levers).

It is also unclear if the relationship with the RCC in Art. 12(2) is limited to the planning process or extends to other matters. In either case, it is also odd that the DA-RCC relationship would be tailored to each DA. There may be a case for asymmetric relationships, but then this itself requires some frame to avoid inconsistent and administratively unfeasible arrangements.

The issue of public participation does not seem to receive any mention in the process of planning or budgeting. There is mention only of harmonizing NGO activities with government efforts (Art. 10(5)), and of DA members consulting the people with the view to “collate their views, opinions, and proposals” (Art. 16(1)a.) but this falls rather short of progressive practices in participatory planning and budgeting.

The successful realization of the planning, budgeting and auditing provisions of the LGA very much depend on the further elaboration in practical guidelines and the availability of professional staff for the relevant units and a conducive environment to apply the skills in accordance with the LGA. The reviewer does not have information on these aspects of implementation.

Suggestions for the LGA review:

Consideration should be given to delegating the function of plans and budgets review to the RCC, with clarity on the scope of the review (whether legal or substantive; ex-post or ex-ante; and the indicators and processes of the review and follow-up). The provisions could also be bolstered by greater attention to the specific plans required of LG and some principles or key procedures for participatory approaches to planning and budgeting. Because of the centrality of these processes (and related financial management aspects like accounting, auditing), special attention to capacity development efforts needs to be given; some principles on approaches should be reflected in the capacity development section of the LGA.

IX. CIVIC ENGAGEMENT

Role of Traditional Forms of Governance

General remarks:

There is an intent to incorporate traditional leaders in the LGA political structure, but the provision is vague and does not lend any certainty that this aim will be achieved.

Key provisions:

Art. 272(a) of the Constitution states that “*The National House of Chiefs shall - (a) advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy.*”

Art. 5(1)(d) of the LGA states that a DA shall consist of “*other persons not exceeding 30% of the total membership of the Assembly appointed by the President in consultation with the traditional authorities and other interest groups in the district.*”

Analysis:

The nexus between traditional governance and local administration is a challenge in many countries. The countries find different ways of accommodating traditional authorities, as shown in Table 4.

Table 4: Illustrations of traditional authorities’ roles in governance addressed in LGA

South Africa	<ul style="list-style-type: none"> • General consultation • Consultation in preparation of integrated development plans • Provide LG service
Philippines	<ul style="list-style-type: none"> • A seat on LG councils at various levels is reserved for a member of “indigenous cultural communities” • Barangays (villages) can be established so as to be coterminous with an “indigenous community” • Dispute resolution mechanisms used by LG can be those of indigenous community
Indonesia	<ul style="list-style-type: none"> • Election of village head in accordance with traditional method • LG regulations must respect traditional customs
Canada	<ul style="list-style-type: none"> • Variety of mechanisms of self-government, some municipal in character and others exhibiting a greater degree of autonomy.

Some countries give considerable support to traditional authorities but make no effort to weave them within the LG system (e.g. Namibia). Other countries have introduced LG systems specifically to reduce the influence of tribal groups/traditional leaders who are deemed to have weakened governance efforts or nation building (e.g. Yemen). In both cases (Yemen and Namibia), the LGA does not address traditional authorities, though separate legislation may exist that is focused on the “separate” sphere of customary governance practices (e.g. Namibia’s Traditional Authorities Act 2000).

The Ghana LGA has no set places for traditional chiefs in the DA, but the government has the prerogative of appointing chiefs as DA members from the 30% appointed segment of the DA. Chiefs also do not have automatic seats at lower levels; Urban, Zonal, Town Councils and Unit Committees. The reviewer cannot ascertain in this study how the provisions have been

used (what percent has been attained), and is only aware that an informal quota of 6% of the DA has been used.

The issue of traditional authorities, and their inclusion in LG systems, is a difficult one to resolve. As Ghana has seen in its own history, sentiments regarding the need to integrate these structures has waxed and waned. To some, the “free ticket” given to traditional authorities is seen to undermine democracy. Others believe that the lack of institutional inclusion can create problems which lead to worse administration¹³.

Suggestions for the LGA review:

The current provisions in the LGA are probably a compromise that may have been necessary in 1993, but more clarity is desirable. The discussion on chiefs’ access to LG may be part of the broader discussion on whether appointed seats in LG councils are still desirable.

Other Civil Society/Participation issues

General remarks:

The LGA does not adequately address the issue of participation in governance.

Key provisions:

The Constitution, **Art. 240(2)(e)**, states that “*to ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance.*”

Analysis:

The above constitutional provision seems to have very little elaboration in the LGA. As mentioned in the planning/budgeting section, there is a brief mention of harmonizing NGO activities with government efforts (**Art. 10(5)**), and of DA members consulting their people with the view to “collate their views, opinions, and proposals” (**Art. 16(1)a.**).

The 30% appointed proportion of the DA could be seen as a means to ensure that marginalized groups take part in local politics, but this very much depends on how the appointments are made and how they are perceived by other members of the DA and the public (the reviewer has no information on the these dimensions).

Other countries have taken bolder steps in addressing participation. South Africa’s LGA has a section on community participation, that aims to achieve:

- Development of culture of community participation
- Mechanisms, processes and procedures for community participation
- Communication of information concerning community participation
- Public notice of meetings of municipal councils
- Admission of public to meetings
- Communications to local community

¹³ Boafo-Arthur, Kwame (2001). Chieftaincy and Politics in Ghana Since 1982. *West Africa Review*: 3, 1.

Provinces in Pakistan have established Citizen Community Boards for the purpose of community development and improvement in service delivery. Grants from LG are made mandatory on the LG (though the floor of 20% of development funds seems unreasonable and counter to efficiency considerations). Pakistan's provinces also have set aside a portion of LG seats (33%) for women candidates.

The Philippines Local Government Code sets aside one seat on municipal legislative bodies for a representative from women, to be determined by other members of the legislative body. The Code also explicitly addresses relations of the LG with people's and non-government organizations, and places NGO members on tender boards, health boards, local development councils.

In a similar vein, the Namibian Local Authorities Act of 1992 stipulates that party lists had to include at least two women in respect of local authority councils with ten or fewer members, and at least three women in respect of councils with 11 or more members. This contributed to the leadership position Namibia now has in local government women's representation, with about 42% of LG women councilors presently¹⁴.

Suggestions for the LGA review:

A bolder approach to integrating civil society/private sector in local governance is warranted, and there are sufficient examples internationally to draw lessons and inspiration. How women can be encouraged to participate in LG is a growing concern worldwide and a number of practices are emerging that may be of interest to Ghana LG policy makers.

¹⁴ IDEA (2004). *The Implementation of Quotas: African Experiences, Quota Report Series*.

X. POLITICAL PROCESSES

District Assembly and DCE – Roles and Accountability

General remarks:

Very little is said about lower levels of LG or the RCC's relationship to LG. The DA is a mix of elected and appointed members with considerable but unclear functions. The presidential appointment of the DCE is an unusual construction. Some important accountability mechanisms exist that could, in principle, hold members of the DA accountable. The accountability of the DCE to the DA seems rather weak.

Key provisions:

In the Constitution, the District Assembly has legislative and executive power (Art. 241 (3)).

The appointment of District Chief Executive is made by the President (Art. 243 (1)). Art. 243(2)(b) provides that the DCEs shall "*be responsible for the day-to-day performance of the executive and administrative functions of the District Assembly.*" At the same time the District Chief Executive acts also as representative of central government (Art. 243 (2)c.).

Art. 251(1) mandates the establishment of an Executive Committee of a District Assembly that shall "*be responsible for the performance of the executive and administrative functions of the District Assembly.*"

The Auditor-General audits the accounts of the District Assemblies annually and submit audit reports to Parliament (Art. 253).

The above constitutional provisions are reflected in the LGA. Art. 10(2) of the LGA states that "*...a District Assembly shall exercise deliberative, legislative and executive functions.*" Art. 5(1) sets out the members, including the District Chief Executive, elected members, non-voting members of Parliament in the district, and 30% appointees made by the President "*in consultation with the traditional authorities and other interest groups in the district.*"

Art. 17 calls for a Presiding Member of the DA, who "*convenes and presides*" over the meetings of the DA. The Presiding Member is elected by the Assembly from its members (but not the DCE or members of Parliament); the election requires a two-thirds majority. He can be removed from this post if at least two-thirds of the DA vote to do so.

Art. 9(1) allows the public to revoke members of the DA if "*twenty-five per cent or more of the registered voters in the electoral area*" petition the Electoral Commission. According to Art. 9(4) the latter organizes a referendum, that is determining if "(a) forty per cent of the registered voters in the electoral area vote on the issue; and (b) 60 percent of the votes cast are in favour of the recall of the member." The DA itself can revoke a member through the President "*upon the recommendation of three-fourths of the members of the District Assembly*" provided adequate grounds are provided (Art. 9(6)).

Art. 16(1) sets out obligations for attendance of meetings and interaction with the electorate.

Art. 27 establishes a Public Relations and Complaints Committee for the public to call DA members to account.

Art. 19(1) establishes an Executive Committee (EC) of the DA "*which shall be responsible for the performance of the executive and administrative functions of the District Assembly.*" Art. 19(2) precludes the Presiding Member from the EC.

Art. 20 establishes the post of District Chief Executive "who shall be appointed by the President with the prior approval of not less than two-thirds majority of the members of the District assembly present and voting at the meeting." The DCE acts as chair of the EC and is "*responsible for the day-to-day performance of the executive and administrative functions of the District Assembly*" and "*is the chief representative of the central government in the district.*" The tenure of the DCE is also four years, with a maximum of two terms. He can however be removed from office by a vote of two-thirds of the DA, or by the President (Art. 20(4)). Art. 28(2)(a) The DCE "*shall present a report on the*

performance of the functions of the Executive Committee to the District Assembly at the beginning of each session.”

Art. 80. (1) “Every bylaw made by the District Assembly shall be submitted to the President for approval or rejection.” **Art. 80.(2)** stipulates that bylaws “shall at all reasonable times be open to public inspection without the payment of any fee.”

(See also provisions regarding functions, staffing, organizations, planning/budgeting, and civil society in previous sections of this review.)

Analysis:

The DA is difficult to categorize in terms of international models (see Box 2 for typical North American models). It resembles in part the “Commission” model used in the US, where elected officials are placed in charge of particular portfolios/departments, but the role of the DCE is unusual. It is not unusual to have the senior executive member of local government

Box 2: North American Municipal Models

In the **mayor-council** form, a mayor is elected at large or from wards. The ‘strong mayor’ can appoint and remove heads of city departments, prepare the budget, and veto council bylaws. The council adopts the budget and general policy positions, and audits the government’s performance. The ‘weak’ mayor has more limited powers of appointment, removal and veto, and does not generally act as the chief executive, leaving that to a city manager (approaches the last model below).

The **commission** model, five or seven elected officials take on both the executive and legislative roles. They split responsibility for departments among them. One of them may act as a chair and assume the title of mayor, but has no extra powers.

In the **council-manager** form, the city manager has most executive powers and prepares the draft budget. He carries out the decisions of the elected council, who decide on ordinances and policy (e.g. budget). He is hired for an indeterminate term, until such time as the council sees fit.

sit in on Council meetings, or be an appointee of central government, though the latter is not considered good practice as far as LG proponents are concerned. Central level appointees are seen in Yemen (Governor, district secretary), Cambodia (commune clerk), and Indonesia (village secretary - after 2004 reforms). However, even in these countries there has been criticism of this arrangement (connected to calls for direct election of this position or appointment by the LG), based on the fears that the operation of LG may be unduly influenced by central government and the loyalty of the appointee to the LG compromised. The explicit role of the Ghanaian DCE as representative of the central government can be useful to the central government, but that role can be

played by an elected political figure that also has political accountability to the LG (e.g. the Governor role in Indonesian provinces) or the council itself, through delegated tasks (e.g. Commune in Cambodia). In summary, it might be said that the DCE construction in Ghana seems to be *sui generis* – perhaps best characterized as a “Strong Manager” model of LG, where the accountability of the manager to the Assembly is rather weak. This weak link may be further exacerbated by the DCE’s overriding sense of loyalty to the President (incidentally, the central government is also the source of the DCE’s pay).

It should be noted that some tension between the DCE and the DA (specifically the Executive Committee) has been created in the Constitutional provisions themselves. **Art. 243(2)(b)** and **Art. 251(1)** regarding the mandates of the DCE and EC respectively seem to give essentially the same function to these two institutions, making it difficult to know who has the ultimate authority.

The reviewer does not wish to imply that the LGA creates an entirely weak DA. Some accountability of the DCE might be possible through **Art. 28.(2)(a)** where the DCE presents a report to the DA. However, whether this can be truly used as an occasion for accountability depends on how the DA receives and questions the report, and what it can do if it is not pleased with the report. The LGA allows for the removal of the DCE by a two-thirds

majority of the DA, but this is rather drastic (and a high threshold vote). Perhaps there are legislative instruments that indicate further how the DA can hold the DCE and departments accountable on an ongoing or periodic basis.

The accountability of the DA toward the central government is achieved through preventive and repressive supervision, including an annual audit that is sent to Parliament (see also section VI). It is also potentially strong toward voters, with some useful guidelines for engagement of DA members with voters, a system for submitting complaints from the public against DA members, and also the possibility of revoking DA members. The latter is not an option seen in many LGAs. The 25% of eligible voters condition for a valid petition is similar to that found in the Philippines. In the latter country however, the official that is the focus of the petition is allowed to run against any opposition, whereas Ghana sets the removal threshold at 60% of a referendum on the removal question alone. The Ghana LGA provisions may be close to the balancing point between avoiding frivolous and costly recall referendums and making it still possible to maintain a mechanism to punish willful neglect, misconduct and wrongdoing. Taken together, the accountability mechanisms related to the DA are significant. However, only an empirical review of these mechanisms can reveal if they have been truly accessible and properly used.

One of the unusual features of the DA is the presence of elected Members of Parliament (MP) (based in the district electoral zone) on the Assembly. This arrangement is very rare (it exist e.g. in India) and probably for good reason. In all likelihood the MPs seek to influence DA decisions, though they do not vote in the DA. Presumably they are in the DA to convey the national perspective. Given that the DCE is already representing the central government, and that there are ways for the DA itself to take on delegated tasks of the CG in principle, it is hard to tell what the added benefits of this arrangement might be. It should also be noted that the DA and CG hold different functions (in principle, even if this is not well structured in the current architecture of functional assignment); it would seem to be an intrusion for national MPs to be actually sitting on the DA because it mixes a mandate for the national representation of the district's interest with a mandate to run the local affairs of the district. It may well be that ordinary channels of coordination (e.g. via the RCC in the planning process) are sufficient if properly used.

Turning to the RCC, which is strictly not local government, it may be argued that it ought to be transformed to another level of local government with an elected assembly. To the extent that the RCC plays a significant role in development and governance it may be appropriate to examine options for giving it greater legitimacy in making important decisions. A regional assembly may be established, either partly or fully elected. If elected, the members may be directly chosen by the people, or be elected from elected members of lower level government (as is the case in Yemen, Pakistan, and Ontario).

Suggestions for the LGA review:

Clarification on the institutions of LG (DA and lower levels) needs to find its way into the Constitution and to be consistently reflected in the LGA and subsidiary regulations. Considerable attention should be given to the DCE-DA relationship to reduce current ambiguities and skewed lines of accountability. Consideration should also be given to dropping the MPs from the DA and the potential transformation of the RCC into a true LG level.

LG Elections and Role of Parties

General remarks:

The Constitution and LGA do not say much about the election processes of LG, but they are clear in prohibiting party politics at LG level.

Key Provisions:

The Constitution states in [Art. 248 \(1\)](#) that “*A candidate seeking election to a District Assembly or any lower local government unit shall present himself to the electorate as an individual, and shall not use any symbol associated with any political party.*” Moreover, [Art. 248 \(2\)](#) adds “*A political party shall not endorse, sponsor, offer a platform to or in anyway campaign for or against a candidate seeking election to a District Assembly or any lower local government unit.*”

The above provisions are repeated in [Art. 7](#) of the LGA, adding penalties for violation. [Art. 6](#) sets out the qualification for DA members’ election.

[Art. 5.\(3\)](#) stipulates that elections shall be held once every four years.

Analysis:

The LGA only devotes two articles to the DA election process. This is rather unusual, although not necessarily a shortcoming if elections are addressed in separate legislation or subsidiary regulations.

The length of term (four years) is a reasonable and common length among countries. It is long enough to allow for a reasonable period of orientation, planning and implementation, but not too long to make officials unresponsive to their constituents. Some countries have 2-3 year or 5-6 year terms; and these extremes can lead to either a lack of stability and efficiency, or complacency respectively.

The prohibition of party politics is rooted in the Constitution, and the LGA naturally follows suit. This prohibition has raised questions in Ghana, and is a difficult issue prompting considerable debate in many countries. Some examples of how countries have decided on this issue are given in Table 5.

Table 5: Existence of party politics at LG level

Country	Form of State	Provincial/State/Region/County	Lower level LG
Cambodia	Unitary	Yes	Yes
Indonesia	Unitary	Yes	Yes
Namibia	Unitary	No	Yes
Nepal	Unitary	N.A.	Yes
Pakistan	Federal	Yes	No
Philippines	Unitary	Yes	Yes
South Africa	Unitary	Yes	Yes
Yemen	Unitary	Yes	Yes
Canada	Federal	Yes	No
UK	Unitary	Yes	Yes
US	Federal	Yes	No

As the table suggests, it is quite common to have party based elections at local level, but some countries have used some strong arguments for restricting them. The concern over political parties at the local level is that they may inhibit local democracy. In many countries

(e.g. The Philippines, Cambodia and Indonesia¹⁵), LG level parties are just extensions of national parties, and national issues or central party machinations are sometimes seen to dominate local concerns. If freed from parties, “party-free” advocates maintain, individual politicians can then claim to speak for all citizens and be more inclusive.

As the size of LG increase, there appears to be more of a case or desire for party alignment. It is not uncommon for LG political candidates in large cities (in non-party systems, e.g. Canada) to indicate their leanings or membership in provincial or national political parties. It should also be noted that it is possible in some party systems to run as independent candidates.

There are many ways of running elections at LG level, based on individual candidates or parties, and direct versus indirect mechanisms. Direct election allow voters to choose among single (either party or non-party affiliated) candidates for a specific office. In indirect election voters may elect representatives who then in turn choose the person to fill the position in question (as the Presiding Member of the DA). Direct elections have the advantage of forging a strong link between the elector and the elected; the official is cognizant of who voted for him and he is empowered to take action based on their support.

In deliberating individual (direct) versus voting by party, consideration must be given to the advantages of having political organizations that have a continuous life and are connected to their supporters. However, the effectiveness of party politics depends on whether local parties can be established, or whether national parties are able to focus on local issues and run their organization in democratic ways.

Suggestions for the LGA review:

Consideration should be given to placing some key provisions on the DA election process in the LGA (e.g. campaign rules). A thorough examination and debate on the various possible ways of electing the DA, Presiding member of the DA, DCE (if the position should be elected) and potentially the RCC would be salutary in the context of the revision of the LGA.

¹⁵ The special autonomous region of Aceh being a recent exception- local parties are now allowed.

XI. ROLE OF LG ASSOCIATIONS

General remarks:

On the positive side, the National Association of Local Authorities of Ghana is recognized in the LGA and LGSA. The provisions seem rather intrusive – districts are forced to contribute to an association.

Key provisions:

Art. 45(1) “Every District Assembly shall make such contribution to the National Association of Local Authorities of Ghana as the Association may from time to time determine.” Art 45(2) “The contribution made under sub-section(1) shall be in respect of any expenditure incurred by the Association in undertaking its business and the holding of its meetings.”

Article 5. (2)(h) of the LGSA places a representative of the National Association of Local Authorities of Ghana (NALAG) on the Local Government Service Council.

Analysis:

The acknowledged existence of NALAG is a positive feature of the LGA, and in keeping with good practices (there are about 120 Local Government Associations worldwide), with many represented in the United Cities and Local Governments (UCLG). According to the predecessor International Union of Local Authorities (IULA) a Local Government association is a representative organization, governed by and accountable to its members. It is not possible to say from the LGA if NALAG fits this mold.

In terms of government acknowledgement, there is no principle of IULA or similar group that argues for it. The independence of LG association make it unnecessary for these bodies to be formally acknowledged by the government. As most countries already have formal legal vehicles for collective action, any of these can be used if they allow the LG associations to come into being and to function adequately.

Having made the point regarding independence, many countries nonetheless see fit to place the role of LG associations in their constitution or in the laws governing how local governments are to function (LGA). Germany and South Africa place the LG association in the constitution, while The Philippines and Canada have chosen to use laws. This treatment is a measure of their awareness of the legitimacy of the LG associations and the benefits they can bring to local governance and intergovernmental relations.

In recent years, some LG associations have sought to reach formal mechanisms of consultation with the Ministry in charge of LG issues. For instance, in 2005, the Canadian province of Ontario amended its Municipal Act of 2001 to include the following provision:

“The Province of Ontario endorses the principle of ongoing consultation between the Province and municipalities in relation to matters of mutual interest and, consistent with this principle, the Province shall consult with municipalities in accordance with a memorandum of understanding entered into between the Province and the Association of Municipalities of Ontario.” (Province of Ontario, 2005)

Generally these MOUs or other similar agreements specify the ways the parties will consult each other, and the main procedures of the consultation.

Suggestions for the LGA review:

The NALAG could continue to be acknowledged in the LGA, but what is important to make clear is that associations are independent organizations, meaning that the government should not be intrusive (such as requiring all DAs to contribute to NALAG). Consideration should also be given to adding a provision on the principle/mechanism of consultation between the central government and LG associations. If lower level LG is to have equivalent status to the DA (as implied in the Constitution) then it may also be appropriate to facilitate the creation of associations for lower levels of government, by making the LGA statements regarding LG associations more general/inclusive.

XII. CONCLUSIONS

The Ghana LGA was undoubtedly a progressive initiative when it was issued in 1993; coupled with Constitutional provisions, it provided a cornerstone for building a strong form of decentralization/local governance, at least at district level. However, there are sufficient indications that practice has lagged behind the intent of the LGA, and that one of the reasons for the slow progress on decentralization rests on shortcomings of the architecture and content of the legal framework for decentralization/local governance.

This report has touched upon a number of topics that are typical of an LGA, comparing the Ghanaian LGA provisions with some international comparators and emerging notions of good practices. In many areas, the LGA (and related legal instruments) do seem to require an updating. While the recommendations in this report cannot be conclusive and detailed, they provide some fruitful directions for an official review. The GoG LGA review team will now need to examine these issues in a more rigorous way, and in a process that is acceptable to key stakeholders.

Appendix 1: Extract of the Terms of Reference

Review and Assessment of 1993 Local Government Act of Ghana (Local Governance Poverty Reduction Support Programme/LG-PRSP, PN 2003.20341, Ghana)

1. Background

In August 2006, the Ministry of Local Government, Rural Development and Environment (MLGRDE) has established an inter-ministerial committee to review the 1993 Local Government Act of Ghana. The Committee is expected to submit its conclusions and recommendations within three months, i.e. until December 2006. LG-PRSP, while not directly involved in the review process, has been encouraged to provide inputs and comments to the review team in line with the current transformation of LG-PRSP towards supporting national-level agencies in policy formulation and policy coordination. In this context, LG-PRSP intends to make available to the Review Committee an assessment of the Local Government Act which takes into account international practices of legislation regarding decentralization and local governance.

2. Terms of Reference

The following results are expected from the assignment:

- A critical assessment of the 1993 Local Government Act of Ghana in comparison with similar legislation of other countries
- a set of recommendations where -based on international experiences- the Local Government Act should be amended or modified.

In achieving these results, the Consultant will carry out the following tasks:

- 2.1 Review the 1993 Local Government Act of Ghana, and identify strengths and inherent weaknesses and inconsistencies in terms of emerging good practices for the regulation of local government (developing country and OECD practice).
- 2.2 This analysis will include illustrative comparisons of main aspects of the 1993 Act with similar legislation in other countries (particularly developing/unitary states) where decentralization efforts have been undertaken through the introduction or revision of a framework/omnibus local government legislation (e.g. Indonesia, Nepal, South Africa, Yemen, Philippines).
- 2.3 The analysis of the 1993 Local Government Act of Ghana will encompass the following issues:
 - Enshrinement of local government principles in the Constitution, and what is left in the law and lesser instruments to regulate.
 - Connection of local government act with other key legal streams regulating local government.
 - Provisions and clarity in modes of decentralization
 - Territorial divisions and hierarchy of subnational levels of government, and focus of decentralization in terms of jurisdictional scale (e.g. size and functions of a “district”)

- Role and functions of the District Assemblies as representative bodies in the districts, this includes the stipulations governing the assembly's election, the role and tasks of assembly members, work procedures and internal structures of the assembly, availability of technical and logistical support, the relationship between the assembly and the District Chief Executive, the relationship between the assembly and the electorate
- Role, tasks and functions of the District Chief Executive, his/her working relationship with the assembly and with the national government, accountability and reporting mechanism, mechanisms for election, appointment and dismissal of DCEs
- Weight and mechanism of assignment of mandatory and non-mandatory functions to the District Assemblies
- Reporting and supervisory mechanisms between the district, the Regional Coordination Council and the national government
- Provisions for capacity building for local government
- Structure, composition, role and functions at the sub-district level
- Civil service system for local government (esp. district)
- Planning system of district level and its connection to lower and higher levels of planning
- Funding arrangements for the District Assemblies (own revenue, transfer revenue) and structures and procedures for financial management, including the drafting, approving and executing of DA budgets and the reporting and accountability mechanisms for budget execution.
- Role of local government associations in the local government act
- Provisions for gender equality
- Provisions for direct participation of civil society/private sector in governance
- Any other feature that the Consultant deems worthy of comment.

Appendix 2: Typology(modes) of decentralization

Aspect of the service/function	Deconcentrated Task	Delegated/Agency Task	Devolved function
Instrument	Ministerial decrees and circulars	Law, regulation, government decree, or ministerial decree/circular	Constitution, law and related regulations
Source and receiver of authority	From Ministry, “delegated” to its own dispersed branches	Representative body or ministry/agency to local authority (or parastatal/semi-independent bodies)	State, or representative body of higher level to local authority
Funding	From ministry to its branches directly (does not show in local authority budget)	From the assigning entity to the local authority (shows in its budget)	Receiving level (assigned revenues or block or conditional grants)
Staffing	Branch staff are central level civil servants, part of the Ministry establishment. Their duties may include coordinating with LAs.	Local authorities or semi-independent bodies have own staff, but operate under a national frame. May also use seconded staff of central government.	Local authorities have own staff, but operate under a national frame; considerable discretion in hiring, firing, size of establishment etc.. May also use seconded staff of central government, who is treated essentially as LA staff.
Internal organization discretion	Branches are structured by the Ministry, though often approved at cabinet or higher level	Local Authorities or semi-independent bodies can shape their units within a national frame, and handle tasks in units of their choosing	Local authorities can shape their units within a national frame, and handle functions in units of their choosing
Implementation Discretion	Variable but usually limited by Ministry regulations, procedures, standards and instructions	Considerably constrained by policy, procedures and standards set by assigning entity; some discretion on implementation.	High degree of discretion, but may be limited somewhat by national standards.
Reporting/ Accountability	To Ministry headquarters	Primarily to the assigning entity, but also to the Local Council and citizens	Primarily to citizens of receiving level, through the Local Council and directly; vertical accountability remains and in principle is more pronounced in early stages of decentralization

Appendix 3: International practice in the assignment of functions¹⁶

One way of assigning functions is to make a detailed list of what local government can or must do (a “positive” list). This is explicitly done to give clarity and contain the local government within these rules, making any other action of local government “*ultra vires*” (beyond its legal bounds). In some cases, the bounds are further clarified with a “negative” list; what the local governments cannot do. Even where the *ultra vires* principle is not explicitly invoked, the use of a list of functions makes local government cautious, and the implicit understanding among actors is that local government should not take up something that is not on the list.

In OECD countries, where decentralized governments have had some time to take hold, or where it was the starting point for any other higher order government, the functions given to local government have been rather permissive (e.g. home rule in US counties). Where restrictive regimes have been developed in the past (through narrow positive lists), the recent trend has gone against this restrictive architecture. Recent reviews have been seen around the world resulting in more permissive formulations (e.g. provinces in Canada, states in Australia, and the United Kingdom).

In a permissive approach to functional assignment, a particular level of sub-national government, of sufficient scale, is normally targeted as the main service delivery level, and efforts are made to ensure that it can function as a “general purpose government,” empowered to fulfill the multiple needs of its population. This assignment is referred to as “general competence,” meaning that the functions are not listed in detail but rather in broad form, to give as much freedom as possible to local government to act.

One potential problem with both the positive list and general competency models is that it is sometimes not made clear what local government must do. These models may simply indicate the range of functions that can be undertaken. However, there are hybrid models that combine a fairly permissive formulation of what local government can do, along with well specified obligations (a special kind of positive list). Even where the local government/decentralization framework does not reveal such checks on freedom, it is often only necessary to look at the sectoral streams of legislation to note that central/state level governments find ways of imposing some obligations on the performance of local government services.

Sectoral or other conditions imposed on local governments can be well crafted or clumsy, to the point where they work against delivering the promises of decentralization. When they are well constructed, they confirm the assignment, or principles of assignment, found in the broad local government/decentralization framework, and they add the necessary details on what exactly is to be done, setting out accountability and support mechanisms to make the assignment workable. Inevitably, a fairly complex set of central-local relations is crafted, generally operating sectorally, but also cross-sectorally, to ensure local government conformity with national objectives, balancing local discretion with proper attention to “national” values of equity, safety, security, integration, and social cohesion.

¹⁶ Slightly adapted extract from Ferrazzi Gabriele (2006). Sector Decentralization and Functional Assignment – Support Study for the Formulation of a National Decentralization Strategy, Final Report, UNDP/UNCDF.

The division of labour between national and subnational government take on more nuanced forms when there are two or more levels of subnational government. In these cases, more choices arise in the assignment of functions. This may complicate the system, but it also offers an opportunity for increased efficiency, as services are assigned to the level (read “scale”) of government that best captures the benefits and costs of the service, i.e. the level that can deliver it most efficiently and effectively.

The relationships in a multilevel system of governance (three or more levels) entail some choices in how the centre relates to the lowest level(s); whether directly or mediated through intervening levels. Hierarchical relationships are often necessary for efficiency, though they generally work best when they are carefully crafted and delimited. In some cases, central policy must reach all levels. For reasons of efficiency (span of control, lack of deconcentrated offices), a subnational level may be given a weak or strong role toward lower levels; in coordination, supervision or capacity development support. Often the choice is made against a political backdrop and historical evolution that overrides technical considerations, but there is usually a price paid for disregarding issues of span of control and remoteness from the local conditions. Compromises have been used, with beneficial effect in some cases. For instance, higher order subnational levels are given dual roles. In particular, the executive head is given the role of territorial head (responsible to an elected territorial council) as well as the role of representative of central government. This architecture can lead to some confusion however if territorial departments are used to execute a considerable number of deconcentrated tasks (tasks handed to the executive head as the representative of the centre).

As the above discussion indicates, the assignment question invites a nuanced understanding of the forms (or modes) of decentralization. The most common typology of decentralization (taking place within the government system) used internationally distinguishes the following: deconcentration, delegation/agency, and devolution (see previous Appendix 2). These are categories that capture patterns of relationships between the central level and subnational government. They are helpful in understanding just how far decentralization has gone.

A kind of decentralization can also occur by having government withdraw from provision (or perhaps just from production), allowing the private sector and civil society to take up certain roles. As well, decentralization can occur within a sector when the central government gives communities and users special roles in decision making and management. The latter may occur with or without having local government involvement, naturally with large implications for their probable success.

The modes of decentralization briefly depicted above do not entail an automatic value judgement. Whether a particular function ought to be deconcentrated or devolved, or show some in-between form depends on the nature of the function. To make a proper decision, it is necessary to resort to empirical evidence; whether it is working better in one form or another, or has been seen to work better in one form or another in similar settings.