The Tunisian Experience of Decentralization Since 2014

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In order for decentralization to be effective and lead to greater equality in development and political engagement, both processes of codification (i.e. enshrining provisions in the constitution) and operationalization must be guided by strong legal and political foundations, principles and structures. The paper discusses the Tunisian experience of decentralization since the adoption of the 2014 Constitution that described the Tunisian state as a unitary state and enshrined administrative decentralization, thus consolidating the Tunisian decentralized state. It argues that after the fall of Ben Ali, decentralization was seen as a way to preserve the integrity of the unitary state in Tunisia while introducing instruments of participative democracy through a reinvigorated decentralization process. First, it presents the legal and political foundations for decentralization and the new structures that were set up to implement it. Second, the paper addresses the fiscal and logistical challenges of implementation, the importance of collective civil society engagement in decentralized structures and concludes with recommendations and lessons learned from this experience in a country that recently experienced democratic transition.

I. Renewal of the foundations of decentralization

Following Tunisia’s Arab Spring and the initiation of the transitional process towards democratization, a new constitution was drafted in 2014 opening new political spaces for particularly young actors that played a key role in the revolution, enshrining democratic participative processes of local governance and reinforcing the constitutional foundations and principles of decentralization. Following decades of centralized authoritarian rule, comprehensive efforts were made at a political level to strengthen the judicial, political and constitutional foundations for a decentralization process that increased local government structures and competences. At the same time, new principles were enshrined in order to maintain a certain degree of central control so that the autonomy allocated to decentralized structures does not turn to independence and threaten the state’s territorial integrity.
A. The legal and constitutional foundations of decentralization

In this section, we focus on two basic issues: the constitutional density of decentralization; and the legal principles of decentralization.

1. Constitutional density and decentralization

The 1959 Tunisian Constitution contained very few words on the issue of decentralization. It had only one article dealing with local government,[1] and this made no reference to decentralization as such, but only to local government. Indeed Article 71 of the 1959 Constitution was not normative at all. It did not contain or set down legal principles to orient the legislator towards a specific conception of decentralization. Under this Constitution, decentralization conferred the management of local issues to regional and municipal councils, but without any further specifications. During Ben Ali’s rule (1987-2011), things remained largely the same and the constitutional basis for decentralization was not further elaborated.

However, considerable progress has been made under the 2014 Constitution. Chapter VII on “Local Government” consists of 12 articles (Articles 131-142) in addition to Articles 14–15 under Chapter I on General Principles. This means that almost 10% of the Constitution’s provisions deal with decentralization.

The question of the “constitutional density” of decentralization is not purely quantitative. It has extremely important implications for the content of the process and the degree of freedom it confers on local government; local government powers are linked to the constitutional provisions on decentralization. The greater the extent of constitutional density, the more the discretionary power of the legislator decreases. The latter is obliged to transmit the constitutional principles of decentralization into law and institutions.

The renewal of [the] foundations of [decentralization] extend to its legal and political dimensions.

2. The legal principles underpinning decentralization
Legally speaking, decentralization requires the implementation of three joint conditions: the attribution of legal personality and financial autonomy; the attribution of effective powers; and the principle of subsidiarity. The inclusion in the Constitution of principles relating to these conditions is important since it guarantees autonomy to decentralized powers in relation to the State and effective powers allowing local government to operate autonomously.

a. The attribution of legal personality and financial autonomy

Article 132 of the Constitution confers legal personality on local government. This means that it has its own legal existence and autonomy in relation to the State. In addition to managerial autonomy in local government, the principle of autonomous administrative is now reinforced in Tunisia. In practical terms, local government is autonomous in relation to the State at all levels: legal, administrative and financial. Local government enjoys its own legal capacity and manages local affairs autonomously. It operates its own financial planning and manages its budget autonomously.

b. The attribution of effective powers

Yet in order to constitute genuine decentralization, local governments must have their own powers and it is vital the Constitution sets out the operational principles of the distribution of these powers very clearly. The legislator is bound by these guiding principles in all operations to distribute powers between the State and local government and between devolved and decentralized administration.

The 1959 Constitution did not contain any principle to frame the distribution of powers between the State and local government. By contrast, the new Constitution contains two main principles relating to the distribution of powers: the principle of subsidiarity and the principle of correspondence between transfers of power and transfers of resources.

c. The principle of subsidiarity

This principle is inspired by the European Charter of Local Self-Government (ECLSG, 1988)\(^1\) and ratified in positive law as Article 134 of the Tunisian Constitution. It recognizes the existence of three categories of local government powers: own powers, powers shared with the State, and powers transferred by the
State. The principle of subsidiarity only applies to joint powers and transferred powers.  

This principle is extremely important. It frames the power of the State in matters relating to the distribution of powers. The State is not totally free in this sense, and, in the case of joint or transferred powers, must apply the subsidiarity principle. This means that the State must attribute powers to local government at the level nearest to the citizen where this is the most appropriate way to exercise it.  

If a power can be more appropriately exercised at a higher level, it must be attributed to that level, also when this is the central State.

In practice, however, the adoption of subsidiarity can be difficult to implement since in some circumstances it takes place at the expense of local government. It is an ambivalent principle as regards the endorsement of policies either promoting or restraining decentralization.

d. The principle of correspondence

This principle relates to the transfer of powers and the transfer of financial resources established by Article 135(2) of the Constitution. The State cannot transfer new powers to local government without backing this up with the financial and logistic resources needed to implement them. Transferred resources must be proportional to the powers transferred or shared and be sufficient to cover them.

Beyond the constitutional principles governing the distribution of powers, the Local Government Code of 2018 (Code des Collectivités Locales, CCL) attributes extremely diversified powers to local government in all domains of regulation, law and order, economic development, urban planning and development of the territory, and so forth.

Here it is important to point out that Article 134(3) of the Constitution recognizes the regulatory powers of local government. The Code attributes this exercise to the [High] Council of Local Government (Conseil de la collectivité locale) or its acting President, by delegation or authorization.

In Tunisia local government autonomy was reinforced in the 2014 Constitution when it became subject to a posteriori oversight.
d. A posteriori oversight

All levels of local government are subject to a posteriori/post-audit oversight stipulated in Article 138 of the Constitution “to determine the legality of their actions”. The 2014 Constitution breaks with the previous state of affairs where local government was subject to extremely meticulous control exercised by the governor. This was particular insofar as it exercised both a priori and a posteriori control in legality but also in opportunity. The new political and constitutional context makes local government autonomous. Autonomy becomes the rule and oversight is now the exception.

However, “autonomy” does not mean “independence”. Independence is a condition related to the sovereignty of the State and to its international status, whereas autonomy is a condition related to local governments in the exercise of their administrative functions. Local government cannot in any way transform itself and make itself independent and thus challenge the unitary nature of the State. As a consequence, oversight is a corollary of the principle of the unity of the State where the latter exercises control over local government to guarantee that their autonomy does not become independence. The Constitution of 2014 follows this logic, which is clearly stated in Article 14, and Article 138 delineates the nature of the control exercised on local governments. This is a posteriori oversight of the legality of their actions exercised by the administrative judge and initiated by a representative of the State.

B. Political foundations of decentralization

In addition to its legal and constitutional aspects, decentralization in Tunisia has an incontestable political dimension. This is revealed through the electoral selection process for local political candidates, and the process of participatory democracy that it drives. Furthermore, the opening up of local government to women and other social categories enhances the political basis of decentralization.

1. The extension of the electoral process to all levels of local government
Elections constitute the political and democratic expression of decentralization; without them, decentralization cannot engage local populations in taking responsibility for managing their own affairs.

Article 133 of the 2014 Constitution extends the electoral process to all levels of local government and stipulates that:

Local governments are headed by elected councils. Municipal and regional councils are elected by universal suffrage through general, free, direct, secret, fair, and transparent elections. District councils are elected by the members of municipal and regional councils. Election law shall guarantee the representation of youth in local government councils.

The move to increase the representation of youth in local councils reaffirms the general obligation of Article 8 of the Constitution which stipulates that:

The state seeks to provide the necessary conditions to develop the capacities of youth and to realize their potential, it supports them in taking on responsibility, and strives to extend and generalize their participation in social, economic, cultural and political development.

This commitment is designed to open up greater room for political participation in Tunisia, by promoting the Tunisian youth as the social category that played a decisive role in the Revolution.

Beyond this specific case, Article 34 the Constitution poses the general principle of gender parity in elections, voting and candidacy, and Article 46 reaffirms the State’s commitment to guaranteeing the principle of parity “in all domains” which can extend to the national, regional and municipal levels.

The legislator has taken steps to guarantee the effectiveness of provisions relating to the extension of political representation to women, youth and persons with disabilities. Indeed, the law on local elections, amended in 2017, commits to horizontal parity alongside vertical parity. Today, local electoral lists must have as many women as men as heads of list; the lists of independents are exonerated from the condition of horizontal parity.

As regards the representation of youth, Article 49 bis of the electoral law lowers the
age of candidates standing for election in regional and municipal elections to 18 years. Moreover, a third of members must be under the age of 35 and one of the first three candidates on the list must be under the age of 35. In the case of two winning candidates with the same number of votes in two lists, the President of the Council will choose the youngest. The electoral law also specifies that electoral lists must contain at least one person with a disability.

2. The process of participatory democracy

The process of participatory democracy enriches the political dimension of decentralization. With Article 139, the 2014 Constitution makes instruments of participatory democracy a vital component of the Tunisian experience of decentralization and states that:

Local governments shall adopt the mechanisms of participatory democracy and the principles of open governance to ensure the broadest participation of citizens and civil society in the preparation of development programmes and land use planning, and follow up on their implementation, in conformity with the law.

From Article 139 it appears that the mechanisms for citizens’ participation are sizeable and extend to all domains: planning development, infrastructure, territorial development, financial planning and investment. By virtue of the post-Revolution governance model citizens are authorized to access all administrative documentation of local government. These participatory mechanisms also enable them to influence local government decisions and to evaluate the latter’s performance.

The Local Government Code also reflects the need for citizen participation by dedicating an entire Chapter to participatory democracy and identifies the instruments required to implement it. Beyond enriching its legal and political foundations, as of 2014 Tunisia has witnessed a densification of local power structures.

II. The densification of decentralized structures
In Tunisia, the process of decentralization was strengthened not only to increase overall democratic governance and representation but also to improve local development and ensure effective distribution of services and enlarge the territorial coverage of local decentralized governments. This is particularly due to the fact that prior to 2014 large parts of the population were deprived from accessing basic services and practicing their local citizenship. Hence, measures such as increasing the number of local levels of governance from 2 to 3 and creating new structures that manage local finances and oversee local mandates were set up to prevent the isolation of economically disadvantaged rural areas while ensuring a degree of central oversight to protect the nature of the Tunisian unitary state.

The densification of local power structures occurs with the transition from two to three levels of local government, and with the creation of new institutional structures.

**A. Transition to three levels of local government**

In the 1959 Constitution decentralization was extended to two levels of local government: municipalities and regions. Now Tunisia has three levels of local government as per Article 131 of the 2014 Constitution: municipalities, regions and districts.\(^7\)

It is worth noting that Article 131 establishes the principle of extending all levels of local government throughout the territory of the Republic “in accordance with the boundaries established by law”.\(^8\)

This fact is extremely important, the constituent authority has taken on the crucial task of correcting the anomaly of under-municipalization in Tunisia. In fact, prior to 2014, over 70% of Tunisia was “non-municipalized”. Under-municipalization involves the rural and border areas of the country and affects roughly one third of the population.

This situation is untenable since it denies the population in non-municipalized
rural areas the benefit of public local services, and thus prevents them from exercising their citizenship fully. This last consequence highlights the existence of two categories of citizens: those who vote at the municipal level and those who do not, due to the absence of a municipal structure in their territorial area. The constituent authority has been alerted to this anomaly and has introduced, in addition to the principle of extending local government to the entire country, a legal obligation to reinforce decentralization throughout Tunisia.

B. The creation of new structures

In addition to the creation of the district as the third level of local government, two new institutions have been created to promote and enhance decentralization: the High Council of Local Government headquartered outside the capital, and the High Authority of Local Finances The Council has a constitutional basis under Article 141 of the Constitution. It is a consultative body for local legislation, budget, planning, development and “balance between the regions”. The High Court of Local Finance is created by Article 61 of the Local Government Code, and is responsible for examining all issues relating to local financing, its consolidation, modernization and management in line with the rules of good governance. Nonetheless, there are many outstanding challenges still facing the implementation of decentralization despite the progress made since the introduction of the 2014 Constitution.

III. Outstanding challenges

Tunisia’s 2014 Constitution reinforced and developed the foundations for the roll out of a decentralization process that enhanced local autonomy in administering local affairs, elections and service provision. At the same time, several broad principles and mechanisms were also put into place to ensure a degree of central-state control. In addition, the exercise of newly allocated powers and the implementation of the decentralization process face a variety of challenges that relate to the will of the population as a whole and the will of the political elite of the Tunisian government. Overcoming these challenges is required to ensure a beneficial and democratic decentralization process.
A. The financial and logistical challenges

The financial situation of local government in Tunisia is extremely precarious. Local tax revenue comes from different sources (property tax, undeveloped land tax, and industrial, commercial or professional property and hotel tax) and produces a low rate of return.\textsuperscript{12} It also generates fiscal inequality due to disparities of revenues among the different levels of local government. Returns using the local tax instrument are very weak and the revenue of all the municipalities accounts for around 2.4% of national tax revenue. This is well below tax revenue reported for other countries (Morocco 4.8%, France 15.2%, England 12%, Germany 48% and the USA 43%).\textsuperscript{13}

Furthermore, Tunisia’s municipalities are in debt and some struggle to cover their operating costs. The situation has become more complicated since 2014 with the creation of 86 new municipalities to help meet the goal of extending decentralization throughout Tunisia.

Local government financing is certainly a cause for concern, but it does not seem to constitute a serious risk for the future of decentralization in Tunisia. In fact, the rate of indebtedness, with the exception of some municipalities, remains manageable.\textsuperscript{14} The Local Government Code created mechanisms to help manage finances with the High Court for Local Finance and the Tunisian Common Loan Fund for decentralization, regulation and cooperation between the levels of local government. This enriches the resources of financing by other fees.\textsuperscript{15} Transfers of State power to local government must be accompanied by corresponding financial resources,\textsuperscript{16} and we can expect an increase in the volume of State transfers in the near future, to accompany the process. Furthermore, compensatory mechanisms of equalization have been set up by the Constitution and the Local Government Code, on the basis of the principle of solidarity between the State and local government as set out in the Constitution.\textsuperscript{17}

In addition to financial issues, all levels of local government suffer from an acute shortage of skilled personnel. The rate of training and recruitment is not above 10% (national average) of which 1.6% relates to technical managers responsible for basic public services and the execution of investment programmes.\textsuperscript{18} In local government over 90% of personnel is unskilled and well below the staffing needs
of all levels of local government. A legal provision relating to trained professional State civil servants for the benefit of local government should be forthcoming. The problem of recruiting or retaining employees at this level is aggravated by the absence of territorial public administration, and the low levels of salaries, career prospects and family living conditions. Furthermore, the Local Government Code does not provide for the creation of a territorial public administration.

In addition, there is an urgent need to train local officials and this far outstrips central government’s capacity to train and recruit civil servants, and – therefore – endorse decentralization. According to the Ministry of Finance, there is an immediate need to recruit 1,500 skilled managers to reinforce the staff in Tunisia’s 350 municipalities. This means developing a structured five-year training programme with basic administrative training, namely the École Nationale d’administration de Tunis (ENA) and the École nationale des finances (ENF).

B. Implementation challenges

In addition to substantial financial and logistic resources, the implementation of decentralization means a general mobilization of all components of civil society and strong political commitment. Progress has been made in the two ways: The first is the creation of a Ministry of Local Government and the Environment in 2016 with key powers. Generally speaking, it ensures the implementation of government policy on decentralization in line with Chapter VII of the Constitution and the Local Government Code and supports local governments to ensure their development. In addition to traditional structures operating in the implementation of decentralization such as the Tunisian Common Loan Fund (Caisse des prêts et de soutien des collectivités locales, CPSCL), other structures have been created to help pilot the process of decentralization. In particular, the High Council of Local Government and the High Court of Local Finance, the General Court of Development of Exploration and Support for the decentralization process (Instance générale de prospection et d’accompagnement du processus de décentralisation, IPAPD). An immediate consequence of the broadening of jurisdiction of oversight has been a re-organization of administrative justice and the creation of regional administrative tribunals provided for in the Local Government Code.
Furthermore, and given the extent of reforms still to be made, the Local Government Code opts for an incremental approach, implementing decentralization over a period of several years. This progressive approach to implementing decentralization is stipulated in Article 66 of the Local Government Code. It provides for the setting up of a five-year development plan for decentralization, with goals and means to implement it. It is approved by the legislator in the context of a framework law and is subject to an annual evaluation by the Assembly of Representatives of the People and the High Council of Local Government.

Among the challenges linked to implementation we should mention the lack of clarity in some principles laid down by the Constitution. For example, the principle of administrative autonomy – whose meaning does not appear to differ from that of the autonomy of local government – is enshrined in the Constitution. With multiple principles with similar content we run the risk of complicating the role of interpreting the Constitution and the administrative jurisdictions responsible for local government litigation. There is also the risk that the High Council of Local Government and the High Court for Local Finance may exercise a new occult form of supervision in relation to these groups.

Finally, there are the negative effects of Tunisia’s widespread anti-tax culture, particularly as regards local taxation. This, together with very heavy fiscal pressure at the national level, inevitably works against the reinforcement of local government financing and thus the emergence and consolidation of a genuine local power. Lastly, we should bear in mind that the political culture of Tunisia’s elites remains overwhelmingly statist and centralist and that citizens still tend to treat the central State as sacred, underestimating local institutions and their expertise.

**Conclusion**

The implementation of the Tunisian experience of decentralization is extremely complex. It opens up a real political, institutional and financial initiative whose parts overlap and constitute a single system. The introduction of decentralization inevitably affects the structure of the State, the political system, the economy and
the social system. These multiple articulations must always be taken into account when attempting to stimulate political decentralization. The following recommendations refer to Tunisia’s constitutional initiative and the concrete components of decentralization.

The process of constitutionalization is very important since it is the basis of decentralization; its constitutional foundations. When it comes to framing a constitutional text, a mid-way position of constitutionalization is strongly recommended. This should not be either too detailed or limited to a synthetic approach which does not guide the public powers clearly and in a detailed way. Moreover, the process should be flanked by a control mechanism to examine the constitutionality of laws. Constitutionalization is based on these principles, since the function of the Constitution is to direct the legislator and to bind actors by specific principles and values. Finally, these principles must be clear, workable and easy to understand and redundant principles which overlap, or which have similar meanings (autonomy, administrative freedom, freedom to pass provisions, etc.) should be avoided in the wording.

When it comes to the substance of decentralization, the electoral process is extended to all levels of local government and covers all municipalities and, if necessary, the categories of municipalities can be broadened (rural/urban). Powers and functions must be precisely delimited. Decentralization must provide for a level of local government centered exclusively on development. Each level of local government shall have key tasks to accomplish (basic services in the municipalities, solidarity in the regions, and infrastructure and regional development etc. in the districts). Relations among the three levels of local government and the State must be specified in detail (the nature and intensity of jurisdictional, financial and legal control, a priori control among local governments and with civil society). A new tax regime will need to be installed with specific mechanisms for solidarity and financial compensation for local government. Guarantees need to be in place to encourage the participation of women, youth and persons with disabilities. Finally, the social and cultural function of local government must be developed. Ultimately, the Tunisian experience of decentralization reveals that the country is taking steps in the right direction, towards increasing participatory democratic practices and improved local
governance.
Endnotes

1. The ECLSG states that “[p]ublic responsibilities shall be exercised, in preference, by those authorities which are closest to citizens, having regard to the extent and nature of the public tasks and the requirements of efficiency and economy”.

2. “Local governments possess their own powers, powers shared with central government, and powers delegated to them by central government. The joint and delegated powers shall be distributed in accordance with the principle of subsidiarity. Local authorities shall enjoy regulatory powers in exercising their mandates. Regulatory decisions made by the local governments shall be published in an official gazette of local government.”

3. According to the technical performance criteria and the employment of material and human resources.


5. Art. 14 makes it very clear that decentralization is not just a way to organize the administration, but is, in the words of the doyen [of French administrative law] Hauriou, “a way of being the State”. Decentralization cannot challenge the unitary nature of the State and autonomy in local government does not mean being independent of the [central] State. This clarification is important given the distrust of regionalism which is part of [Tunisia’s] traditional political culture in which it is equated with primary and tribal allegiances. The assertion of the principle of the unity of the State is based on the State’s guardianship of local government.


7. The “district” was created by the Constitution of 2014.

8. The territorial segmentation setting the new map of territorial boundaries has been officialized by Government Decree 2016-602 of 26 May 2016.

9. The distribution of public local services is a result of the phenomenon of highly uneven municipalization. This gives rise to uneven development between urban and rural areas and between coastal and inland areas cut off from the development dynamic.


11. In particular it cites: presenting estimates of financial resources to be transferred to local government in the context of the State budget; proposing criteria of distribution of transferred State resources to local government; drafting a preliminary report on the cost of the transfer or extension together with central services and the High Court of Local Government; making financial analyses of different [levels of] local government in the light of their financial calculations; these accounts to be obligatorily transferred by [local] government to the Court; examining the volume of public compensation of municipalities in line with the provisions of Art. 9 of the Organic Law; carrying out evaluation studies and supporting surveys of local government financing.

12. The World Bank [(2018)] reports that “Local government budgets account for less than 4% of the State budget and less than 1% of GDP. In 2016 close to 35% of local government resources came from the State: in 2016 the TCL, managed by the State, accounted for 42% of local government’s own resources and can in some cases came close to 75% of taxes and taxes returned to the municipality. Unlike OECD countries [Tunisia’s] municipalities are not big public investors. The State spent on average 2,000 TD per inhabitant against only 90 TD for the municipalities. Municipality budgets are heavily dependent on State transfers. The power to regulate tax rules, percentages and collection procedures largely side-steps local government. This is because almost all tax income is based on the tax system and is thus governed by [ordinary] laws (Art. 65, Constitution of 27 January 2014). Report de synthèse sur la performance de la gestion des finances publiques, Roger Picard and Ahmed Guidara, 6 April 2018, p. 36.

amassed to around 150 million Tunisian Dinars (MTD). This affected 7 municipalities in the regions of Kasserine, Tozeur, le Bardo, Om Laarayes, Tunis, Sfax and Carthage with debts of over 5 MTD, that is, 45,663 MTD, which accounts for 30% of all debts. Whereas for 113 municipalities, indebtedness remained manageable. See https://directinfo.webmanagercenter.com/.../tunisie-les-dettes-de-172-municipalites-sel.

14. According to the Director General of Local Government in 2015 the debt of 172 municipalities out of a total of 264
17. Art. 136 of the Constitution states: “The central government shall provide additional resources for local authorities, in order to apply the principle of solidarity [in a balanced and organized manner]. The central government works towards achieving balance between local revenues and expenditures. A portion of revenues coming from the exploitation of natural resources may be allocated to the promotion of regional development throughout the national territory”.
19. Total personnel in local administration at all [levels of] local government is around 27,000 compared to approximately 700,000 for the State.
20. As regards human resources in municipalities the Minister of Local Affairs [and the Environment], Mokhtar Hammami, has spoken of the [need for a] ministerial programme to increase the current rate of training and recruitment (11%) to 15.4% (2019) in 193 municipalities. [to] 25% nine years from now. Training programmes in 2019 reach 55% of elected candidates, 4,000 out of 7,121, 50% of municipal managers (1,750 out of 3,500) and 10% of manual workers (3,100 out of 31,000 (www.webmanagercenter.com accessed 28/11/2018).
24. The CPSCL was created by decree in 1902 as a loan fund for municipalities. Law 75-37 of 14 May 1975 transformed it into a Loan and Support Fund for [all levels of] local government (JORT 34 of 20 May 1975, p. 1068). It is organized by Decree 92-688 of 16 April 1992 to support the administrative and financial organization of the CPSCL (JORT 24 of 21 April 1992, p. 44). Its mission is to grant loans and to provide financial and technical assistance to help identify, study and implement local government investment plans.
25. Cited supra, no. 11.
26. This is responsible for developing a national approach to implementing decentralization, and ensuring the involvement of local government, the ministries and public bodies, together with key components of civil society.
28. The Preamble reads as follows: “Nevertheless, the reality calls for radical changes, dictated by the text of the Constitution, progressive borrowing in implementation and consolidation of decentralization, taking into account the cost of the planned reforms, the need to transfer considerable rights to [local] government, to the reform their financial regime and their property assets, which is the same as preserving their autonomy and guaranteeing them the effective management and good governance of [local] government”.

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