The Urban Situation: Cities’ Place in Decentralized Government Frameworks

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Introduction

Over the past four decades, many developing and post-Soviet countries have shifted away from central rule and embraced sweeping decentralization reforms. These reforms were largely driven by the idea that greater autonomy at the local level would make government more responsive and accountable to local concerns and more effective at addressing the special public-service demands of particular areas. Since different localities have different concerns, service needs, and service-delivery capacities, many countries decentralized by conferring more autonomy, or more responsibilities, to some local governments than others.

This paper studies two aspects arising from this phenomenon affecting the legal position of cities in Latin America, Sub Saharan Africa, Southern Asia, Middle East/North Africa, East Asia, and Eastern Europe/Central Asia. To start, it examines the tiers of subnational government in these regions and analyzes the position of cities within each hierarchy relative to other sub-national governments. It then looks within the tiers and studies the ways cities are classified in relation to each other.

These studies have yielded the following observations: First, while most of the countries studied place cities in a fixed tier in their subnational hierarchy (normally the third tier below state/provincial governments and the central government), East Asian and former Soviet-block nations tend to place cities at various tiers, giving some cities autonomy from traditionally “higher” tiers of government. The most diverse placements of cities are found in East Asian

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2 Specifically, the paper draws examples from the countries of Brazil, Argentina, Chile, Ghana, Senegal, Nigeria, Kenya, India, Pakistan, Nepal, Egypt, Iran, Morocco, China, Vietnam, Philippines, Russia, Poland, and Kazakhstan.
countries (especially China) where strong centralized governments have strategically used local autonomy to enable certain cities to more effectively respond to global economic opportunities.

Secondly, with the exception of Latin American countries, most countries studied assign different statuses to their cities based on population, development indicia, or a combination of factors. Several countries, including Poland, Kenya, Ghana, Nepal, Morocco, Iran, Pakistan, and the Philippines, have adopted clear criteria for classifying cities. The large decentralized nations of India, Russian Federation, and China have instead opted to merely partially codify criteria for city classification and leave the rest to the discretion of central or regional government officials. Other countries leave city classification almost entirely up to the discretion of the national government or state/provincial government, or they do not classify cities at all.

I. Placement of Cities Within Local Government Hierarchies

The decentralized reforms of the last several decades have given cities a variety of relationships to their central governments. The traditional pattern is for capital cities to be one step below the national government (either under national administration or as a second-tier state/provincial government) and for non-capital cities to occupy the third-tier, under the authority of provincial and state governments. However, the more recent decentralization reforms in the East Asian and post-soviet countries adopted a flexible approach under which cities occupy various tiers of complex subnational frameworks.

A. Multi-Tiered City Placement

East Asian and former Soviet-dominated countries provide the most complex positioning of cities within their subnational government frameworks. In the Philippines, Vietnam, China, Poland, Kazakhstan, and, to a limited degree, the Russian Federation, some highly developed
non-federal capital cities can attain a status equal to provincial, or 2nd tier, governments directly below the national level.

1. East Asian Subnational Frameworks

East Asian cities tend to occupy a variety of places within complex hierarchies of subnational government resulting from a series decentralization reforms. Throughout much of the region over the past few decades, highly centralized governments have adopted flexible approaches to the amount of autonomy granted to cities in an attempt to better position them to respond to global economic forces. ³ In China and Vietnam, cities’ legal status has been shaped piecemeal through a series of ad hoc decisions and legislation.⁴ In contrast, the Philippines adopted a more comprehensive reform.⁵

China’s cities can occupy a variety of places along a complex, multi-tiered framework of devolved government. “Direct-controlled municipalities” (including Beijing, Tianjin, Shanghai, and Chongquing) are one tier below the central government, sharing a status equal to the

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⁴ Id. at 11.
⁵ Id.
provinces and autonomous regions. Additionally, the Chinese central government has assigned 15 cities the status of “sub-provincial large cities.” Unlike the direct-controlled municipalities, these cities are have less administrative authority than provincial governments but are not under provincial authority. Cities also exist one step below the provinces and autonomous regional governments and are known as “prefecture-level cities.” Smaller cities and towns are placed at yet a lower, sub-prefecture tier. The territory of city governments in China often encompasses surrounding rural as well as urban land. Urban areas are divided into districts and rural areas are divided into counties.

Though not as complex as China, the Vietnamese subnational government hierarchy also affords cities with various relationships to the other tiers of government. The 1992 Vietnamese Constitution stipulates that some cities will have the same status as provinces and will be directly under the central authority. These 2nd tier cities are divided into urban districts, rural districts, and towns. Urban districts are further divided into wards. Other cities occupy the third tier, under the authority of the provinces. These provincial cities are divided into fourth-tier wards and communes.

Table 1.2 Hierarchy of Vietnamese Subnational Governments

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6 XIANFA, art. 95 (1982) (China).
8 Id. These cities are Shenyang, Dalian, Changchun, Harbin, Jinan, Qingdao, Nanjing, Ningbo, Hangzhou, Xiamen, Wuhan, Guangzhou, Shenzhen, Xian and Chengdu. Id.
9 Id.
10 Id.
11 Id.
12 Id.
14 Id.
15 Id.
16 Id.
17 Id.
Under the Philippines’ 1991 Local Government Code, cities can either occupy the second-tier as “highly urbanized” cities or third-tier as “component cities,” which are under the authority of the provinces.\(^{18}\) Some component cities, however, can be declared “independent component cities,” which are not under the control of the provinces, but still have a lower status than highly urbanized cities.\(^{19}\)

Cities in the Philippines consist of smaller administrative entities, known as Barangays, which also serve as rural administrative entities outside urban areas.\(^{20}\) Unlike most sub-city entities, Barangays are not seen as mere subdivisions of cities (as wards and districts are typically seen in other countries) rather, cities are seen as collections of barangays.\(^{21}\) Barangays are thus conceived as more primary and fundamental administrative entities, from which derive their existence.

2. Former-Soviet-Bloc Subnational Frameworks

Russia, Kazakhstan, and Poland also place non-capital cities at various tiers of government, though their frameworks are less complex and generally give cities a more remote relationship to the center. The Constitution of the Russian Federation lists republics, territories,

\(^{19}\) Id.
\(^{20}\) Id. at § 384
\(^{21}\) See e.g. id. at § 384 (defining Barangays as “the basic political unit”); Id. at § 448 (explaining that cities “consist of more urbanized and developed Barangays”).
regions, autonomous areas, and “cities of federal importance” as the direct subjects of the federation.\textsuperscript{22} The “cities of federal importance are St. Petersburg and Moscow, the capitol, both of which are governed under their own charters and legislation, similar to the other direct subjects.\textsuperscript{23} All other cities are subject to the joint jurisdiction of the national government and the republics, territories, regions, or autonomous areas over them.\textsuperscript{24}

Similarly, Kazakhstan places two cities, Almaty and Astana,\textsuperscript{25} directly under the central government along with 14 oblasts, which are similar to provinces in other countries.\textsuperscript{26} Below the oblasts are 160 raions, or counties, and 79 cities of raion status.\textsuperscript{27} More rural settlements occupy a fourth tier under the raions.\textsuperscript{28}

Poland generally makes cities more remote from the central government, placing them either at the third or fourth tier. Below the central government are voivodships, or regions. Voivodships are divided into poviats, or counties, which are further divided into gminas, or municipalities.\textsuperscript{29} 65 urban gminas have poviats rights and functions, essentially moving them from the fourth tier to the third tier.\textsuperscript{30}

B. Fixed-Tier City Placement

Cities have a much more fixed position in relation to the center in most other regions of the world. Other than the national capital city, which is normally either administered by the national government or treated as its own provincial-level administrative entity, cities are

\textsuperscript{22} KONSTITUTSIJA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION], art. 17 (Russ.) (1993).
\textsuperscript{23} Id. at arts. 65–66.
\textsuperscript{24} Id. at art. 72(m).
\textsuperscript{25} Astana is the current capital of Kazakhstan and Almaty was the capital until 1998.
\textsuperscript{27} Id.
\textsuperscript{28} Id.
\textsuperscript{29} Poland, DIVISION OF POWERS, http://extranet.cor.europa.eu/divisionpowers/countries/MembersNLP/Poland/Pages/default.aspx.
\textsuperscript{30} Id.
typically two steps removed from the central government. These cities often possess different statuses in relation to each other, as will be discussed in Part II, below, but possess the same relationship to other tiers of government.

As a typical example, in Kenya, all territory is divided into counties, each of which is responsible for the city governments within them.\textsuperscript{31} Nairobi, the capital, is treated as a county.\textsuperscript{32} Ghana also divides its territory into ten administrative regions and, below them, districts, which consist of both urban and rural areas.\textsuperscript{33} The Nigerian Constitution establishes 36 states below the central government and assigns a special status to the Federal Capital Territory of Abuja.\textsuperscript{34} Under the states are local governments as well as areas designated “urban” by the state governors.\textsuperscript{35} Under the 2014 Egyptian Constitution, cities and villages constitute a third tier of government under governorates and the national government.\textsuperscript{36}

Both Senegal and Morocco, cities also have a fixed placement in the hierarchy of subnational government but are more remote from the central government. Both rural and urban municipalities in Morocco are at the fourth tier of government, below 61 prefectures and provinces, 16 regions, and the central government.\textsuperscript{37} In Senegal, cities are arguably a fifth tier of government. Under the national government are 16 elected regional governments, then two levels of institutions with appointed officials tasked with overseeing local governments: 34 Départements and 93 Arrondissements.\textsuperscript{38}

\textbf{Table 1.3 Senegal Subnational Government Hierarchy}

\begin{table}[h]
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\textbf{33} & CONSTITUTION OF GHANA, art. 7 (1992). & \\
\textbf{34} & CONSTITUTION OF NIGERIA, art. 3(5), 6, Sch. 1 (1999). & \\
\textbf{35} & Land Use Act of 1990, arts. 3, 51(h) (Nigeria). & \\
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\end{tabular}
\end{table}
India has taken significant steps to formalize the role of local governments in recent decades, but cities are nevertheless very much creatures of the state, whose rights, functions, and powers are subject to state discretion.\(^\text{39}\) Pakistan also places cities under provinces.\(^\text{40}\) Nepal is unusual among countries with fixed-tier cities; there all cities are for the most part directly under the national government.\(^\text{41}\)

In contrast to India, Brazil has given municipalities a strong, constitutionally defined role and relationship in the framework of government.\(^\text{42}\) Like Chile, Argentina, and all other Latin American countries, however, all non-capital cities are administratively subordinate to states.\(^\text{43}\) For the most part, Latin American countries divide their entire territory into municipalities, rural and urban areas alike, and assign roughly the same form of government, with the same responsibilities, over each of them.\(^\text{44}\) Argentina breaks this mold somewhat because the highly
federalist-nature of its government results in its states adopting different divisions. Most Argentine states, including Cordoba, only assign municipal status to urban areas and leave rural areas without any local government. Some, like La Rioja, make both rural and urban territory into municipalities.

II. Classification of Cities in Relation to Other Cities

Not only are cities assigned varying positions in relation to state/provincial and central governments, but many are further categorized in relation to each other. Each classification comes with its own form of government and unique set of responsibilities, functions, and powers. Several countries have codified clear standards for how this classification will happen—normally by reference to measurable population and economic indicators. The vast and populous nations of Russia, China, and India, however, have only partially defined the method by which cities are classified. Others have left city classification either entirely up to the discretion of government officials or do not classify cities at all.

A. Clearly Articulated Criteria for Classifying Cities

Kenya’s 2011 Urban Areas and Cities Act provides a highly detailed and comprehensive framework for classifying cities. Under the act, settlements can climb a ladder of classifications based on measurable criteria. For smaller settlements, county governors can confer the status of “town” on areas of at least 10,000 people. Once a town reaches 250,000 people and meets certain stated requirements signifying their capacity to deliver services, it can apply for the status of “municipality.”

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45 Id. at 97.
46 Id.
47 Id.
49 Id. at § 9.
Finally, the board of a municipality can apply for the status of “city” once it has a population of at least 500,000 and meets certain requirements such as adoption of an urban area or city development plan, demonstrated ability to generate sufficient revenue to sustain its operations, capacity to deliver certain essential services to its residents, and an institutionalized participation of residents in management of the municipality.\(^{50}\) The application for city status must meet the approval of various entities within the county government—including an ad hoc committee composed of professional urban planners, surveyors, architects, accountants, lawyers, and business people—as well as the national Senate and President.\(^{51}\)

Ghana’s Local Government Act gives a less detailed method of classification. Under it, the entire country is divided into districts, which must consist of at least 75,000 people.\(^{52}\) “Ordinary districts” have populations of between 75,000 and 95,000.\(^{53}\) Districts qualify to become “municipalities” if they are a “single compact settlement having at least 95,000 people.”\(^{54}\) Finally, districts are classified as “metropolises” if they have at least 250,000 people and have “geographical continuity and economic viability,” meaning the ability to provide for “basic infrastructural and other developmental needs from the monetary and other resources generated in the area.”\(^{55}\) Once a settlement meets these criteria, the President has the discretion to confer the relevant classification under advisement from Ghana’s electoral commission.\(^{56}\)

Under its Local Self-Governance Act, Nepal created three classifications of urban governments based on a combination of population, sources of income, and urban facilities. Areas of at least 20,000 people having own source income of 5 million rupees and electricity,

\(^{50}\) Id. at § 5–8.  
\(^{51}\) Id. at § 8.  
\(^{52}\) Local Government Act 462 (1993) § 1 (Ghana).  
\(^{53}\) Id. at § 1(4).  
\(^{54}\) Id.  
\(^{55}\) Id. at § 1(4),(5).  
\(^{56}\) Id. at § 1(2),(3).
roads, drinking water, and communication facilities can be designated as municipalities. The national government can upgrade a municipality to a sub-municipal corporation if it possesses at least 100,000 people, an annual own-source income of at least 100 million rupees, a pitched main road, higher-level education and health services facilities, national and international sports facilities, public gardens and city halls, and the qualifications for a municipality. It can further upgrade sub-municipal corporations to municipal corporations if they have a population of at least 300,000, annual own-source income of at least 400 million rupees, a main pitched road and access roads, highly sophisticated health services, the necessary infrastructure for an international sports program, adequate opportunities for higher education, at least one university, and similar urban facilities, as well as the criteria to become a sub-municipal corporation.

In Poland, urban giminas, can acquire the rights and functions of poviats, or counties, in three ways. The national Council of Ministers can automatically confer poviat status if the gimina (1) has more than 100,000 people or (2) was the seat of the county governor before 1999. Alternatively, (3) the city council of the gimina can request poviat status even if it does not meet (1) or (2) if it has the necessary infrastructure to carry out the tasks of a poviat. In that case, the Council of Ministers must hear the opinion of the relevant municipal councils, district councils, and regional councils. Additionally, the Council of Ministers can refuse to grant poviat status in all cases if granting the right would limit municipalities from accessing public services provided by the existing poviat.

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57 Nepal Local Self-Governance Act, art. 72, 88 (1999). Hilly and mountainous areas can become municipalities if they have 10,000 people and meet the other criteria. Id.
58 Id. at art. 88.
59 Id.
60 County Government Act, art. 91 (1998) (Poland).
61 Id.
62 Id.
The Philippines’ Local Government Code permits the National Congress to create urban governments out of a collection of Barangays subject to majority approval from a plebiscite of the local governments affected.63 Municipalities may be established over a group of Barangays if they have an annual average income of at least 2,500,000 pesos for the last two consecutive years based on 1991 constant prices, consist of at least 25,000 people, and at least 50 square kilometers of contiguous territory.64 Congress may convert a municipality or other collection of Barangays into a “component city” if it has an average annual income of at least 20,000,000 pesos for the last two consecutive years based on 1991 prices and either 100 square kilometers of contiguous territory or a population of at least 150,000.65 However, Congress is prohibited from creating a new municipality or city if doing so would cause an existing local government entity to lose its status as a municipality or city because of a loss of land area, population, or income.66

Some component cities are classified as “independent component cities” because their city charter identifies them as independent of the province surrounding them.67 Component cities may further be upgraded to “highly urbanized cities” if they have a population of at least 200,000 and a previous year income of 50 million pesos based on 1991 constant prices.68 Both independent component cities and highly urbanized cities are not subject to provincial administration.69

Morocco, Iran, and Pakistan generally classify cities based purely on population. The government of Morocco establishes municipal councils for urban municipalities of more than 750,000 people and subdivides them into boroughs, which are administered by borough

64 Id. at § 441, 442.
65 Id. at § 450.
66 Id. at § 442, 450.
67 Id. at § 451.
68 Id. at § 452.
69 Id. at § 451.
councils.\textsuperscript{70} In Iran, the Ministry of the Interior simply classifies any settlement of at least 10,000 people as a city.\textsuperscript{71} In Pakistan, classification of municipalities is currently handled province-by-province. In 2013 the Punjab province enacted the nation’s clearest framework. Under the current law, the Punjab government can establish municipal committees for “integrated urban areas” with a population between 30,000 and 500,000, and municipal corporations for urban areas with over 500,000 people.\textsuperscript{72} It also designated the government of Lahore, Punjab’s capital, as a “metropolitan corporation.”\textsuperscript{73}

\textbf{B. Partially Defined Criteria for Classifying Cities}

China’s classification of cities evolved piecemeal without any dedicated, comprehensive legal framework for determining the status of cities. Thus, there is no clearly stated rationale for how the Central government identifies its direct-controlled municipalities or its sub-provincial large cities.\textsuperscript{74} The central government appears to have simply declared them as such and individually assigned specific functions and powers to them.

Lower-status Chinese cities have more official classification criteria. To qualify as a prefecture-level city, an area must have a total non-agricultural population of more than 250,000 people and the government seat of the area must have non-agricultural population of over 200,000, industrial production of at least 2 billion yuan, and government revenue of at least 200 million yuan.\textsuperscript{75} Prefecture-level cities are under the authority of provincial governments.\textsuperscript{76}

\textsuperscript{70} Municipal Charter Law No. 78-00 (2000), art. 1 (Morocco).
\textsuperscript{72} Punjab Local Gov’t Act, 2013, art. 11
\textsuperscript{73} \textit{Id.}; see also art. 3 (replacing Lahore’s earlier designation as a “city district” with a metropolitan corporation).
\textsuperscript{75} China’s Political System, CHINA.ORG, \textit{available at} http://www.china.org.cn/english/Political/28842.htm.
\textsuperscript{76} \textit{Id.}
The official ranking of Chinese cities is further complicated by several factors. First, the “agricultural” and “non-agricultural” population classifications are determined by China’s household registration, or hukou, system. Under hukou only a limited number of residents can obtain non-agricultural status, which entitles them to certain state benefits, even though many more actually live and work in cities. Because of the confusion that the official hukou-based criteria causes, the Chinese census now adopts different criteria for identifying cities.

Furthermore, politics may weigh heavily in the classification of a city. Higher-status cities attract more investment and autonomy from the central government than lower-status cities. Thus, city government officials have a strong incentive to exert political pressure on higher-level officials to obtain higher statuses. As a result of this pressure, some settlements have acquired higher statuses than their official numbers warrant.

The Russian Federation has divided its entire territory into municipalities, which are classified into three types. Under the General Principles of Local Self-Government Organization Law of 2003, smaller municipalities are classified as either rural or urban poselenie, or “communes”; larger municipalities are munitsipalnyi raion, or “municipal districts”; and the largest municipalities are gorodskoi okrug, or “city districts.”

Rather than laying down explicit criteria for classifying cities, the law merely provides general descriptions. While rural settlement status is based on minimum population threshold,
the law explains that urban settlement status is determined by the settlement’s social and transportation infrastructure, as well as other types of infrastructure. 85 It further clarifies that urban poselenie are to consist of one city, but that munitsipalnyi raion are a collection of poselenie united by common territory. 86 Gorodskoi okrug, or city districts, are defined as big settlements with developed social and transportation infrastructure. 87 Changing the status of a municipality requires the initiative of a local referendum. 88

Similarly, the Indian Constitution specifies three types of municipalities, but leaves the method of determining which type is assigned to which cities largely up to the discretion of the state governor. Under the Constitution, municipal councils govern smaller urban areas and municipal corporations govern larger urban areas. 89 Areas transitioning from rural to urban are governed by Nagar Panchayats. 90 State governors can also designate certain areas as “metropolitan areas” if they have populations of at least 10 lakhs (1,000,000) and consist of two or more municipalities or panchayats (rural governments). 91 When classifying cities, state governors must reference certain factors including population, population density, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance, or “such other factors as [they] may deem fit.” 92 Beyond these general guidelines, state governors are free to determine their own standards for classifying the cities. Several states do not appear to have codified more specific criteria and mostly just repeat the language in the Constitution. 93

85 Id. at art. 11.
86 Id.
87 Id.
88 Id. at art. 13(2).
90 Id.
91 Id.
92 Id.
93 See, e.g., Andhra Pradesh Municipal Corporation Act, art. 2
Because of the liberal discretion state governors have, classification of cities in India tends to be driven more by political factors than a cohesive framework. In more urbanized states, such as Gujrat, Kerala, Tamil Nadu, and West Bengal, state governors tend to withhold conferring municipal council or corporation status because if settlements remain governed by panchayats, the rural form of government, the state exercises more control and is not obligated to transfer as many resources to them. In less urban states, such as Uttar Pradesh, Rajasthan, and Madhya Pradesh, state governors have conferred municipal status on the majority of their settlements because it helps politicians’ reelection chances by enabling them create more districts, giving them greater ability to cater to different constituencies. As a result, many settlements in India that have economic and demographic conditions matching rural villages have municipal-level governments, while other very urban areas have rural governing bodies, constraining their ability to meet service demands. Also, many peri-urban settlements have grown very large in recent years, but have not yet been included under the municipal governments of the cities they surround or been conferred independent municipal status.

C. Discretionary Classification of Cities or No Classification

Other countries provide even less definition, either leaving classification up to the discretion of higher tiers of government or not creating separate classifications for cities at all. In Nigeria, state governors have the sole discretion to declare certain territory “urban.” In those urban areas, state governors own, control, and manage all urban land on behalf of the state.

95 Id.
96 Id.
98 Land Use Act (1990), arts. 3 (Nigeria).
and local governments have little authority.\textsuperscript{99} On non-urban land, however, local government councils have many more functions.\textsuperscript{100}

The Senegalese Local Government Code also leaves room for government discretion in the classification of cities, but places the discretion with the central government. Settlements must have at least 1,000 people and be sufficiently developed to generate the resources to maintain a balanced budget to become an incorporated municipality.\textsuperscript{101} After that threshold, the central government can decree any municipality to be a “city,” which is then divided into boroughs.\textsuperscript{102}

In Latin America, cities tend to not have different classifications. Brazil, for example, assigns the same form of government and the same powers to almost all municipalities.\textsuperscript{103} Thus, even the smallest have concurrent responsibility with higher tiers of government to deliver certain services to their populations as specified in the Constitution.\textsuperscript{104} Chile and most Argentine states are similar.\textsuperscript{105}

\begin{footnotes}
\textsuperscript{99} Id. at arts. 2–3.
\textsuperscript{100} See Constitution of Nigeria (1999), art. 7, sch.4 (defining the powers of Local Government Councils).
\textsuperscript{101} Senegal Local Government Code of 1996, art. 79.
\textsuperscript{102} Id. at art. 84. Vietnam and Kazakstan appear to create separate classifications for cities as described in Part I, however there does not appear to be codified standards for making the classifications publically available.
\textsuperscript{103} Nickson, supra – at 121.
\textsuperscript{104} Id. at 121.
\textsuperscript{105} See id. at 97, 131. No information on Egypt’s treatment of cities was publically available.
\end{footnotes}