

DIRECTIONS IN DEVELOPMENT

# Decentralization of Education

*Legal Issues*

KETLEEN FLORESTAL  
ROBB COOPER



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Cover photograph, by Curt Carnemark of the World Bank, is a scene from an Aga Khan Foundation School in Pakistan.

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## Foreword

This book was produced by the Education Team of the Human Development Department of the World Bank. It is one in a series covering a range of topics relating to restructuring education systems. As part of education and public sector reforms, many countries are choosing to decentralize the administration and financing of education services to the regional, local, or school level.

Successful decentralization of school systems is neither quick nor easy. It requires changes on many fronts, behavioral as well as institutional. This book deals with one aspect of the institutional changes needed in the decentralization of primary education systems: the legal aspect. It gives an overview of the legal issues involved and provides suggestions for designing the necessary legislation. The approach is practical. The book attempts to give suggestions to those who plan and implement education decentralization programs on the legal issues that they are likely to encounter and on preparation of the necessary legislation.

We hope that the practical nature of the book will make it useful to a wide audience of educators and administrators dealing with the complexities of education system development.

*David de Ferranti*  
*Director*  
*Human Development Network*  
*The World Bank*

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## Preface

The responsibility for providing basic education is firmly written into the law in nearly all countries. National constitutions often mandate free and universal primary education, national and state legislatures enact laws to govern the provision of basic education, and governments and local administrations adopt regulations to implement these laws. To the lawyer, education law is part of administrative law, although education issues also spill over into a number of other branches of law. Every major attempt to decentralize basic education systems throughout the world has involved changes in the law.

Of course, other factors also influence the outcome of decentralization. While a formal education system is a product of the law, and reform efforts will require changes in the law, it is also true that

Decentralization does not come with the passing of laws or signing decrees. Like most types of reform it is built rather than created. It happens slowly because the organizational culture (e.g., “the way we’ve always done things around here”) must be transformed, new roles learned, leadership styles altered (e.g., shifting from controlling to supporting behaviors), communication patterns reversed, planning procedures revised (e.g., bottom up and top down), and regional policies and programs developed. (Hanson 1995: 9)

Indeed, decentralization has sometimes taken place without any legislative action. In a number of African countries and in Haiti, for example, “the transfer of service provision has been more *de facto* than *de jure* as central governments have simply become unable to exercise their established financial and administrative responsibilities in various sectors, instead passing them along to the local level by default” (Blair 1995: 19). Even in these cases, as governments resume the role they are expected to play in providing basic education, legal issues will need to be addressed.

The purpose of this book is to inform education policymakers, planners, and practitioners about international experience in the legal

aspects of decentralizing basic education. It also provides a basic understanding of how instruments such as laws and regulations can be used for education reform. There are four main sections. The first examines the general legal aspects of decentralization; the second looks more closely at decentralization laws and regulations; the third is, in effect, a checklist of items that should be included in decentralization laws; and the fourth sets out a road map to help the planner prepare and implement the laws required for reform.

Each country has different laws, and the terms used in one country may have different definitions in other countries. We have tried to keep the discussion of legal matters as general as possible here, so that this book can be used in any country. Still, the legal analysis is based on the legal systems of the Western world or the legal systems that they inspired.

Finally, the term *decentralization* will be used in two different ways. First, it will denote all efforts aimed at transferring decisionmaking power in basic education from the administrative center of a country (such as the central ministry of education) to authorities closer to the users (such as countries, municipalities, or individual schools). Second, it will be used in a more technical sense to describe one of the many forms this type of reform can take, and in this narrow sense it will be contrasted with deconcentration and devolution (see glossary).

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## Decentralization: Differences in Form, Degree, and Context

In a centralized primary education system most decisionmaking, monitoring, and management functions are concentrated in the hands of an education ministry or department. The central government regulates all aspects of the system, including those related to students, teachers, funding, and facilities. It sets policy and performs management functions, such as paying teachers, and providing pre-service and inservice instruction. Since in practice some matters might be dealt with locally, school officials are given some power, but it is limited to day-to-day management, and they have very limited scope for initiative.

By contrast, a decentralized system is characterized by the exercise of substantial power at the local level on many aspects of primary education, subject to some limited control by the central government. Responsibility may be decentralized to a region, a province, a district, a town, or an individual school or a group of schools.

In practice, most basic education systems have both centralized and decentralized elements. In a partially decentralized system some powers remain in the hands of the central authority, and some are exercised locally. Planners involved in a decentralizing reform must identify which components of the system are more appropriately managed at the central level and which at the local level, given the country's particular circumstances and the objectives of reform.

Countries decentralize their basic education systems for a variety of reasons: to save money and improve management efficiency and flexibility, to transfer responsibility to the most capable level of government, to raise required revenues, to conform with a wider administrative reform or with the general principle that administrative responsibility should be vested in the lowest capable level of government, to give users a greater voice in decisions that affect them, to better recognize local linguistic or ethnic diversity. It is important to define the objectives of decentralization at the outset, so that they can act as measures of its success.

## Deconcentration, Decentralization, and Devolution

So far, we have used only the broad meaning of decentralization: to move decisionmaking away from the center and closer to the users of the service. We now must look at the different kinds of decentralization. The general literature identifies three types of decentralization: deconcentration, decentralization proper (or delegation), and devolution. In the context of basic education we are concerned mainly with deconcentration and devolution.

### *Defining Deconcentration*

Deconcentration is "the handing over of some amount of administrative authority or responsibility to lower levels within central government ministries or agencies" (Rondinelli 1984: 10). From a legal standpoint the key feature of deconcentration is that the people given additional responsibility are part of the central ministry, and they continue to act under the supervision of that ministry. In other words, decisionmaking authority is transferred within the same legal entity. Deconcentration puts more responsibility in the hands of central ministry officials who are located closer to the users of the service and will thus, it is expected, be more responsive to local needs. But deconcentration does not modify the basic notion that the people managing the education system are agents of the ministry. They act in the name of the ministry and are accountable to it. The central ministry remains responsible for the acts of its agents and for funding the system.

### *Distinguishing between Decentralization and Devolution*

Devolution and decentralization in its narrow sense are characterized by the idea that the body or agency receiving the new powers is legally separate from the central ministry, which initially held those powers, and does not report to the central ministry. Authors differ somewhat in distinguishing between decentralization and devolution. In the case of decentralization (which is sometimes referred to as delegation) the body receiving the powers is typically a public corporation or a regional agency that may be subject to significant control by the central ministry.

There are few instances of this type of decentralization in the area of basic education.

In the case of devolution—a term found mainly in the English-language literature—the power to regulate the provision of basic education is given to local governments or to other local bodies that are associated with local governments. Often, the local body made responsible for some aspect of basic education is a local government (such as a county or a town government) or an agency with a territorial jurisdiction matching that of a local government (such as a county or municipal school board). Sometimes responsibility can be handed over to a body exercising jurisdiction over one or several schools. The French equivalent is *décentralisation* or *décentralisation territoriale*.

Devolution has four key features: the body that exercises responsibility is legally separate from the central ministry; the body acts on its own, not under the hierarchical supervision of the central ministry; the body can exercise only the powers given to it by law; and the body can act only within the geographic limits set out in the law. Also, such bodies are often supervised by a board of officials elected by the local population. Because the local body is legally separate from the ministry, it can enter into contracts and conduct other transactions in its own name. The local body is fully responsible for its acts; the central ministry has no responsibility unless the law specifies other arrangements.

Although the local body is not under the control of the ministry, it is nevertheless not entirely free to do as it pleases. Local governments must act within the limits set for them by law. These constraints also hold for special bodies established specifically to control certain aspects of the provision of basic education. Such bodies can act only within the limits set out in the legislation establishing them.

As a consequence of devolution, the local body is responsible for the functions assigned to it by law. Its agents act on behalf of the local body, and only the local body, not the central ministry, is responsible for them. As will be seen later, this has important consequences for the financing of basic education. A local body may be given responsibility for managing schools or paying teachers. Without a reasonably assured source of funds or the power to raise funds independently, the local body may not be able to discharge its new responsibilities. Similarly, granting authority to local bodies can be successful only if those bodies have the administrative capacity to discharge their responsibilities.

One of the usual objectives of decentralization is to improve the efficiency and equity of primary education by transferring responsibility to local authorities. However, unless the reform is well planned and implemented, these objectives may not be fully realized. For example, if legislation decentralizes the source of funding, leaving it up to local

authorities to raise funds, there may be a significant lag between the time when the central authority is freed from its responsibility and the time when local authorities have the capacity to raise and allocate funds. In such a case, if legislation does not provide for a transitory solution, such as a compensating grant scheme, regional disparities may develop.

The law generally specifies the duties and obligations of school boards. In New Zealand, for example, The Education Act of 1989 gives a school's board of trustees "complete discretion to control the management of the school as it thinks fit" (section VII, paragraph 75). A board "may from time to time, and in accordance with the State Sector Act 1988, appoint, suspend, and dismiss staff" (section VII, paragraph 65).

In Nicaragua the municipal education councils, established by decree of the Ministry of Education, are responsible for administrative functions delegated by the center to the local or municipal level (Gaynor 1996).

Local bodies may be subject to a wide range of general laws, in addition to those dealing directly with education. For example, in Ontario, Canada, "in addition to legislation, regulations and policies on education, school boards must comply with other legislation such as the Occupiers' Liability Act and the Occupational Health and Safety Act, unless exempted by the statute." Thus there are "many non-education statutes both federal and provincial which directly or indirectly govern or determine the conduct of school boards" (Brown and Zuker 1994: 11). For instance, they may have the general duty of caring for students, and "failure to have an adequate playground supervision policy could result in a finding of negligence against the board where the failure results in an accident" (Zuker and Brown 1994: 50). Similarly, a school or school board may have the legal responsibility for hiring and could be sued for employing inadequate personnel.

## **The Question of Formal Control**

A key question in any decentralization effort is to define how much control the central ministry will exercise over the local body. At one extreme, if the central ministry controls local bodies as tightly as it controls its own agents, the situation would be that of deconcentration, not decentralization or devolution. At the other extreme, if the central government exercised no control, the local body would have political power, and the situation would be that of a federal state. It is between these extremes that the control of the central government will be defined.

Generally, local bodies can act only within the limits of the law that established them or regulate them. In some cases a government ministry may exercise control over them. For example, local governments are often under the indirect control of the ministry of the interior. In other cases control may be exercised through court actions. In some rare cases control may be exercised only before a decision of the local body becomes effective (such veto power would end the autonomy of the local body). In others control can be exercised only after the decision has been made.

The decisions of the local body may be subject to annulment under certain conditions specified in the law. Alternatively, the controlling body may have the power to force the local body to reconsider its decision. The law may also provide an emergency scheme, under which the local authority's powers would be repealed if it failed to act in a manner consistent with the law. In either case the law would determine whether remedial action could be taken by the central ministry or by a court.

When devolving decisionmaking authority, policymakers may want to balance local bodies' autonomy with some control by the central authority or the judiciary. A careful balance must be struck between the need to provide safeguards against local bodies taking arbitrary actions and their need to maintain autonomy. One option is to leave it to individuals affected by an allegedly arbitrary decision of a local body to seek redress through court action. Another option is to provide a repeal or suspension mechanism, such as granting veto power to the central authorities or allowing for the reversal of power from the local bodies to the center. However, if procedural requirements for vetoing or repealing an act are too strict, they may inhibit the exercise of such an option.

An example of such a control mechanism is found in Papua New Guinea, where the national government has been given the power to veto provincial tax laws if it regards them as discriminatory (particularly against residents or products of other provinces) or excessive (if they affect taxpayers' capacity to pay central taxes). This power to repeal is limited. The vetoing process involves not only the central government but also the National Parliament and the National Fiscal Commission (NFC). It ensures that the Parliament and the NFC provide protection against arbitrary actions by the central government but limits their power to disallow provincial laws even if they reveal themselves as inefficient or inequitable (Ghai and Regan 1988).

Even if local authorities are given the exclusive right to take initiative on education matters, a certain level of control may still remain at the center. That level will indicate the extent to which there is a

move toward decentralization. Limiting the powers of local authorities may influence their willingness to undertake new functions. Nevertheless, such a restriction may be justified if local bodies are inexperienced. If they fail to perform the newly allotted functions correctly, the central authority would be allowed to override their powers.

## **Shared Responsibilities**

The formal controls established by law are not the only limits placed on local bodies' freedom to act. Since the components of the education system are by and large interdependent, the actions of local bodies may also be limited by the actions of the central authority. For several aspects of the system there are many types of relationships that can be established between the central government and local bodies.

For example, even if local authorities are given responsibility for the curriculum, their freedom of action may be limited by national requirements dictating the minimum standards students must meet to move up to the next level. The central government may also set the broad parameters of the curriculum and then let local authorities choose textbooks, or it can impose topics for a part of the school day, leaving the rest of the time for local curriculum. Funding school systems may also raise issues concerning shared responsibilities, depending on the freedom local authorities have to establish their own budgets and raise their own resources.

Such shared distribution of power may affect local accountability and efficiency. If decisionmaking capacity is awarded exclusively to local bodies, accountability may be enhanced. On the other hand, shared responsibilities may promote efficiency and consistency if the central authority can better the process or if local bodies are not ready to assume full responsibility.

## **Decisionmaking Authority**

Countries that decentralize their primary education systems will start from varied governmental structures (very centralized, moderately decentralized) and distribute responsibilities for education functions differently (see box 1). Several factors will influence where within the local government structure education powers and responsibilities are

transferred. These factors include financial considerations, such as the potential to raise funds, proximity (geographic and administrative) to the facilities and to the users of the system, and the present and potential management capacity of the bodies involved.

In Argentina reforms initiated in 1978 resulted in the transfer of responsibility to the provinces, but "no deconcentration to the municipalities has been ever attempted within the decentralization process" (Prawda 1992: 60). In Ghana "the decentralization of the education administrative system has shifted the locus of responsibility and managerial functions from regional to district level" (Asare-Bediako and others 1995: 24). In Zambia the Ministry of Education recognized that the existing system was too centralized and in August 1995 proposed a reform of the Education Act that would establish district education boards.

## **Context and Pace of Decentralization**

Decentralization can take place as part of wider political reforms, as in South Africa and Eastern Europe, or it can be undertaken in the absence of such reforms. Decentralization can be completed quickly, as was the case in New Zealand, or be achieved more gradually.

The many variations can be summarized by three broad categories. First, when education reform is undertaken as part of an overall decentralization program, there is usually room for effective geographical and functional decentralization. Assuming that a consensus on the need for reform is reached, legislation mandating the decentralization of government may also include provisions on the decentralization of education (see box 2).

Second, if the decentralization of government has already been provided for (or taken place), then at the time of reform local and regional government structures will already exist legally and in practice. Decentralizing education may be facilitated if strong regional infrastructures are in place. For example, in Chile in the early 1980s, "the relative ease of institutionalizing decentralization was attributable to the strong administrative capacity at all levels of government and by effective public financial management and control at the center" (Espinola 1995: 1). However, problems may arise if existing local entities are poorly suited to carry out education functions. Parallel structures may have to be created for education. If responsibilities are not clearly delimited, local school authorities may end up competing for power with local government structures.

### Box 1. Local Government Structures

Government bodies below the national level vary from country to country in terms of their degree of autonomy, legal personality, and governance structure. Within federal countries there may be significant differences among the federated states. Also, names of local government units can have different meanings in different countries.

Generally, two levels can be identified below the central state (or in the case of federal countries, below the federated states, which usually have responsibility for education): an intermediate level between the central state and the municipality (such as counties or districts in many English-speaking countries, or regions and departments in France), and municipalities. In some countries, however, the bodies exercising responsibility for education may not have the same territorial scope as any of the government levels. For example, the territorial jurisdiction of the French *académies* does not match exactly the territory of the *régions*.

#### *Ghana*

Three levels of local government share responsibility for education: the district, the municipality, and the metropolis. Under the 1993 Local Government Act the governments are to be created by the president according to (at least) the following criteria:

- For a district, a minimum population of 75,000.
- For a municipality, a geographic area consisting of a single compact settlement and a minimum population of 95,000.
- For a metropolis, a minimum population of 250,000.

#### *Philippines*

The Local Government Code of 1991 distinguishes four principal local government units:

Third, the decentralization effort may be confined to the education sector. This may be the case in a centralized government, where at the outset responsibility for education functions were not well defined. It also may be the case if education is considered a test sector for decentralization. Moreover, political pressure may also reduce wider decentralization schemes to only the education sector. When education is decentralized in such a context, the task goes beyond creating new laws and regulations (see box 3).

It becomes crucial at the beginning to ensure that all implementation issues, such as the establishment and administration of local governance structures (whether under a deconcentration or a devolution scheme), are dealt with in order to avoid the risk that the reforms will

- The *barangay*, which “may be created out of a contiguous territory which has a population of at least 2,000 inhabitants” (Section 236) and which “as the basic political unit . . . serves as the primary planning and implementing unit of government policies, plans, programs, projects and activities in the community” (Section 384).
- The municipality, “consisting of a group of barangays, serves primarily as a general-purpose government for the coordination and delivery of basic regular and direct services and effective governance of the inhabitants within its territorial jurisdiction” (Section 440). A municipality may be created if it has an average annual income as certified by the provincial treasurer of at least 2.5 million pesos for the last two consecutive years based on the 1991 constant prices, and a population of at least 25,000 inhabitants.
- The city, “consisting of more urbanized and developed barangays, serves as a general-purpose government for the coordination and delivery of basic, regular, and direct services and effective governance of the inhabitants within its territorial jurisdiction” (Section 448). A city can be created if it meets a composite list of criteria on income, size, and population (Section 450).
- The province, “composed of a cluster of municipalities, or municipalities and component cities, and as a political and as a corporate unit of government, serves as a dynamic mechanism for developmental processes and effective governance of local government units within its territorial jurisdiction.” A province also must fulfill a minimum income criterion and a geographic size or population criterion.

Source: Ghana, 1993 Local Government Act; Philippines, Nollado 1994.

be made in an institutional vacuum and suffer from a lack of experience, infrastructure, and implementing bodies. The experience of Papua New Guinea is telling in this regard. Administrative decentralization of the education sector was introduced in 1970 with the creation of district education boards (DEBs). It was only in 1977, however, that political decentralization was undertaken and provinces created. The DEBs were transformed into provincial education boards with extended powers (Bray 1996).

In most cases reform was not accomplished by the passage of a single law, and there were several waves of legal reforms. In Chile, for example, the decentralization process was accomplished in two stages: a financial decentralization between 1973 and 1989 followed by a ped-