

**LOCAL GOVERNANCE
INTEGRITY
PRINCIPLES AND
STANDARDS**

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of September 2014. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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INTRODUCTION

BACKGROUND AND PURPOSE

Local governance reform continues apace around the globe, with an ever increasing trend towards the transfer of powers and responsibilities from central government to the subnational level. Although decentralisation processes can help strengthen accountability by bringing government closer to the people, corruption is a problem at all levels and decentralising services can also simply decentralise corruption. For example, local officials may have greater vested interests based on family, friendships and business ties that can influence decision-making; remuneration at the local government level is, in many cases, low in comparison to the national level; and the institutions that are designed to hold public officials to account at the local level are not always adequate. Monitoring by the media and civic institutions can also be weak. Contact between local government officials and the public is highest at the local level, which increases the opportunities for corruption. Conversely, it also provides more chances for citizens to hold governments to account. Thus, decentralisation provides both significant opportunities which can be leveraged in the fight against corruption, but also presents particular challenges which must be addressed.

The purpose of the **Anti-Corruption Principles and Standards for Local Governance Systems** is to provide clear guidance as to how to prevent corruption and deal with it when it occurs. Most of them apply to the whole governance system, including citizens, civil society, the media and the private sector. These stakeholders play an increasingly important role in local policy-making, oversight and service delivery and are essential for reducing corruption. Civil society organisations notably can use the principles and standards to monitor the progress of local governance.

When the principles are put at the heart of local governance and the standards are met, the risks of corruption are reduced. Citizens can participate in and influence policy design and implementation and hold local officials to account for their decisions. Actors in the local governance system work in the public interest and are open about their activities and take responsibility for them. Local governments around the globe should adhere to these principles and standards and citizens and other stakeholders should demand they do so.

HOW TO USE THE PRINCIPLES AND STANDARDS

The **principles** centre around transparency, accountability and integrity – the key overarching elements needed to effectively prevent corruption. They also highlight ways of increasing the accountability of local governments by allowing the participation of citizens in decisions that affect them.

The **standards** include concrete measures that local governments should take to make sure that these principles are realised. They complement the principles by showing how they can be applied in practice. The standards are divided into nine sections, which reflect areas of work that are particularly important for local governments and where transparency, integrity and accountability are essential.

The principles and standards are the first of three parts of a broader package to reduce corruption at the local level. They are the basis for our Local Integrity Assessments, which use a certain number of indicators that help examine how local governments perform and what they can do to improve. Thus, this second part identifies the gap between the ideal standard and the reality. The third part of the package is a set of practical solutions and tools – developed by both Transparency International and others – that can assist local governments and others in following up on the recommendations and initiating reforms.

While the principles and standards are generic and are meant to cover all kinds of political systems and levels of decentralisation, clearly a large degree of adaptation will be necessary when implementing them. For example, the nature of responsibilities devolved to local governments varies enormously from country to country, ranging from federal structures to very centralised systems with little local autonomy. Therefore some of the standards will not be applicable when the competency around a particular issue lies with the central government. For example, the police force might be the remit of national authorities. In addition, even in the most decentralised structures some essential accountability mechanisms will exist outside the local government level and structure. More generally, in all countries, whether highly decentralised or centralised, the relationship across levels of government is more one of mutual dependency than a clear-cut separation of roles. Ideally, therefore, such principles and standards should also be supported and endorsed by central administrations, which should see their successful application as their own responsibility as much as that of the local authorities.

Clearly, there is a significant gap between the principles and standards contained here and the reality in many countries. Contexts and capacities vary tremendously. For example, there is a clear difference between large cities and small rural municipalities and between rich countries and those where infrastructure and resources are lacking. The reality will also be entirely different between countries with a long democratic tradition with comparatively strong institutions and those which might be in, or emerging from, conflict. The result will be, for example, that the creation of an independent investigation agency may be relevant for a large city, but not for a rural municipality. Similarly, in places where the Internet is widely used, web platforms might be powerful tools to enable citizens to access information about their local governments; in other contexts, public hearings, mobile phones and other media may be much more efficient. We fully acknowledge this diversity and the principles and standards should be viewed more as a “gold standard” than a “blueprint”.

Nevertheless, despite all of the variations in contexts, capacities and priorities, all actors who are interested in reducing corruption in local government will find material in these principles and standards which is of relevance to them. The principles and standards can help set objectives for reform and help clearly define priority areas and measures which should be undertaken. While such a reform process should be owned and driven by local governments themselves, the principles and standards should be used to inform the actions of all actors and stakeholders, whether they be central governments pursuing a decentralisation process, organisations providing technical assistance or civil society seeking to engage locally. The key is not the pro forma, wholesale adoption of the principles and standards, but rather their intelligent use as a basis for action, change and a reduction in the corruption which blights the lives of people throughout the world.

HOW THESE PRINCIPLES AND STANDARDS WERE DEVELOPED

The starting point for the development of these principles and standards is that work on local governance is not new and a tremendous amount has already been done. Thus, we examined existing principles and standards developed by other expert institutions and organisations and drew heavily on them where they were relevant to the fight against corruption. However, it should be noted that in many cases this also involved modifying or rephrasing the standards which exist. Thus, it is important to recognise that when a particular standard is referenced, this might not be exactly as it appears at source, and it is necessary to check the original document before attributing it to another organisation. We are grateful for and fully acknowledge the excellent work undertaken by a number of organisations which is drawn-upon heavily in this document. Some new elements as well as standards have also been added where gaps were identified.

This is a living document which will be updated as new standards emerge or are identified.

GUIDING DEFINITIONS

- **Local governance** – the process by which public policy decisions are made and implemented at the local level¹
- **Local government** – broadly defined as any unit or entity beneath the level of the central government in a unitary system (or beneath the level of state governments in a federal system), applicable to cities, municipalities, provinces or counties and ranges from small rural councils to very large city parliaments. The term includes the local executive and legislative (or deliberative) branches of government and the local public sector (e.g. local bureaucracy)
- **Local governance system** – encompasses many actors, namely local government, public sector, private sector and civil society, and the traditions, rules and institutions that frame the complex interactions between these actors (including the judiciary and the police)
- **Key actors of the local governance system** – local governments, local entities benefiting from public funding or any type of preferential treatment, any actors with significant capacity to influence local policy decisions and any entity in charge of delivering local public services (be it public, private or mixed)
- **Corruption** – the abuse of entrusted power for private gain

¹ “A Users’ Guide to Measuring Local Governance”, United Nations Development Programme (UNDP), 2009.

GUIDING PRINCIPLES

1. ENSURING INTEGRITY

The key actors of the local governance system must fulfil their mandates in an effective manner, according to the rule of law and in line with strict codes of ethics, conduct and practice. Operational mechanisms must be in place to prevent corruption. These mechanisms shall bind individuals (namely, public officials, civil servants and the managers and directors of the key actors of the local governance system), as well as institutions. Each of these individuals must ensure that his/her conduct is above reproach in the view of a reasonable observer.

When key public actors (or those acting on behalf of the public actors) at the local level fulfil their mandates according to strict ethical and moral codes, and conduct themselves honestly, corruption has little space to take root. Integrity, transparency and accountability are mutually reinforcing. Actors that behave with integrity are more willing to be open about decisions and actions taken and be held accountable for them. Conversely, transparency and accountability provide incentives to behave with integrity.

- 1.1 Rule of law** – The key actors of the local governance system abide by the law and judicial decisions. Their decisions are taken and applied in agreement with publicly disclosed rules and regulations. The rules and regulations are adopted according to procedures provided for by law and are published and impartially enforced.²
- 1.2 Effective judiciary** – The judiciary is independent, effective and professional in discharging its responsibilities and is properly resourced.
- 1.3 Ethical conduct** – Individuals behave at all times with the highest ethical conduct and the public interest is placed before their individual interests. There are effective measures to prevent and fight all forms of corruption at all times. Conflicts of interest are reported in a timely manner and the person(s) involved abstain from taking part in relevant decisions.
- 1.4 Non-discrimination** – Local public officials and local governments shall perform their duties without favour, bias or prejudice. Any measures for positive discrimination must be clearly defined and publicly communicated.
- 1.5 Anti-corruption arrangements** – Local governments shall design and implement effective anti-corruption plans binding public officials and elected representatives. These plans are revisited periodically to ensure the effectiveness of the integrity system and to identify and manage corruption risks. Some activities and competencies of local governments are particularly susceptible to corruption, meaning necessary measures must be in place to prevent corruption and detect and deal with it promptly if it occurs. Local governments shall also commit to developing and implementing programmes that clearly, and in reasonable detail, articulate values, policies and procedures to be used to prevent corruption from occurring in all activities under their effective control and to deal with it if it does occur. Planning, developing and implementing anti-corruption mechanisms shall be the mandate of an autonomous local anti-corruption agency or body.
- 1.6 Leadership from the top** – Local politicians and high-level local public officials publicly commit to zero tolerance of corruption and actively support and enforce measures against it.

² The rule of law is defined as “Legal and political systems, structures and practices that condition a government’s actions to protect citizens’ rights and liberties, maintain law and order, and encourage the effective functioning of the country”. See Transparency International’s Plain Language Guide, p. 41: <http://bit.ly/1ymbBaH>.

- 1.7 Probity of local political parties and campaigns and elections** – local governments must not interfere in local political parties’ activities. All local political parties and/or candidates shall have equitable access to the media and to transparent financing mechanisms. Elections need to be free and fair, allowing people to vote without fear of interference. The electoral procedure should be clearly defined by law and transparent. An independent Electoral Commission or its equivalent must be in place, with the required oversight and management responsibilities, and be properly resourced.

2. ENSURING TRANSPARENCY

The key actors of the local governance system must make transparency a central element of their governance, and report on their activities. Government information shall be made available to citizens in a timely, useful and comparable way and in an accessible format.

Transparency empowers citizens to participate in and follow up on local governments’ activities. If the actors of the local governance system are open in the clear disclosure of information, rules, plans, budgets, processes, actions and results, corruption is harder to hide. Transparency is a precondition for integrity and accountability.

- 2.1 Access to information** – Every citizen shall have the right to access information held by the key actors of the local governance system. This right may be limited only in very narrow circumstances and limitations must be proportionate and justifiable. Citizens can request information without justification or having to demonstrate a specific interest in the information. Whenever a local public entity wishes to deny access to information, it bears the onus of justifying the denial at each stage of the proceedings. Restrictions that aim to protect the key actors of the local governance system from embarrassment or prevent the exposure of wrongdoing are not justifiable.
- 2.2 Active provision of information** – Local governments shall collect, store and make available intelligible and up-to-date information, particularly on the following issues:
- information on people’s representatives (e.g. declarations of assets and financial interests)
 - information on decision-making processes (e.g. information with regard to past, present, and future activities and budgets)
 - information on decisions and outcomes (e.g. financial management, recruitment, public procurement, urban planning and regulatory issues)
- 2.3 Quality and timeliness of information** – The information disclosed by the key actors of the local governance system shall be accurate, timely, useful and in an accessible format. The local executive must produce and insist on high-quality reporting through effective reporting procedures. The legislative or deliberative body must demand and be committed to high-quality reports and provide input into, and oversight over, the local government’s reporting procedures.

3. ENSURING ACCOUNTABILITY

Local governments shall be held responsible for executing their powers properly and in a timely manner. It is, therefore, a requirement that citizens and other government agencies have the adequate resources and entry points to elicit the proper monitoring of the local governments’ activities, and use the available resources effectively to engage in the shaping and monitoring of local public policy, programme delivery and financial management.

Accountability discourages corruption. When public officials have to account for their decisions and actions, corruption is more likely to be exposed and can be suitably sanctioned. Accountability encourages integrity and depends on transparency and oversight capacity.

- 3.1 Local democracy** – Local elections for local representatives are conducted regularly, freely and fairly, without any fraud and in accordance with national legislation and international standards.
- 3.2 Answerability** – All decision-makers, collective and individual, take responsibility for the impacts of their decisions and do not try to conceal problems and tensions or transfer them to future generations. All documents supporting policy decisions and outcomes (e.g. strategic, provisional and financial documents) shall be discussed and approved in the local assembly or similar deliberative organ.
- 3.3 Responsiveness** – Local public services are delivered at a high level of quality, and requests and complaints are adequately responded to within a reasonable timeframe.
- 3.4 People's participation** – The ethics and practice of civic responsibility shall be nurtured, enabling and encouraging citizens to monitor local government integrity and participate in development of policies, programmes and finance systems. Adequate instruments and resources must be available for citizens to use participatory mechanisms and create associations, forums, working-groups or similar structures that hold local governments accountable. Corruption-prevention awareness programmes shall be carried out by local government (e.g. through the local anti-corruption agency).
- 3.5 Independence of functions of government** – The local legislative or deliberative body is fully independent from the executive. It performs its functions according to clear and stable rules that prevent political and bureaucratic patronage.
- 3.6 Oversight** – The key actors of the local governance system and public officials are subject to internal and external controls (e.g. checks and balances and independent audits) which shall be carried out regularly to detect irregularities and assess and improve local integrity systems.
- 3.7 Investigation of corruption** – An independent and effective local anti-corruption agency shall proactively investigate and prosecute local level corruption-related cases and, when appropriate, take enforcement measures.
- 3.8 Local media independence** – The key actors of the local governance system shall not tamper with or manipulate the local media in any way. The media has total freedom to report on local level corruption-related cases, without retaliation.
- 3.9 Stakeholder feedback** – The local governance system shall be endowed with effective feedback mechanisms (e.g. an ombudsman, complaint offices and hotlines). All individual stakeholders of the local governance system have:
 - accessible, reliable and safe channels to report wrongdoing
 - robust protection from all forms of retaliation resulting from a complaint
 - assurance that their disclosures will correct legislative, policy or procedural inadequacies and deter future wrongdoing
- 3.10 Sanctioning** – Decisions that disregard or harm the public interest are suitably sanctioned. There are effective and proportionate remedies against maladministration (e.g. fines and obligations to make restitution) and against actions of the key actors of the local governance system which infringe citizens' rights.

STANDARDS

Note: For each standard, the source, if any, is indicated by a number at the end of the paragraph. The list of sources can be found at the end of the document.

1. GENERAL STANDARDS

Institutional arrangements

- 1.1. The **roles and functions** of elected and non-elected local government officials are clearly identified and the local executive branch is able to operate effectively. (37; p. 14)
- 1.2. Clear rules regarding **civil service practices** are in place (payrolls, staff levels, recruitment practices, appointment, promotion, staff performance) as well as systems for periodic monitoring and timely revisions through local government commissions. (33; p. 63) These rules should state that the **appointment and promotion** of civil servant must be made on the basis of merit only.
- 1.3. **Local councillors** have the powers and functions necessary for overseeing the work of executive agencies or appointed local officials, whether the local council has investigative functions and capacities for obtaining information on the work of local government departments and agencies, or whether the local council actually exercises the authority to investigate or censure the operations of administrative departments and agencies. (33; p. 30)
- 1.4. Within the local government, there is an official **position or contact person** for issues related to corruption. (55)
- 1.5. An independent, permanent **investigative anti-corruption agency** is in place, with the specific and primary mandate to address corruption. It should ideally have the capacity to receive corruption allegations, investigate them and take enforcement actions, recommend measures to close corruption vulnerabilities revealed by investigations, and develop and implement anti-corruption strategies.

Integrity³

- 1.6. Mechanisms to **prevent and detect acts of corruption, investigate them and sanction them** are in place within the local administration and used systematically.
- 1.7. Local public servants should abstain from being **involved in politics** in order to maintain their impartiality in delivery of services and applying rules.
- 1.8. Rules prohibit civil servants from knowingly soliciting or accepting **political contributions** from anyone doing or seeking to do business with the local government. Employees who have authority over local government contracts are not allowed to serve on political fundraising committees. (54; p. 10)
- 1.9. Local civil servants cannot hire or ask for assistance in the **hiring of a relative or domestic partner** for jobs with a local government agency or department where they

³ See also standards on asset declarations below, p. 18.

work. They may not exercise contract management authority over any contracts that benefit a relative or domestic partner, or with any person or company that employs a relative or domestic partner. (54; p. 16)

- 1.10. Local civil servants may not participate in or influence any local government decision where they have an **economic interest**, including outside employment or outside business interests. Economic interest means any interest valued or capable of being valued in terms of money. (54; p. 16)
- 1.11. Local regulations set specific and modest limits on the **receipt of gifts** (they either prohibit the receipt of gifts, or set a threshold per person per year), which are systematically recorded in a register. Gifts include favours, loans, discounts or other similar advantages.
- 1.12. When individuals with **personal relationships** (e.g. family members, partners) are employed as local civil servants, rules ensure that they are not in the same line of authority. (55)
- 1.13. A mechanism is in place to **review local government processes** in order to simplify and streamline them.

Conflicts of interest prevention

- 1.14. Local regulations clearly define **who is subject to conflict of interest provisions**. The definition should cover: local public officials who occupy a position in which personal or private interests might impact (or be perceived to impact) upon official duties; politically elected officials; staff being contracted to serve in public sector functions; and staff of enterprises owned by local governments.
- 1.15. Public officials subject to conflict of interest provisions (as defined above) are required by law to **declare those interests**. Such declarations include carrying out activities, whether paid or unpaid, or accepting positions or functions outside the official's public service employment, which would have a bearing on their public role. These public officials must declare membership of, or association with, organisations that could detract from the proper performance of their duties as a public official. (22)
- 1.16. The legal framework prohibits public office holders (as defined above) from having any **external interests** which would result in a probable (possible) conflict of interest with their current post and decision-making responsibilities. (22)
- 1.17. Declarations of interest must be made on taking up a post, and at regular intervals thereafter, and whenever there are any changes to the nature or degree of those interests. (22)
- 1.18. Declarations of interest must be made proactively available to the public, in an open machine-readable format, and must be regularly updated. (22)
- 1.19. Local public officials are prohibited from **engaging in any activities**, either paid or unpaid, which would be incompatible with or would detract from the performance of their duties as a public official. (22)
- 1.20. Local public servants must ensure that they are (and are perceived to be) **non-partisan** in their decisions, in order not to impair their actual ability to perform impartially as a public servant.
- 1.21. **Conflict of interest declarations** are specifically designed to identify and guard against the "**revolving door**" phenomenon and hence to prevent abuse of office by those who may use their influence while in office to shape a policy or to ingratiate themselves with companies which might later hire them. (22)
- 1.22. Local governments have a formal process that obliges officials to **seek guidance** from their manager or ethics office on issues that they suspect could potentially constitute a conflict of interest.

- 1.23. Local public officials are prohibited from **engagement in decisions** where their judgement would be or might possibly be swayed because of their previous involvement in a particular sector. (22)
- 1.24. Limitations are placed on **the professional activities** of former local public officials or on the employment of local public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those officials during their tenure. (22)
- 1.25. A mandatory **“cooling off”** period is imposed, which prohibits employment in economic activities which are directly related to areas where the local public officials were previously in a decision-making position or where they hold privileged information which would be of unfair benefit to that business. (22)

Transparency and the right to access information

- 1.26. **Legal recognition of the right to know** – The right to access information is recognised in national or local legislation, and a legal framework exists that enables citizens to access information. (23)
- 1.27. **Scope** – The right to access information applies to all information held by local public bodies as well as all bodies performing public functions and operating with public funds. (23)
- 1.28. **Limited and clear exceptions to the right to access information** – Exceptions are narrowly construed in law and applied judiciously in practice, subject to a well-developed public interest test elaborated through guidance from the information commissioner and courts. (23)
- 1.29. **Institutional independence and protection of the right to access to information** – The right to access to information is overseen by an independent body with a broad mandate conferred by the local government. It can review compliance; it may undertake ex officio investigations; it may receive and rule on complaints from the public; and it is empowered to ensure compliance and impose sanctions, where appropriate. (23)
- 1.30. **Promotion** – Significant power and funding is provided to a local body to promote the right to information. This should include a substantial budget for public education regarding the right to access to information and the ability to require public authorities to take measures to address structural problems. (23)
- 1.31. **Clear procedures** – The rules and mechanisms to access information, to review decisions made regarding the publication of information and contest exceptions are established in the law, along with the timeframes and mechanisms for introducing these requests for review and legal recourse. (23)
- 1.32. **Right to appeal and reasonable timelines** – The adjudication processes to determine access to information are structured to ensure information can be accessed promptly by requesters, and all internal and external appeal mechanisms are clearly laid out, simple, free and completed within clear timelines. It is the local government’s responsibility to establish appeal mechanisms. (23)
- 1.33. **Proactive publication** – Local public bodies should proactively publish information of public interest, making every effort to ensure easy, prompt, effective and practical access to such information. This includes: (22)
- **institutional information:** the legal basis of the institution, internal regulations, functions and powers
 - **organisational information:** the organisational structure, including information on personnel, and the names and contact information of public officials

- **operational information:** strategy and plans, policies, activities, procedures, reports, and evaluations – including the facts and other documents and data being used as a basis for formulating them
 - **decisions and acts:** decisions and formal acts, particularly those that directly affect the public – including the data and documents used as the basis for these decisions and acts
 - **public services information:** descriptions of services offered to the public, guidance, booklets and leaflets, copies of forms, information on fees, schedules and deadlines
 - **budget information:** projected budget, actual income and expenditure (including salary information) and other financial information and audit reports⁴
 - **open meetings information:** information on meetings, including which are open meetings and how to attend these meetings
 - **decision-making public participation:** information on decision-making procedures, including mechanisms for consultations and public participation in decision-making
 - **subsidies information:** information on the beneficiaries of subsidies, the objectives, amounts, and implementation
 - **public procurement information:** detailed information on public procurement processes, criteria, and outcomes of decision-making on tender applications; copies of contracts, and reports on completion of contracts⁵
 - **lists, registers, databases:** information on the lists, registers, and databases held by the public body. Information about whether these lists, registers, and databases are available online and/or for on-site access by members of the public. This includes **gift and hospitality registers**, which are maintained for those in sensitive posts (17; p. 30)
 - **measures taken to prevent conflicts of interest** (22)
 - **information about information held:** an index or register of documents/information held, including details of information held in databases
 - **publications information:** information on publications issued, including whether publications are free of charge or the price if they must be purchased
 - **information about the right to information:** information on the right of access to information and how to request information, including contact information for the responsible person in each local public body
 - **salary scales, benefits, allowances or any other form of compensation** of elected officials and public servants
 - **information on complaint mechanisms** and how to access them
- 1.34. **Accessibility and publicity of the legislative process** – The local assembly proactively publishes its administrative and organisational information. Documentation relating to the scheduling of legislative business is provided to the public. The local assembly provides public access to preparatory analysis and background information to encourage a broad understanding of policy discussions about proposed legislation. (23)
- 1.35. **Free of charge** – All information is made public without charge (excluding reasonable charges on delivery) and without limits to reuse. (23) Any exception to this rule should be clearly justified and should not be used in any way to restrict public access to information.

⁴ See standards on local public financial management (next section).

⁵ See standards on local public procurement (section 3).

- 1.36. **Clear and comprehensive** – All support materials available to public officials involved in a decision-making process are made available. Key data and analysis are presented in a form that is accessible and comprehensible to citizens. There is a public, comprehensive listing of all information holdings. (23)
- 1.37. Local officials are **trained** in the proper **handling of records** and the making of information available to the public. (17; p. 62)
- 1.38. An **official body** exists with a legal duty regarding **records maintenance** (records tracking). There are clear administrative instructions on the maintenance of public records, and these are observed. (17; p. 64)

Participation

- 1.39. **Legal recognition of the right to participate** – The right of citizens to participate in decision-making processes is recognised in the country's constitution and relevant laws. A legal framework exists that enables citizens to participate in public affairs. (23)
- 1.40. **Scope** – The right to participate in decision-making processes includes the legislative and policy processes, different stages of the policy process and all relevant levels of local government. (23)
- 1.41. **Limited and clear exceptions** – The procedures and means for participation in public affairs are clearly laid out, and when participation is limited in time, scope or demographic criteria, these limitations are duly justified, and made explicit in law and regulations. (23)
- 1.42. **Clear mechanisms for consulting citizens and groups affected by policy** – Local public bodies are proactive in their interaction with citizens and stakeholders affected by policy, they establish multiple channels to gather information and they are required to ensure all relevant stakeholders have voice and an equal opportunity to participate. These measures should assist in preventing undue influence of a few powerful individuals, businesses or organisations. (23)
- 1.43. **Reasonable timelines** – Participation processes are structured so as to ensure sufficient time to allow interested stakeholders to learn about, review the materials considered in the decision-making process and prepare quality and considered input. (23)
- 1.44. **Promotion and consultation** – The right to participate in public affairs is actively promoted with funds, resources and outreach activities by local governments; participation is promoted through the most appropriate mechanisms, including public announcements, local assemblies, via the Internet, mailing lists, and through media outreach, encouraging everyone, and particularly key stakeholders, to engage. (23) The local government regularly holds **public hearings** and consultations, including on important normative acts. (33; p. 41)
- 1.45. **Inclusiveness** – Mechanisms must be provided to ensure the participation of all stakeholders, including disabled, illiterate and vulnerable/ marginalised populations. (23)
- 1.46. **Institutional independence and protection of the right to participate** – Citizens excluded from participation in decision-making processes have options available to challenge and contest that exclusion. When citizens face retribution for participating in public affairs, they have access to a public defender, and oversight and accountability mechanisms for preventing retribution and seeking redress. (23)
- 1.47. **Meetings of local bodies** are required to be held in public unless there are special reasons why they should be held in private, whether by law or by convention. (1; p. 30)
- 1.48. Any person or organisation may **petition** the local government to adopt, amend, or repeal a normative act, and the petition must be reviewed and responded to in writing. (33; p. 41)

Participation through information and communications technologies

- 1.49. The local government has a policy on the use of **information and communications technologies**, developed through an inclusive process. (23)
- 1.50. Information stored electronically should be **delivered to those who request it** electronically and in open format, and governments provide application programming interfaces that allow third parties to automatically search, retrieve, or submit information directly from databases online. (23)
- 1.51. **All local government data** shall be published in a non-proprietary, searchable, sortable, platform-independent, machine-readable format, including information made public and information published proactively, independently of other formats used. There is a mandate requiring all new data to be created, collected and released in an open format. (23)
- 1.52. There is a local **agency in charge** of information and communications technologies policy implementation. (23)
- 1.53. Open data commitments apply to **all organisations handling public data**, including private enterprise and civil society organisations. (23)

Accountability

- 1.54. **Codes of conduct** – Clear codes of conduct should exist which list the ethical standards required by all individuals. Public officials should also be required to keep a true and complete record of their actions. (23) Such codes should include: (45)
 - the values and principles the organisation stands for, including zero tolerance of corruption
 - standards of behaviours to be expected across the local government
 - specific guidance for employees when they are confronted with specific situations
 - guidance for transparent decision-making
 - rights and responsibilities
 - provisions on avoiding conflicts of interest
 - guidance on how to deal with sensitive matters related to the work of the local government
- 1.55. **Transparency in lobbying** – There are rules regulating the interaction of local public officials, civil servants, legislators and judges with lobbyists and pressure groups. Registration and reporting provisions are made explicit, and apply to contacts made by third parties with the executive, legislative and judicial branches of power, and to private bodies performing public functions, or exercising public authority. All registries and reports should be public. (23)
- 1.56. The procedure for **registering lobbying activity** is used systematically and requires information on lobbyists and the entity or individual being lobbied for to be recorded. Lobbyists who fail to comply with the procedure and requirements are automatically **suspended**. (17; p. 91)
- 1.57. **Social accountability mechanisms** – There are formal means to enable citizen participation in directly monitoring and auditing policies, programmes and results. (23) Such mechanisms can include expenditure tracking, third-party monitoring, beneficiary feedback, and participatory budgeting. (19; p. 400)
- 1.58. There is **no immunity against being prosecuted** for any elected official or public servant.

Asset declarations⁶

- 1.59. At a minimum, **asset declaration requirements** cover all individuals who hold (or who have held) senior public office as well as their close family members and associates. These requirements should remain valid for a reasonable period of time after the individual leaves office (e.g. a year). (31)
- 1.60. Asset disclosures capture elements that could **potentially influence or corrupt public officials or demonstrate illicit enrichment**: assets, liabilities, income from all sources, gifts and potential conflicts of interests. (31)
- 1.61. Asset declarations must be made when a person **first assumes** his or her position. (31)
- 1.62. Regular, periodic **updates** of asset declarations, at a minimum annually, must be made. (31)
- 1.63. **Sanctions** are in place for those who fail to comply. (31)
- 1.64. The accuracy of information in declarations is **verified by an oversight agency**, including thorough cross-checking data and physical verification. (31)
- 1.65. Asset declarations are **available online** and in a machine-readable format to ensure timely access and the use of extractable data by third parties (i.e. civil society, media, etc.). (31)

⁶ For more guidance on asset declarations, please consult the following Working Paper: "Asset Declarations: an Effective Tool to Fight Corruption?", Transparency International, 2014, http://www.transparency.org/whatwedo/pub/working_paper_1_2014_asset_declarations_an_effective_tool

2. LOCAL ELECTIONS AND POLITICAL PARTIES⁷

Locally elected representatives are the closest to peoples' needs. Therefore election procedures should be very clear and transparent so that these needs are met in practice. An independent agency to oversee elections and robust rules on financing local campaigns are critical in achieving fair elections, the results of which actually represent the views of citizens.

Elections

- 2.1. The local government has detailed **election procedures**, which can easily be obtained by anyone who requests them. (2)
- 2.2. The public is provided with opportunities for **input about election procedures** and their improvement, and they are alerted in a timely and effective manner about these opportunities. (2)
- 2.3. The **local government election law** guarantees that people can vote freely and without fear of interference. (13) Elections are held at regular and defined intervals, and by secret ballot.
- 2.4. There are no **barriers to accessing** local elections: the ballot paper is simple, voters can easily get to a polling place and the electoral register is up-to-date. (50; p. 10) Rules on local elections clearly stipulate the inclusion of certain **disadvantaged or minority groups**. Sanctions against the exclusion of such groups are in place and effectively enforced. (36; p. 11)
- 2.5. There are no requirements that unduly restrict **participation in the election process**.
- 2.6. There are clear, transparent and fair procedures and criteria for the **nomination and selection of candidates** for local elections, which are widely enforced. (13)
- 2.7. Rules define a reasonable **limit for expenditures** incurred by parties / candidates in the framework of **local elections** (p. 29). The limit should not be so low as to disable any effective political competition, nor too high to constitute a meaningful ceiling on expenses in practice. Restrictions on campaign expenditure should also clearly identify what counts as election expenditure and what does not, and should clearly distinguish between campaign and non-campaign spending. They should take into account the question of timing, and establish a reasonable demarcation of when the campaigns begin. (29; p. 31)
- 2.8. A procedure is in place to allow citizens to initiate the **recall** of elected public officials. (33; p. 62)
- 2.9. **Citizen organisations** monitor government's performance in meeting the challenges of electoral integrity through impartial and systematic election monitoring, in accordance with international principles. (48; p. 62)
- 2.10. The local electoral system allows individuals to run as **independent candidates** and to have an equal opportunity to compete against party candidates. (49; p. 132)
- 2.11. The electoral system ensures that **local – rather than national – issues** are the main priority in local elections.

⁷ See also Transparency International's Policy Position on political funding and favours, http://www.transparency.org/whatwedo/publication/policy_position_no._01_2009_standards_on_political_funding_and_favours

Political parties

- 2.12. Political parties **operate freely** and are subject only to reasonable **oversight** linked to clear and legitimate public interests. (13) They are free to form, recruit members and campaign for office. (47)
- 2.13. Political parties and candidates to **local elections** represent a wide **range of interests**. Local political parties do not have clientelistic relationships with particular individuals or groups. (13)
- 2.14. There are no rules or processes limiting the opportunity for new **parties to compete** with more established ones. (29; p. 43)
- 2.15. The local electoral system secures real **competition among politicians**, and citizens have viable electoral alternatives. (36; p. 9)
- 2.16. Parties and candidates should have equal access to publicly-sponsored **community forums**. (49; p. 132)
- 2.17. **Criteria for standing as a candidate** and the nomination and selection process are clear and reasonable. (49; p. 133) Rules state that candidates previously convicted of corruption offences are not eligible to stand.

Financing of parties and candidates⁸

- 2.18. There are clear regulations governing the **financing of local political parties** (e.g. limits on individual and corporate donations, independent auditing of campaign finances) which are enforced in practice. (13) Sanctions are in place and used to impose penalties when the law is breached. (29; p. 51)
- 2.19. There are rules that set a **clear ceiling for private and public donations** that local parties may receive, and that identify sources of funding that are not acceptable. (29; p. 20)
- 2.20. Rules on donations to local parties define a threshold over which **information on the donor** needs to be recorded and made available to the public. The **nature and value of the donation** is recorded and disclosed in all cases, without threshold. (29; p. 22)
- 2.21. There are comprehensive regulations requiring local political parties to make their **financial information publicly available**, which are effectively enforced in practice (e.g. regarding the amount and sources of public subsidies, private financing etc.). (13) The accounts should be published at least annually. These reports are timely, comprehensive and understandable by the public at large. (29; p. 61)
- 2.22. Local parties are required to keep **particular records of all expenditure**, direct and indirect, **on electoral campaigns** in respect of each political party, each list of candidates and each candidate. (29; pp. 72–75)
- 2.23. **Disclosure provisions** distinguish between income and expenditure, and between the financing of political parties and the financing of candidates. Donations to local parties should be itemised into standardised categories. (29; p. 55)
- 2.24. **Donations in cash** are generally not allowed. (29; p. 59)
- 2.25. Rules exist to limit, prohibit or otherwise strictly regulate donations from legal entities which **provide goods or services for any public administration**. (29; pp. 72–75)
- 2.26. Legal entities under the control of the state or of other **public authorities are not allowed to make donations** to political parties. (29; pp. 72–75)

⁸ In the following standards, “parties” also refers to individual candidates during an election.

- 2.27. Any use of local government **administrative resources** should be equally available to all candidates.
- 2.28. Local government should not seek to unfairly restrict or promote the access of one or more candidates to **media access** or other such tools which might affect the outcome of elections.
- 2.29. Rules on donations to local parties **also apply to all entities** which are related, directly or indirectly, to a political party or are otherwise under the control of a political party. (29; pp. 72–75)

Oversight

- 2.30. An independent, professional and competent **election management body** has the mandate to manage local elections, with full independence of action, including the assurance of timely access to the necessary finances to conduct elections and mandates to organise transparent elections that merit public confidence. (48; p. 62)
- 2.31. The oversight body oversees and **supervises the finances and activities** of local political parties. (13) Its staff are legally protected from arbitrary dismissal. (51; p. 49)
- 2.32. **Core powers** and functions of an oversight body are: (51; p. 74)
- determining who is eligible to vote
 - receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates)
 - conducting polling
 - counting and totalling the votes
 - investigating complaints and irregularities
- 2.33. Regarding the **oversight agency**, rules should clearly define the following: (29; pp. 64–65)
- the procedure for appointment of its members, including their term of office and safeguards for their independence
 - the definition of their specific powers and activities, such as the interpretation of relevant laws, the checking and publishing of party accounts, the publication of reports, the investigation of suspected violations of the law or the application of sanctions
 - the types of breaches of the law to be sanctioned and the specific sanctions to be applied for different types of violations; sanctions are effective, proportionate and dissuasive
 - the procedures for appeals against decisions of the agency
- 2.34. **Financial reports of local political parties** are subject to **independent auditing**. The auditing body has autonomous capacity to seek out violations. It is multi-party and includes minority parties and members of the opposition. Members of the auditing body are not eligible for re-appointment. Furthermore, there are no budgetary strings attached which curtail the powers and restrict the scope of activities of the controlling commission should it criticise the government or major political parties. The auditing body is free from political pressure in carrying out its activities, and free from party intervention when appointing its staff. (29; p. 66)
- 2.35. Political parties and independent candidates are obliged to provide the oversight agency with a complete **statement of their electoral expenses**. This should be done within a short time after the elections.

3. LOCAL PUBLIC PROCUREMENT⁹

Public procurement processes can be complex and manipulations hard to detect. Given the large sums at stake and the importance of local public procurement – which can directly benefit citizens by improving the infrastructure or services delivered to them – the principles of integrity, transparency, accountability, fairness, efficiency and professionalism need to be respected. This will minimise corruption risks and maximise the chance that the economic, social, environmental and political benefits of local public procurement are realised.

Integrity

- 3.1. Administrative processes and decisions **comply with rules**. The rules allow limited scope for discretionary decision-making.
- 3.2. Local governments implement and provide **training on a code of conduct** that commits the contracting authority and its employees to a strict anti-corruption policy. The policy should:
 - outline a commitment to integrity and ethical behaviour, including an obligation to abstain from collusion, giving or accepting bribes and facilitation payments
 - describe, and manage, conflicts of interest
 - require disclosure by officials involved in the procurement process of financial assets, the amount and source of any non-government income, the amount and source of income of close family members and any outside activities in which an official has a leadership role, such as membership of charitable boards of directors
 - make the financial asset reports for senior managers available to the public
 - include mechanisms for appealing decisions during the procurement process
 - provide anonymous and safe mechanisms for whistleblowers
- 3.3. A policy for private sector bidders includes **codes of conduct** for executives and employees that outline commitments to integrity and ethical behaviour and to abstain from corrupt conduct, and addresses issues of political donations, donations for charitable purposes and the sponsoring of government functions.
- 3.4. A company is not permitted to tender unless it has implemented a code of conduct under which the company and its employees commit to a **strict anti-corruption policy** and certify that they have not engaged in illegal conduct as part of their bid.
- 3.5. A company is not permitted to tender unless its **ownership structure** is clear and publicly available.
- 3.6. All contracts between the procuring agency and its contractors, suppliers and service providers require the parties to comply with a strict **code of conduct**.
- 3.7. **Staff for the planning phase** are separate from those working on the other phases of procurement and, as far as possible, staff involved in the evaluation of contract implementation are separate from those involved in other phases. However, one official should be responsible for overseeing the whole process.
- 3.8. Key decisions are made “**under four eyes**”, using committees, such as evaluation committees, at crucial decision-making junctures.

⁹ Adapted from: “A guide to curbing corruption in public procurement”, Transparency International, 2014.

- 3.9. Staff in **sensitive positions** (e.g. those with decision-making authority) are rotated regularly.

Transparency

- 3.10. The following information is **proactively made public**, except when information is legally protected – such as for reasons of national security or protection of intellectual property or other confidential information:
- activities carried out prior to initiating the contracting process, such as needs assessment, the development of a procurement plan and budget allocation
 - procurement budgets and plans. Budgets may be presented in aggregated numbers
 - tender opportunities
 - technical specifications
 - selection criteria, specific accountabilities and steps for making decisions
 - the key elements of all bids in a public tender opening event. The key elements include bidder identity, beneficial ownership for corporate bidders and information responsive to the evaluative criteria
 - the key elements of the bid evaluation process
 - the award decision and its justification
 - the issuing authority
 - the contract and any amendments (including significant change orders)
 - implementation, evaluation, oversight and auditors' reports
 - dispute settlement mechanisms and procedures
- 3.11. The information specified above is made available through an **open web portal**, centralised at the local government level. If a web portal is not available or is little used, the information is widely disseminated through alternative media, which are widely accessible by citizens both in urban and rural areas (e.g. notice boards, public hearings). The format in which the information and data are published should be, wherever possible, the same as that used by other local governments in the country.
- 3.12. Digital information is published in **widely used formats** that are non-proprietary, searchable, sortable, platform-independent and machine-readable.
- 3.13. **Stakeholders** in a major procurement process are fully informed and consulted on relevant aspects of the project. For example, on large dam projects all those affected by potential resettlements as well as by upstream and downstream changes in the water flow regime are allowed and encouraged to participate in decision-making processes.
- 3.14. **Public comment** on needs assessments and budget plans is requested, through written submissions or public hearings.
- 3.15. Both the local government and private sector must practise **transparent and comprehensive book-keeping** and prohibit “off-the-books” accounts (extra-budgetary accounting).

Accountability

- 3.16. Administrative or judicial processes **able to impose sanctions** upon the determination of fraud, bribery or collusion are established and maintained to effectively deter corrupt practices. Sanctions include debarment in the case of serious offences.
- 3.17. **Sanctions are effective, proportionate and dissuasive** and include monetary and criminal penalties (where available) against companies and individuals. Sanctions include confiscation of illicitly gained profits and debarment from tendering for a particular period of time. Information about sanctions that have been imposed is publicly available.
- 3.18. **Internal and external control and auditing** bodies function independently and effectively and the external reports are accessible to the public.
- 3.19. **Audits** assess both financial data and the performance of the implementation of the procurement process itself and the actual performance of the contract, including the cost-benefit ratio, after completion of project. Auditors also analyse information on different contracts in order to discern patterns of collusion or other irregularities.
- 3.20. The participation of civil society organisations as **independent monitors** overseeing all stages of the procurement process is promoted.
- 3.21. **Contract change orders** that alter the price or description of work beyond a cumulative threshold (e.g. 15 per cent of contract value) are monitored and approved at a high level.
- 3.22. Robust, independent and effective **appeals processes** are in place for aggrieved bidders and accessible at any time during the procurement process. The appeals process is not overly complex, time-consuming or expensive, and is capable of suspending the procurement until a judgement is made.
- 3.23. The procurement process requires that **risk-based due diligence** be conducted on bidders in order to independently verify their existence as well as their technical and financial capacity.

Fairness and efficiency

- 3.24. Public contracts above a certain (low) threshold, which is clearly established in law or regulations, are subject to **open competitive bidding**. Exceptions to this must be limited and clear justifications documented and publicly available.
- 3.25. **No bidder is given access to privileged information** at any stage of the contracting process, and bidding opportunities are widely published.
- 3.26. If a bidder asks for **clarifications** during the bidding procedure, the information is also communicated to the other bidders.
- 3.27. Bidders have **sufficient time** for bid preparation and pre-qualification, when applicable. A reasonable amount of time is left between publication of the contract award decision and the signing of the contract, in order to give an aggrieved competitor the opportunity to challenge the award decision.
- 3.28. Procurement officials use, where relevant, **standardised bidding documents** and internationally accepted product standards across all levels of local government.

Professionalism

- 3.29. **Procurement positions** are adequately remunerated in order to attract well-qualified staff, while training and other avenues for career enhancement are available.
- 3.30. Positions are filled and duties assigned **on the basis of abilities and talent** and not based on origin, family connection, political influence or other unrelated qualities.

4. FINANCE – REVENUES, BUDGETS AND EXPENDITURES

It is essential that citizens know how their local government is using public funds, in order to deter corruption. The following standards ensure that budgets and taxes are transparent, and that people have opportunities to be involved in decision-making processes.

Institutional arrangements

- 4.1. The **local assembly** approves the local government's budget. The **local executive** provides the local assembly with all the financial and accounting documents needed for an informed vote on the budget. This is done systematically and well in advance of the vote. The same applies for the approval of accounts at the end of the financial year.
- 4.2. The leadership team of the local authority comprises a **Chief Financial Officer (CFO)**, whose roles and responsibilities are clearly set out in a statement. The CFO reports directly to the Chief Executive. (11; p. 7)
- 4.3. There is a separate local government **public accounts committee**. (17; p. 33)
- 4.4. Procedures exist and are used in practice to **maintain records**, including of the results and recommendations of previous audits. (38; p. 24)

Revenues

- 4.5. There are clear, transparent and simple **rules and regulations for revenue collection** by the local government. Revenue collection is rule-based and free from manipulation, extortion and favouritism in practice. (13)
- 4.6. Citizens' access to **information on taxes and administrative procedures**: citizens have easy access to comprehensive, user friendly and up-to-date information on taxes and how they are defined, tax liabilities and administrative procedures for all major taxes. (2; p. 29)
- 4.7. All information about taxpayers and subscribers to services is managed in **electronic databases**. Centralised databases keep track of outstanding financial obligations to the local government, payments, and arrears. (19; p. 207)
- 4.8. The **services that local governments provide** are clearly linked to the revenue sources needed to finance them, and this information is published. (19; p. 150)
- 4.9. **Existence and functioning of a tax appeals mechanism**: a tax appeals system involving transparent administrative procedures with appropriate checks and balances, and implemented through independent institutional structures, is completely set up and effectively operating with satisfactory access and fairness, and its decisions are promptly acted upon. (28; p. 29)

Budgets and financial reporting

- 4.10. **Access to information**: subnational governments provide fully **transparent and comprehensive information to the public** regarding both budgeted and actual revenues and expenditures, through all four stages of the budget process (formulation, approval, implementation and evaluation). The formats for reporting are consistent across phases of the budget process and levels of government, allowing for a clear picture of all fund flows to subnational units, and comparability across units. Reports are published in a timely manner and in accessible (understandable) formats, to ensure that they are usable. All

reports contain an executive summary in simple language, with minimal technical jargon. Information is made freely available both online and in public places. (30)

- 4.11. **Comprehensive financial information:** budgets and reports include financial information on all local government units, as well as local public enterprises and public–private partnerships.
- 4.12. **Local participation:** where subnational governments have discretion over the use of funds which have been transferred to them from other levels of government, or funds collected through their own revenue sources, opportunities are provided for **local assemblies** (where these exist) **and citizens to provide input into the budget** process at multiple points, from allocation to implementation and evaluation. Where participatory processes exist at local level for citizens to provide input into the planning or budget process, clear regulations explain what input is expected, what those inputs are intended to be used for, and how the input will be accounted for in the central and provincial budget process. (30)
- 4.13. **Financial management systems** are in place to record, monitor and report expenditures and revenues, and allow tracing flows of money (including expenditures and revenues of local public enterprises and public–private partnerships, as well as disbursements between central and local governments).
- 4.14. **Public financial documents:** the following financial documents are prepared and published by the local government: (6)
- **budgets**, containing at least the following: (6)
 - objectives of the document, description of budget process, and institutional coverage of budget
 - a summary of the budget itself and of the main new budget initiatives, written in a non-technical style, which can be easily understood by the public at large
 - local government’s economic and fiscal objectives (e.g. for the coming three years)
 - description of recent economic developments that influence the local government’s finances and an assessment of sustainability of current policies
 - description and cost of new policy measures
 - detailed quantitative and narrative information regarding the government’s forecast of revenues – including intergovernmental transfers – and expenditures, describing any new revenue measures being introduced and the contribution they are expected to make to policy objectives. (30) This section includes comparative figures for the previous year
 - non-financial performance data, including performance targets, for expenditure programmes
 - an explanation of how the budget proposal will be financed (debt) and an overview of the financial position (i.e. assets and liabilities)
 - **in-year reports**, published monthly or quarterly, and including at least the following: (6)
 - progress in implementing budget. It should contain quantitative and qualitative information on revenues and expenditures in each month and the year-to-date. A comparison should be made with the forecast amounts of monthly revenue and expenditures for the same period. Any in-year adjustments to the original forecast should be shown separately

- local government's borrowing activities
- initial identification of deviations from budget. An explanation should be made if the divergence is significant
- **mid-year reviews**, containing at least the following: (6)
 - revisions in economic assumptions and their impact on budget estimates
 - comprehensive identification and explanation of deviations in budget spending and revenues and estimates
 - exploration of policy adjustments
 - details on policy decisions taken and policy developments since presentation of budget
- **year-end reports**, containing at least the following: (6)
 - aggregate spending and revenues, the overall budget balance, and its financing
 - a quantitative and qualitative presentation of actual budget outcomes for expenditures and actual revenues by different revenue items. Revenues should be disaggregated by their source
 - a statement of the local government's overall balance sheet position, including both assets and liabilities (namely, the level of public debt)
 - a summary presentation of local government spending by sector. This presentation should allow for a comparison of the budgetary outcome relative to that envisaged in the enacted budget, including any supplementary budget provisions
- **audit reports** (see next section), which are publicly available and contain at least the following: (6)
 - identify cases in which the local government has breached the budget and other related laws on public finances. Auditors should identify issues related to revenues and expenditures alike
 - provide the auditors' opinion (qualified, unqualified, disclaimer, etc.) on whether the local government financial statements present a true and fair view or are presented fairly, in all material respects, in accordance with the applicable financial reporting framework
 - provide an audit management letter or statement, which identifies (i) any weaknesses in the accounting and internal control systems, including any irregularities in the use of funds; (ii) recommendations to rectify identified weaknesses; (iii) management's comments on the recommendations, along with the timeframe for implementation; (iv) the status of significant matters raised in previous management letters; and (v) any other matters that the auditor considers should be brought to management's attention

Disbursements

- 4.15. Where funds are decentralised, the **responsibilities of each level of government for the delivery of the decentralised services is made public**, including the public offices or public officials within each level of government that are responsible for specific services, and the fund flows associated with those responsibilities. (30)

- 4.16. **Procedures for the execution and monitoring** of approved expenditures are clearly specified (14; p. 26) and have robust anti-corruption safeguards.
- 4.17. The financial management system used by the local government **systematically records all disbursements** made by local government units, and allows them to be easily traced.
- 4.18. All information and records on all disbursements should be available for inspection by appropriate oversight functions.
- 4.19. Information on and lists of payments made by local government over a certain specified threshold should be publicly available.
- 4.20. Rules specify that any **new expenditure proposal** over a certain threshold should be approved by the local assembly.

5. INTERNAL CONTROL AND AUDIT ARRANGEMENTS

Internal control systems and audits (internal and external) are essential tools to make sure that local governance systems are functioning well and that problems are exposed and dealt with. Local governments should set up internal and external auditing processes and allow auditors to perform their duties independently.

- 5.1. There are clear and comprehensive provisions (including complaints mechanisms and audit mechanisms) to ensure that local **public servants have to report and be answerable** for their actions, which are effectively enforced in practice. (13)
- 5.2. **Effective oversight** – Clear oversight functions over policy allocations and results are attributed to the local assembly and a local auditing body. (23)
- 5.3. There are clear rules – including sanctions – for **local government audits** and these are conducted annually by objective and qualified independent auditors and with the result publicly displayed and/or available for the public. (13) Auditing standards are consistent with International Standards on Auditing (ISA) or International Standards of Supreme Audit Institutions (ISSAI).
- 5.4. Where concerns have been identified by the auditors, local officials are provided with a reasonable timeframe in which to **respond to audit findings**, after which provision is made for appropriate action to be taken to hold officials accountable for misuse of public funds where this has occurred, and recovery of those funds where possible.

Internal mechanisms

- 5.5. **Internal control systems** are in place and effectively used. They include: (20; pp. 8–9)
 - accounting controls covering the procedures and documentation concerned with safeguarding assets and the reliability of financial records
 - administrative controls for procedures and records concerning the decision-making processes (e.g. physical checks on the goods owned by the local government)
 - management controls covering all the plans, policies, procedures, and practices needed for employees to achieve the entity's objectives, including hierarchical checks to make sure that responsibilities are handled in accordance with policies and procedures
- 5.6. Independent enforcement bodies: (22)
 - there exist independent bodies such as ombudsman institutions, anti-corruption agencies or audit offices, which oversee the exercise of public power (22)
 - all such bodies meet the **following standards**: (22)
 - independent from executive power with resources allocated by the parliament or assembly
 - senior figures nominated and appointed through transparent, participatory processes
 - well resourced (measured by sufficient resources to conduct their mandated functions in a timely manner)
 - powers of investigation, including powers to conduct on-site inspections
 - powers to impose sanctions (disciplinary, administrative, and fines) for breaches of rules

- mandate to promote compliance through training of public officials and educational materials aimed at the public
- 5.7. An internal **audit body** with the following characteristics should be set up: (20; p. 22)
- a clear agenda mandated by a decisive political driver
 - clarity on the definition and different types of internal audits and audit reports
 - clarity on who has the authority over the budget of the unit
 - clear methods to appoint auditors, including requirements
 - auditing standards and certification processes
- 5.8. An **independent chief auditor** is appointed by the executive board or the legislative body. (20; p. 22)
- 5.9. **Capacity of the local auditing body** – The auditing body has the capacity to sanction local public officials and the mandate to access information and appropriate resources to audit and report on the use of public funds, and the results of policy. The auditing body operates in an independent, accountable and transparent manner. (23)

External audits

- 5.10. All entities of local government are **audited annually**, covering revenue, expenditure and assets/liabilities. A full range of financial audits and some aspects of performance audits are performed and generally adhere to auditing standards, focusing on significant and systemic issues. There is clear evidence of effective and timely follow-up. (28; p. 47)
- 5.11. A **report detailing actions taken** is published by the auditor and made widely available to the public within a set timeframe (laid down in regulations or law), describing responses from officials and sanctions applied where necessary. This report also includes information on the aggregate number and type of disciplinary proceedings that are in progress, but where no action has yet been taken. These reports also contain a summary in simple language at the front. (30)

Independence of auditors

- 5.12. The **auditors are independent** from the administration and internal control structure. The mandate, scope, methodology, and results should be determined solely by the internal auditors, without seeking consent from the senior management in the local authority. Auditors should perform financial, compliance and performance audits. (20; p. 12)
- 5.13. The senior management and local politicians **do not interfere** with any decision on the hiring and firing of internal auditors and the scope, design, and areas of audit work, while all of these are subject to the legislative body's review. Internal auditors are invested with full, free, and unrestricted access to all records of finance, personnel, contracts, documents, and reports. (20; p. 22)
- 5.14. While local audit institutions must observe the laws enacted by the legislature, adequate independence requires that it **not otherwise be subject to direction by the local assembly** in the programming, planning and conduct of audits. These institutions need freedom to set priorities and programme its work in accordance with its mandate and adopt methodologies appropriate to the audits to be undertaken. (39; p. 7)
- 5.15. The **local executive** may not oblige auditors to carry out, modify or refrain from carrying out, an audit, or suppress or modify audit findings, conclusions and recommendations. (39; p. 7)

- 5.16. The legal mandate provides for **full and free access** by the auditors to all premises and records relevant to audited entities and their operations and should provide adequate powers for the auditors to obtain relevant information from persons or entities possessing it. (39; p. 7)
- 5.17. Rules prohibit **conflicts of interests** between the auditors and the audited entities, and are applied in practice. (39; p. 7)

6. URBAN PLANNING, LAND MANAGEMENT¹⁰ AND PUBLIC ASSETS

Local governments should ensure the clarity of urban planning, land ownership and land use and the transparency of decision-making processes, so that citizens living on land or owning land are treated fairly, and regulations are not manipulated to benefit private interests. The management of land and other property and assets owned by the local authorities should be transparent and not driven by political purposes.

Public property

- 6.1. An **asset report** summarising information on property holdings, transactions and investments is made available to the public and regularly updated. It contains: (19; p. 296)
 - an inventory of property assets controlled by the local government
 - a directory of public properties used or leased by private and non-governmental tenants
 - a registry of transactions with public property
 - quantitative, project-by-project financial information, including on capital investments
- 6.2. Up-to-date tenure information on public land is available through **accessible inventories**. Such inventories record the agencies responsible for administration as well as any legitimate tenure rights held by indigenous peoples and other communities with customary tenure systems and the private sector. (53; p. 13)
- 6.3. **Contracts such as licenses, concessions, permits**, or any other document exchanging public land, assets or resources (including all annexes, schedules and documents incorporated by reference) are proactively made public¹¹. (56) (see section 3).

Local public enterprises

- 6.4. All standards that apply to local governments also **apply to local public enterprises** (e.g. utility companies) in which the local government has a significant or controlling stake. This includes standards on transparency, accountability, integrity, audits and financial management, internal controls, procurement and service provision.
- 6.5. The **role and responsibilities of the boards** of enterprises owned by the local government are clearly defined. The government formally recognises the independence of such boards, and does not interfere in their work, except in its capacity as a shareholder.
- 6.6. Local public enterprises should publicly disclose their **ownership and voting structure**. This includes disclosing any subsidiary and beneficiary ownership.
- 6.7. Local public enterprises should not make any **donations to political parties or candidates**.
- 6.8. No political parties, candidates or public officials should seek to benefit personally from any economic activity or assets of local public enterprises.

¹⁰ The standards that relate to public land also relate to fisheries and forests and other natural resources, where applicable.

¹¹ See section 3 for more details on procurement standards.

Public land

- 6.9. The legitimate tenure rights of individuals and communities regarding **public land**, including where applicable those with customary tenure systems, is recognised, respected and protected. To this end, categories of legitimate tenure rights are clearly defined and publicised, through a transparent process, and in accordance with national law. (53; p. 12)
- 6.10. Public land is **clearly identified** on the ground or in maps. (4)
- 6.11. Citizens have **access to information** on what part of the land controlled by the state will be retained and used by the public sector, and what part of the land will be allocated for use by others, and under what conditions. (53; p. 13)
- 6.12. The **management responsibility** for different types of public land is unambiguously assigned. (4)

Land ownership and tenure rights

- 6.13. Local land, property and urban planning **regulations** are clear and transparent. (13)
- 6.14. A system is in place to **record land ownership**, is regularly updated and is available to the public. (16; p. 8)
- 6.15. **Safeguards** exist to avoid infringing on or extinguishing tenure rights of others, including legitimate tenure rights that are not currently protected by law. In particular, safeguards should protect women and the vulnerable who hold subsidiary tenure rights, such as gathering rights. (53; p. 11)
- 6.16. Before tenure rights are recognised or allocated, all existing tenure rights and **right holders are identified**, whether recorded or not. Indigenous peoples and other communities with customary tenure systems, smallholders and anyone else who could be affected are included in the consultation process. (53; p. 11)
- 6.17. **Procedures to allocate tenure rights** and delegate tenure governance are clear, accessible to and understandable by all, especially to indigenous peoples and other communities with customary tenure systems. Information in applicable languages is provided to all potential participants, including through gender-sensitive messages. (53; p. 14)
- 6.18. When developing policies and legislation related to **tenure systems of indigenous peoples** and other communities with customary tenure systems, the process includes full and effective participation of all members or representatives of affected communities, including vulnerable and marginalised members. (53; p. 15)
- 6.19. Local governments and other parties use good faith and meaningful **consultation** with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the **resources for which the communities hold rights**. (53; p. 16)
- 6.20. Processes are in place and used to ensure that any individuals, communities or peoples likely to be **affected by a project** should be contacted and provided with sufficient information in applicable languages. Technical and legal support should be provided. Participatory and gender-sensitive approaches should be used, taking into account the rights of indigenous peoples. (53; p. 24)
- 6.21. Information on **restitution procedures** and progress of implementation should be widely disseminated in applicable languages. (53; p. 25)
- 6.22. The planning for and process of **expropriation** are transparent and participatory: anyone likely to be affected is identified, and properly informed and consulted at all stages. Consultations provide information regarding possible alternative approaches to achieve the

public purpose, and should have regard to strategies to minimise disruption of livelihoods. (53; p. 27)

- 6.23. There exists a **right to appeal** decisions regarding expropriation. (53; p. 28)
- 6.24. Any aggrieved party has access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of **resolving disputes** over tenure rights, including alternative means of resolving such disputes, and complainants have a right to appeal. Mechanisms are in place to avoid or resolve potential disputes at the preliminary stage. Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures. (53; p. 33)
- 6.25. **Alternative forms of dispute resolution** are available. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights. (53; p. 33)
- 6.26. Key **information on public land allocations** (the locality and area of the land allocation, the parties involved and the financial terms of the allocation) is recorded and publicly accessible. (4)
- 6.27. No elected or non-elected local government official or their family or associates should take or seek to take any advantage of **inside information** concerning future developments, changes in zoning, etc. for any type of personal benefit. Systems are in place to prevent this occurring and to identify and sanction this if it does occur.

Tenure administration and valuation

- 6.28. Systems (such as registration, cadastre and licensing systems) are used to **record maintain and publicise individual and collective tenure rights**, including who holds rights and duties, and the parcels of land to which the rights and duties relate. Recording systems are appropriate for the local circumstances, including the available human and financial resources. Socio-culturally appropriate ways of recording rights of indigenous peoples and other communities with customary tenure systems are developed and used. An integrated framework is used that includes existing recording systems and other spatial information systems. (53; p. 29)
- 6.29. **Information on tenure rights** is easily available to all, subject to privacy restrictions. Such restrictions should be clearly justified and should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions. Processes, requirements, fees and any exemptions, and deadlines for responses to service requests are widely publicised. (53; p. 30)
- 6.30. Appropriate systems are used for the **fair and timely valuation of tenure rights** for specific purposes, such as operation of markets, security for loans, transactions in tenure rights as a result of investments, expropriation and taxation. (53; p. 30)
- 6.31. **Sale prices** and other relevant information are recorded, analysed and made accessible, to provide a basis for accurate and reliable assessments of values. (53; p. 31) The system used allows identifying and reporting unusual patterns, such as a sudden rise of prices.
- 6.32. **Valuation information, assessments of valuations and taxable amounts** are made public. Taxpayers have a right to appeal against valuations. (53; p. 32)

Land use and land use change

- 6.33. Regulations regarding **restrictions on rural land use, ownership and transferability**, as well as urban land use, ownership and transferability, exist and are justified on the basis of public interest, and enforced. (4)

- 6.34. Clear **land use maps** exist and are available to the public.
- 6.35. **Processes for rezoning** are public and clear, with effective mechanisms in place to safeguard existing rights and compensation in case of loss in areas where land use is to be restricted. (4)
- 6.36. **Information on planned urban expansion** and infrastructure development is publicly available with sufficient anticipation and a process is in place to deal with land rights of those affected in a way that corresponds to internationally recognised standards. (4)
- 6.37. **Public input** is sought in preparing and amending **land use plans** and the public responses are explicitly referenced in the report prepared by the public body responsible for preparing the new public plans. This report is publicly accessible. (4)

Land management

- 6.38. **Institutional mandates** concerning the regulation and management of the land sector are clearly defined and duplication of responsibilities is avoided. (4)
- 6.39. Comprehensive and consolidated **information on spatial extent, duration, and parties involved** in concessions/leases is available publicly. (4)
- 6.40. A clear schedule of **fees** for different services related to land management is publicly accessible and receipts are issued for all transactions. (4)
- 6.41. There are meaningful published **service standards** and the registry actively monitors its performance against these standards (4)
- 6.42. Any **exemptions to the payment of land/property taxes** are clearly based on equity or efficiency grounds and applied in a transparent and consistent manner. (4)
- 6.43. There is clear assignment of responsibility for **conflict resolution**. There are no parallel avenues or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimise the scope for forum shopping. (4)
- 6.44. Institutions for providing a first instance of **conflict resolution** are accessible at the local level in the majority of communities. A process exists to appeal rulings on land cases at reasonable cost, with disputes resolved in a timely manner. (4)
- 6.45. There is a community-based system or **alternative dispute resolution system** that resolves conflicts in an equitable manner and decisions made by this system have recognition in the formal judicial or administrative dispute resolution system. (4)

Investment

- 6.46. The conditions that promote **responsible investments** are clearly defined through a participatory process, and policies and laws are available and publicised to encourage responsible investments. Investments are required by law to clearly determine the rights and duties of all parties to the agreement. (53; p. 22)
- 6.47. A process to clearly **identify land that can be made available to investors** exists and has been arrived at based on comprehensive assessment of land potential and community consultation. The process properly considers the economic, environmental and social local benefits of the land. (4)
- 6.48. Third-party monitoring of investors' (and the local government's) **compliance with safeguards and with contracts** is in place. Mechanisms exist to quickly and effectively reach adherence to safeguards or arbitration in case of problems related to contracts.

Investors' compliance with business plans is also regularly monitored. Results are publicly available and any gaps identified trigger effective remedial action. (4)

6.49. A clearly identified process is in place for **investors' applications for land** and for the local government's approval, and the process is adhered to. Detailed information is required from investors in their application, which includes evidence of technical viability, community consultation, and availability of resources to effectively identify project viability and effectively monitor progress. (4)

Urban planning

6.50. A qualified participative body takes an active and direct part in **developing and updating urban plans**. (38; p. 21)

6.51. **Urban plans** are made publicly available in a timely manner and are open for comments from interested parties or from the public. Comments are taken into account by the local authorities, and no limitations are set for individuals or organisations to provide feedback. (38; p. 21)

6.52. Simple and clear procedures exist for issuing **construction permits**, and they are publicly available. A bylaw clearly defines the division of competencies in the procedure. (38; p. 21)

6.53. **Inspections** are conducted for each **construction permit** and the results are formally recorded. A simple process is in place to determine when and how inspections are conducted. Citizens can also file complaints and request the local authorities to conduct inspections; in this case the person is systematically informed about the result of the inspection. (38; p. 21)

7. LOCAL PUBLIC SERVICE PROVISION

This is an essential area of work for local governments. Whether it is about electricity, water, education or health, corruption directly affects the quality of local public services, and even sometimes prevents the delivery of services, which has a disastrous impact on peoples' lives – especially for the poor and most vulnerable communities.¹²

- 7.1. A system for **monitoring service delivery** programmes (health, education, infrastructure, etc.) is in place and functioning well. A mechanism to use monitoring results for programme planning is in place and these results actually influence the local government's programmes. (1)
- 7.2. Arrangements have been made by local authorities for **measuring the quality** of services for users, for ensuring they are delivered in accordance with the authority's objectives, and for ensuring that they represent the best use of resources and value for money.
- 7.3. **Tariffs/charges/rates** for the delivery of public services, including licences, are established by the regulator on an objective and professional basis, and based on actual cost. This process is not subject to interference (e.g. right to veto decisions) from political leaders. (16; p. 9) The unit cost is posted clearly at point of delivery and sent to households on a regular basis in an easily accessible manner.
- 7.4. A **citizens' charter** that defines the rights of public service users exists. (1)
- 7.5. **Participation** – The agencies in charge of delivering public service proactively research the needs of the citizens that should benefit from these services. To do this they use adequate methods, such as surveys, focus groups, citizens' advisory groups, community meetings and hearings. Diverse groups, including vulnerable ones, are able to voice their opinion, which is taken into account by the local government. (15; PDF p.72)
- 7.6. **Clear procedures for participation in service delivery** – Opportunities to participate directly in the provision of public services and monitor public services exist, and they are easily accessible for different stakeholders, citizens, organisations and groups. The rules for participation are inclusive, detailed and explicitly stipulated in the legal and policy framework. (23)
- 7.7. **Information on resources available** to primary service units is made available to the public. Information is regularly (e.g. annually) publicised through appropriate means, and available upon request, for primary service units, with national coverage in at least two sectors (such as elementary and secondary schools and primary health clinics). (28; p. 23) The budget available for each sector should be prominently displayed, including at the point of delivery (such as health clinics, schools, etc).
- 7.8. For relevant services, e.g. licences, the **expected time for delivery** is also made available to the public and prominently displayed at the point of delivery.
- 7.9. **Partnerships between private firms and local authorities** are governed by contracts that clearly set out the terms and conditions for service delivery, funding, and quality, identify risk allocations and responsible parties, and establish performance standards and measures, as well as monitoring systems. (p. 142) These will not only measure outputs,

¹² Transparency International has also issued several publications that provide concrete recommendations on how to address corruption in service delivery in several African countries. These include studies of education in South Africa (http://www.transparency.org/whatwedo/publication/mapping_transparency_accountability_and_integrity_in_primary_education) and in Cameroon (http://www.transparency.org/whatwedo/publication/mapping_transparency_and_integrity_deficits_in_primary_education_in_cameroon)

but also the effectiveness and quality of service delivery and how it responds to citizens' needs. (32; p. 144)

7.10. An **iterative complaints system** allows users or local governments to report faults to service providers; complaints go to the next level if no or inadequate action is taken. (34; p. 96)

7.11. Local authorities, in consultation with relevant service providers and civil society organisations, should: (5)

- establish a database on the **availability and quality of existing services and an inventory of needs**, taking into account and focusing on the specific circumstances of vulnerable, marginalised and excluded groups (5)
- on the basis of this database, prepare spatial **plans and regulations for future urban growth and extension of services** consistent with regional and national plans and with national and international norms, with the particular aim of providing sustainable access to basic services to the poor (5)
- **monitor and adjust programmes** based on regular and timely feedback from service beneficiaries and service providers (5)

7.12. A formal registration for private **healthcare providers** exists and is applied in practice. (1)

8. LOCAL JUSTICE SYSTEMS

In the same way as the central judiciary system, local courts need to be functioning with integrity and transparency if they are to fulfil their enforcement role, and should be free from political interference to avoid possible pressures.

Capacity

- 8.1. Local courts have **adequate** financial, infrastructural and human **resources** to effectively carry out their duties. More specifically:
 - they provide competitive salaries and incentives for judges to remain in post
 - there are no significant delays and backlogs in dealing with cases
 - court staff and judges receive training on issues of integrity (13)
- 8.2. **Entrenched safeguards** prevent the political manipulation of judicial salaries and promotions. Judges' salaries are commensurate with their position, experience and professional development for the entirety of their tenure, and may be higher than those of civil servants. (3)
- 8.3. Local judges receive initial **training** in order to be appointed or upon appointment, and receive continuing training throughout their careers. This includes training on legal analysis, giving reasons for decisions, judgement writing and case management, as well as anti-corruption training. (3)
- 8.4. Judges have **easy access** to legislation, cases, court procedures, case notes and records of judgements, and are kept up-to-date on legal developments. Local courts also have sufficient resources to carry out their duties. (3)

Immunity and independence

- 8.5. **Immunity** is limited to protection from civil suits for things said or done in the course of the judicial function, and does not apply in corruption or other criminal cases. (3)
- 8.6. Members of the local executive and local assembly **do not place pressure** on judges or the judiciary as a whole by making public statements that unduly influence the actual or perceived security and independence of any judge. (3) Judges are not subject to intimidation and harassment in practice. (13)
- 8.7. The **local executive enforces** judicial decisions systematically. (3)
- 8.8. No attempts are made to **interfere** with the appeals process or to limit judicial review of decisions by members of the local executive. (3)

Appointment of judges

- 8.9. An objective and transparent process exists, and is enforced, for **the appointment of local judges**, in which the appointing body acts independently of the local executive and local legislature. (3)
- 8.10. A fair and transparent procedure exists, and is enforced, for the selection of members of the **appointments body**, thus preventing the executive from dominating the appointments process or appointing body. (3)

8.11. Selection criteria are objective and appointment decisions are well **documented**, with public access to information on the decision-making process. (3)

8.12. **Objective criteria** are used to determine the placement of judges in particular court locations, and to ensure individual judges are not assigned to courts where they have intimate ties to politicians. (3)

Case assignment

8.13. **Case assignment** is managed by judges through an objective system on the basis of clear and transparent criteria. (3)

8.14. **Objective procedures** for case assignment are developed, used and regularly assessed. Guidelines also exist for judges on ways to reduce delay. (3)

Local courts structure

8.15. Court system has a clearly defined **appellate structure**, in which parties have appropriate recourse to appeal processes that are just and fair. (3)

8.16. The appellate structure is **tiered** and the final court consists of a panel of judges, the number of whom is fixed. (3)

Transparency

8.17. Judicial proceedings are **conducted in public** (with only very limited exceptions) and judicial decisions are made public. (3)

8.18. Local courts are required to provide timely **information to the public** (on appointments and removal of judges, judgements, judicial statistics, court hearings etc.) and do so in practice. Public hearings/proceedings are required by law and take place in practice. (13)

8.19. **Accessibility and publicity of the justice procurement process** – Local courts proactively publish their organisational and administrative information, their judgements and related background information, a schedule of judicial hearings and detailed financial information of their budget allocations and expenses. (23)

8.20. **Reasons for decisions** made by local courts are given and recorded systematically. They are also published and easily accessible to the public. (3)

Integrity and oversight

8.21. A **code of judicial conduct**, developed and promoted by the judiciary, serves as a guide to, and a measure of, judicial conduct and is available to the public. (3) The same exists for **the police**. (46)

8.22. **Disciplinary rules** ensure that the judiciary carries out initial investigations of all allegations and complaints. (3)

8.23. An independent body receives **complaints against judges** and gives reasons for its decisions. (3)

8.24. Judges do not participate in **political activities** of any kind. (3)

8.25. All of the following **rules and codes** are in place and effectively enforced: (13)

- conflict of interest
- gifts and hospitality

- asset disclosures
 - post-employment restrictions
- 8.26. There exist **administrative courts** to address local conflicts arising from local governments' decisions. These courts also ensure the compliance with national laws, regulations, and standards. (33; p. 45)

The local police

- 8.27. An **integrity programme** aimed at preventing corruption is in place within the local police. There is independent oversight in the governance of police integrity and clarity on specific responsibilities in relation to the integrity programme. (52; p. 20)
- 8.28. Police officers and other employees of the police forces/services are obliged to **report corruption**. A reporting mechanism enables them (or civil society) to do so and protects those who report corruption in good faith. (46)
- 8.29. Employees of the local police are **trained** on integrity and corruption detection and reporting. Some police officers have also been trained on addressing economic crime.
- 8.30. A mandatory **code of conduct** is in place within the local police. It covers at least: (46)
- a commitment to integrity and ethical behaviour, and to report corruption
 - avoiding conflicts of interest
 - the proper use of public resources in and in connection with the fair and impartial application of the law
 - establishing and strengthening public confidence in the local police
- 8.31. **Appointments and promotions** within the local police should be made on merit and free from interference by the local government.
- 8.32. Mechanisms encourage **participation by civil society** in activities and efforts to prevent corruption in the police forces/services. (46)
- 8.33. The local police use **effective systems** of revenue collection, money and property handling and for the control and preservation of evidence. (46)
- 8.34. An **autonomous oversight body** is in charge of monitoring the systems and measures established by the local police for preventing, detecting, punishing and eradicating corruption and the adequacy, application and effectiveness of such systems and measures. A report of the findings is published annually. (46)
- 8.35. A designated authority should be conferred **powers to carry out investigations** and bring to justice officers or employees of the local police who engage in corruption. (46)

9. COMPLAINTS MECHANISMS

To increase the openness and transparency of local governments, formal and clear complaints mechanisms should be set up, including for whistleblowers. Local governments also need to be overseen by independent enforcements bodies, such as an ombudsman office.

- 9.1. The local assembly regularly **engages the public in consultation** on relevant issues, and takes this feedback into account. Citizens can complain against the assembly and/or councillors. (13)
- 9.2. There is a local **independent complaints procedure** specifically designed to deal with complaints of perceived unjust treatment by the local government. (13) The procedure is available to the public.
- 9.3. The **complaints procedure** is simple and complaints are generally processed swiftly and fairly, and rulings are effectively enforced. (13)
- 9.4. There is an independent **complaints office** within the local government. It is effective and respected, and is known to the public and to staff. Anonymous complaints can be made. (17)
- 9.5. There is a programme for **testing the integrity** of the various local government departments. It is publicised and effective. (17)
- 9.6. Local civil servants are obliged to report corruption.

Whistleblowing¹³

- 9.7. **Protection** is granted for disclosures made with a reasonable belief that the information is true at the time it is disclosed. Protection extends to those who make inaccurate disclosures made in honest error, and should be in effect while the accuracy of a disclosure is being assessed. (24)
- 9.8. **Protection from retribution** – Individuals are protected from all forms of retaliation, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. (24)
- 9.9. **Preservation of confidentiality** – The identity of the whistleblower may not be disclosed without the individual's explicit consent. (24)
- 9.10. **Burden of proof on the employer** – In order to avoid sanctions or penalties, an employer must clearly and convincingly demonstrate that any measures taken against an employee were in no sense connected with, or motivated by, a whistleblower's disclosure. (24)
- 9.11. **Waiver of liability** – Any disclosure made within the scope of whistleblower legislation is immune from disciplinary proceedings and liability under criminal, civil and administrative laws, including those related to libel, slander, copyright and data protection. The burden falls on the subject of the disclosure to prove any intent on the part of the whistleblower to violate the law. (24)
- 9.12. **Right to refuse participation in wrongdoing** – Employees and workers have the right to decline to participate in corrupt, illegal or fraudulent acts. They are legally protected from any form of retribution or discrimination if they exercise this right. (24)

¹³ This section is adapted from: "International Principles for Whistleblower Legislation: Best Practices for Laws to Protect Whistleblowers and Support Whistleblowing in the Public Interest", Transparency International, 2013.

- 9.13. **Preservation of rights** – Any private rule or agreement is invalid if it obstructs whistleblower protections and rights. For instance, whistleblower rights override employee “loyalty” oaths and confidentiality/non-disclosure agreements (“gag orders”). (24)
- 9.14. **Anonymity** – Full protection is granted to whistleblowers who have disclosed information anonymously and who subsequently have been identified without their explicit consent. (24)
- 9.15. **Personal protection** – Whistleblowers whose lives or safety are in jeopardy, or that of their family members, are entitled to receive personal protection measures. Adequate resources are devoted for such protection. (24)
- 9.16. **Reporting within the workplace** – Whistleblower regulations and procedures are: highly visible and understandable; maintain confidentiality or anonymity (unless explicitly waived by the whistleblower); ensure thorough, timely and independent investigations of whistleblowers’ disclosures; and have transparent, enforceable and timely mechanisms to follow up on whistleblowers’ retaliation complaints (including a process for disciplining perpetrators of retaliation). (24)
- 9.17. **Reporting to regulators and authorities** – If reporting at the workplace does not seem practical or possible, individuals may make disclosures to regulatory or oversight agencies or individuals outside of their organisation. These channels may include regulatory authorities, law enforcement or investigative agencies, elected officials, or specialised agencies established to receive such disclosures. (24)
- 9.18. **Reporting to external parties** – In cases of urgent or grave public or personal danger, or persistently unaddressed wrongdoing that could affect the public interest, individuals are protected in relation to disclosures made to external parties, such as the media, civil society organisations, legal associations, trade unions, or business/professional organisations. (24)
- 9.19. **Disclosure and advice tools** – A wide range of accessible disclosure channels and tools are made available to workers of local government agencies, including advice lines, hotlines, online portals, compliance offices and internal or external ombudspersons. Mechanisms are provided for safe, secure, confidential or anonymous disclosures. (24)
- 9.20. **National security/official secrets** – Where a disclosure concerns matters of national security, official or military secrets, or classified information, special procedures and safeguards for reporting, which take into account the sensitive nature of the subject matter, may be adopted in order to promote successful internal follow-up and resolution, and to prevent unnecessary external exposure. These procedures should permit internal disclosures, disclosure to an autonomous oversight body that is institutionally and operationally independent from the security sector, or disclosures to authorities with the appropriate security clearance. External disclosure (i.e. to the media, civil society organisations) would be justified: in demonstrable cases of urgent or grave threats to public health, safety or the environment; if an internal disclosure could lead to personal harm or the destruction of evidence; and if the disclosure was not intended or likely to significantly harm national security or individuals. (24)
- 9.21. **Full range of remedies** – A full range of remedies must cover all direct, indirect and future consequences of any reprisals, with the aim to make the whistleblower whole. This includes: interim and injunctive relief; attorney and mediation fees; transfer to a new department or supervisor; compensation for lost past, present and future earnings and status; and compensation for pain and suffering. (24)
- 9.22. **Fair hearing** (a genuine “day in court”) – Whistleblowers who believe their rights have been violated are entitled to a fair hearing before an impartial forum, with full right of appeal. Decisions are timely, whistleblowers may call and cross-examine witnesses, and rules of procedure are balanced and objective. (24)

- 9.23. **Whistleblower participation** – As informed and interested stakeholders, whistleblowers have a meaningful opportunity to provide input to subsequent investigations or inquiries. Whistleblowers have the opportunity (but are not required) to clarify their complaint and provide additional information or evidence. They also have the right to be informed of the outcome of any investigation or finding, and to review and comment on any results. (24)
- 9.24. **Reward systems** – If appropriate, whistleblowers may receive a small portion of any funds recovered or fines levied as a result of their disclosure. Other rewards or acknowledgements may include public recognition or awards (if agreeable to the whistleblower), employment promotion, or an official apology for retribution. (24)
- 9.25. **Whistleblower training** – Comprehensive training is provided for local government staff and management. Whistleblower laws and procedures are posted clearly in public and private sector workplaces where their provisions apply. (24)
- 9.26. **Penalties for retaliation and interference** – Any act of reprisal for, or interference with, a whistleblower's disclosure is considered misconduct, and perpetrators of retaliation are subject to employment/professional sanctions and civil penalties. (24)
- 9.27. **Follow-up and reforms** – Valid whistleblower disclosures are referred to the appropriate regulatory agencies for follow-up, corrective actions and/or policy reforms. (24)

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School of Law

I WOULD, BUT I NEED THE EGGS: WHY NEITHER EXIT NOR VOICE SUBSTANTIALLY LIMITS BIG CITY CORRUPTION

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I Would, but I Need the Eggs: Why Neither Exit Nor Voice Substantially Limits Big City Corruption

*David Schleicher**

I. INTRODUCTION

When I told the Dean at my law school, the estimable Dan Polsby, that I was going to Chicago to deliver a lecture on political corruption, he said, “I lived there a long time, and, as the saying goes, that sounds like bringing coals to Newcastle.”¹ This is certainly a common belief. The term “Chicago politician” has become national shorthand for a corrupt public official.² New York, where I grew up, also figures in stories of political corruption in America, with Thomas Nast’s cartoons of the Tammany Tiger and Boss Tweed (and, much later, Martin Scorsese’s version of him in the movie *Gangs of New York*³) serving as warnings to all Americans about the sordidness of big city government.⁴

Some of this is hype. After all, there is corruption to be found in every area of the country and at all levels of government. And

* Assistant Professor, George Mason University School of Law. This paper was presented as a speech at the Loyola University Chicago Law Journal’s wonderful conference, “The Scandal of Political Corruption and The Law’s Response.” I would like to thank the participants in the conference for their comments.

1. The first known use (at least as far as I can find) of this term comes from THOMAS FULLER, *ANGLORUM SPECULUM, OR THE WORTHIES OF ENGLAND, IN CHURCH AND STATE* 552 (1684) (“To carry Coals to Newcastle. That is . . . to busy one’s self in a needless employment.”).

2. For instance, in the 2008 Presidential campaign, Senator John McCain used the term repeatedly as a criticism of then-Senator Barack Obama. Chicagoans seem to revel in similar beliefs about their local officials. As Dick Gregory noted, “In most places in the country, voting is looked upon as a right and a duty, but in Chicago it’s a sport. In Chicago not only your vote counts, but all kinds of other votes—kids, dead folks, and so on.” DICK GREGORY, *DICK GREGORY’S POLITICAL PRIMER* 69 (1972).

3. *GANGS OF NEW YORK* (Miramax Films 2002).

4. See KENNETH D. ACKERMAN, *BOSS TWEED: THE RISE AND FALL OF THE CORRUPT POL WHO CONCEIVED THE SOUL OF MODERN NEW YORK* 6–8, 134–39, 252–54 (2005) (discussing Nast’s cartoons); *GANGS OF NEW YORK* (Miramax Films 2002). The best movie about big city political corruption is surely Preston Sturgis’s *The Great McGinty* (Paramount Pictures 1940). The movie’s famous quote—memorable to students of urban politics—was said by Daniel “Dan” McGinty to a party boss about getting paid for voting: “Never mind the applesauce! How do I get the bucks?”

determining the relative susceptibility to corruption of levels of government is an impossible empirical question, as it requires some baseline understanding of what the expected rate of corruption at each level ought to be.

Still, it is hard to shake the popular belief that there is something about big city government that makes corruption particularly likely. This article intends to lay out, from the perspective of economic and political theory, why it might be the case that big city governments suffer more from corruption than other types of governments. It will also discuss the traditional responses to the problem of big city political corruption, the costs of those responses, and what might be done to help cure the problem of corruption in big cities without imposing these costs.

This will require a bit of wind-up, but I will tell you where I am going.

First, successful big cities are more likely than suburbs or small towns to have corruption problems not merely because of the size of their governments but because of exactly what makes them successful—what economists call agglomeration economies.⁵ Big cities draw residents and businesses because they provide people with a number of attractions—things like deep labor and consumption markets, and information spillovers—and drive them away because of congestion, or the high cost of urban land. Government policies play a role in determining whether individuals stay in or leave a big city, but only a secondary one; the choice is largely driven by whether the benefits and costs of city living are worth it. In contrast, when someone is deciding which small town or suburb to live in, government policies like the quality of schools or property tax rates play a crucial and often decisive role. As a result, big city residents are less likely to punish bad governmental policies by exiting the jurisdiction, and this makes corruption more likely. Further, the more successful big cities are as economic centers, the less likely its residents will be responsive to governmental corruption. It is like the joke from *Annie Hall* about a man who tells his doctor that his brother is crazy and thinks he is a chicken. When the doctor asks the man why he does not turn his brother in, the man responds, “I would, but I need the eggs.”⁶ Cities may be crazy and corrupt, but their residents need the eggs.

5. See *infra* Part II (describing why exit only imposes a weak constraint on big city political corruption).

6. See ANNIE HALL (Rollins-Joffe Productions 1977) (“After that it got pretty late, and we both had to go, but it was great seeing Annie again. I . . . I realized what a terrific person she was,

Second, the fact that national political parties contest local elections, but do so without rebranding themselves at the local level on local issues, has left cities without regular political party competition, the traditional tonic for political corruption.⁷ The lack of local partisan competition is caused by the interaction between election laws unsuited to the problems of local elections and predictable aspects of voter behavior.

Third, responses to the problem of urban political corruption have been partially successful, but not without substantial costs.⁸ These costs include imposing severe limits on the ability of locals to determine local policy and extensive inter-local governmental externalities.

Finally, the problems of urban corruption are best addressed by increasing, rather than decreasing, local democracy, particularly by encouraging local partisan competition. This article will conclude by suggesting a few ideas about how to achieve this goal.⁹

II. "I DON'T WANT TO MOVE TO A CITY WHERE THE ONLY CULTURAL ADVANTAGE IS BEING ABLE TO MAKE A RIGHT TURN ON A RED LIGHT"¹⁰: WHY EXIT IMPOSES ONLY A WEAK CONSTRAINT ON BIG CITY POLITICAL CORRUPTION

Albert Hirschman famously divided the ways citizens can influence politics into two categories: exit and voice.¹¹ Citizens can influence a government by either leaving or entering a jurisdiction (or threatening to leave or enter) or can attempt to influence its decisions directly through voting or other methods of popular participation. Hirschman suggested there were trade-offs between these options: where exit is less available, citizens will try harder to use voice to influence government decisions, and where popular participation is difficult, exit becomes more likely.¹²

and . . . and how much fun it was just knowing her; and I . . . I, I thought of that old joke, y'know, the, this . . . this guy goes to a psychiatrist and says, 'Doc, uh, my brother's crazy; he thinks he's a chicken.' And, uh, the doctor says, 'Well, why don't you turn him in?' The guy says, 'I would, but I need the eggs.' Well, I guess that's pretty much now how I feel about relationships; y'know, they're totally irrational, and crazy, and absurd, and . . . but, uh, I guess we keep goin' through it because, uh, most of us . . . need the eggs.").

7. See *infra* Part III (explaining why party competition is an inefficient constraint on corruption in big cities).

8. See *infra* Part IV (describing various attempts at political reform).

9. See *infra* Part V (proposing new methods for reigning in political corruption in big cities).

10. This, again, is from ANNIE HALL, *supra* note 6.

11. ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY 37 (1970) (explaining that voice can function as an alternative or a complement to exit).

12. *Id.* at 34.

Both exit (and the threat thereof) and voice give citizens tools to influence government. Similarly, both exit and voice should serve to constrain governmental corruption. The term “corruption” is notoriously difficult to define. But whatever the definition, we can say that corrupt acts are not for the general good and are not preferred by the majority of the citizenry.¹³ Although there is disagreement about most policies, we can be relatively certain city residents do not like governmental officials enriching themselves at the public trough. Corruption is, for my purposes here, just a special case of an ordinary problem where government actions and popular preferences diverge. As both exit and voice serve to give local residents influence over local governments, they both should constrain bad behavior by local politicians.

There is a long literature on why local governments are generally good at matching preferences to policies. The explanation lies with exit and the threat of exit by residents. Charles Tiebout developed the most well-known economic model of local government, and he argued that, if residents are perfectly mobile, employment does not depend on housing location, and if there are many local governments providing exclusively local public services, local public services will be provided at the most efficient level.¹⁴ Individuals in Tiebout’s model “sort” to their preferred package of taxes and services by moving between local governments, and everyone gets what they want. There is no need for voice—exit does all the work. The same forces that make policy responsive to voter preferences serve as a check on local corruption. If local politicians are corrupt, mobile residents will leave (and others will not want to come), driving down property prices and depriving the city of residents and tax revenue.¹⁵

Tiebout’s model has been criticized for utilizing unrealistic assumptions and for promoting a privatized notion of local government, but there is substantial evidence that sorting does occur.¹⁶

13. One notable problem for people studying corruption is that it is difficult to distinguish between governmental policy-making that is venal and policy-making that is just bad or dumb. For my purposes, no distinction needs to be drawn: corruption is simply a special category of policies that is likely to be disfavored by residents.

14. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 419–24 (1956). “The dominant law and economics model of local government, based on the work of Charles M. Tiebout, assumes that decentralization of power to local governments promotes the efficient delivery of public goods and services.” Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 503 (2002).

15. Willie Sutton once noted that he robbed banks because that was where the money is. A city without many resources is not a particularly attractive target for corrupt politicians.

16. See, e.g., GERALD FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING*

Capitalization, or the degree to which the quality of public policies are captured in housing prices, is a real empirical phenomenon—people pay more to live in local governments with good schools and low taxes.¹⁷ Other scholars, particularly William Fischel, have added voice to the Tiebout model by explaining why small city voters are likely to demand good behavior. Exiting a jurisdiction is costly, and by controlling policy, homeowners can reduce the variation in the value of their house—most people’s most important asset.¹⁸ In small towns, local policies are highly responsive to “homevoters” seeking to protect the value of their investment, and the quality of those policies is reflected in housing prices.

However, capitalization works less well in big cities, and the reason lies in each of us big city residents.¹⁹ When we make arguments for and against living in a big city, we necessarily include many factors unrelated to the quality of government services. Economists studying why cities develop have come up with three central types of what they call “agglomeration economies,” or reasons people locate near one another.²⁰

WALLS 167–73 (1999) (criticizing Tiebout’s vision of local government); Sheryll B. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1991–2015 (2000) (commenting on Tiebout’s prediction that citizens would migrate to certain areas of a metropolis based on their desired blend of taxes and services); Richard C. Schragger, *Consuming Government*, 101 MICH. L. REV. 1824, 1834 (2003) (explaining that the ability to pay for public services largely affects how they are distributed); cf. Richard Briffault, *Our Localism, Part II: Localism and Legal Theory*, 90 COLUM. L. REV. 346, 399–419, 426 (1990) (praising Tiebout for providing a more accurate picture of local governmental power than other scholars, but claiming the model does not properly address the problem and ubiquity of externalities created by local policies).

17. See Wallace E. Oates, *The Many Faces of the Tiebout Model*, in THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES 25–27 (William A. Fischel ed., 2006) (summarizing research on capitalization); Wallace E. Oates, *The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and the Tiebout Hypothesis*, 77 J. POL. ECON. 957, 968 (1969) (same).

18. WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT, TAXATION, SCHOOL FINANCE, AND LAND USE POLICIES 8 (2001) [hereinafter FISCHEL, HOMEVOTER HYPOTHESIS] (developing a Tiebout consistent theory of local voting); Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUD. 205, 211 (1975).

19. See David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 2, 32 (forthcoming 2010) [hereinafter Schleicher, *The City*], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1471555 (suggesting that individual sorting for policies among local governments “reduces agglomerative efficiency”).

20. The literature on the topic is extensive. For summaries, see MAHISA FUJITA, PAUL KRUGMAN & ANTHONY J. VENABLES, THE SPATIAL ECONOMY: CITIES, REGIONS AND INTERNATIONAL TRADE 1–6 (1999); EDWARD L. GLAESER, CITIES, AGGLOMERATION AND SPATIAL EQUILIBRIUM 1–12 (2008); Edward L. Glaeser, *Are Cities Dying?*, 12 J. ECON. PERSP. 139, 139–50 (1998) [hereinafter Glaeser, *Are Cities Dying?*]; Roderick M. Hills, Jr. & David

The first is reducing transport costs for goods—factories and their suppliers often locate near one another in order to reduce shipping costs.²¹ This was once the dominant explanation for city development, but as domestic shipping costs have fallen, it has become less important.

The second is market size. Both individuals and firms like locating in places with deep labor markets. Employees in deep labor markets can specialize and hence become more productive, face reduced search costs, and have insurance against firm-specific risk (that is, they know they will likely be able to get a new job without moving if their employers go belly up).²² Similarly, many residents like living in places with large and diverse consumption and entertainment markets for the same reasons—specialization, reduction in search costs, and insurance that you will find what you are looking for when you go there.²³ For instance, people like being able to choose between the dozens of blues clubs on Beale Street in Memphis or one of the thousands of diamond dealers on 47th Street in Manhattan.²⁴ Big city market size even affects the quality of dating. Single people like living in cities because their deep pools of other single people reduce search costs (i.e., there are crowded bars full of other single people), provide opportunities for specialization, and provide insurance against “firm” specific risk, like a break-up.²⁵

Schleicher, *The Steep Costs of Using Noncumulative Zoning to Preserve Land for Urban Manufacturing*, 77 U. CHI. L. REV. 249, 262–63 (2010); Schleicher, *The City*, *supra* note 19, at 11–29; Richard C. Schragger, *Rethinking the Theory and Practice of Local Economic Development*, 77 U. CHI. L. REV. 311, 318–19 (2010).

21. This can explain why Chicago developed. It was the center of the rail transportation network necessary to get the products of farms from the Midwest. Once that occurred, it made sense for final goods manufacturers to locate near the rail hub, and then for other factories to locate near the final goods factories. See Edward L. Glaeser & Janet Kohlhase, *Cities, Regions and the Decline of Transport Costs*, 83(1) REGIONAL SCI. 197, 198–99 (2004) (explaining that Chicago was built as a transport hub enabling the movement of lumber, wheat, and cattle to the east coast and to Europe); Edward L. Glaeser & Giacomo A.M. Ponzetto, *Did the Death of Distance Hurt Detroit and Help New York?*, NBER Working Paper No. 13710 (Dec. 2007) (“[W]hen firms and people are located near each other in cities and in industrial clusters, they benefit in various ways.”). However, other explanations are needed for why Chicago has prospered in a post-industrial age.

22. See Glaeser, *Are Cities Dying?*, *supra* note 20, at 146 (noting that large labor markets provide insurance to workers whose jobs may disappear due to industry-specific shocks).

23. See Schleicher, *The City*, *supra* note 19, at 17 (discussing how urban consumption markets feature a wider range of products that make it more likely that a consumer will find a particular good, which thus drives people to shop and live in cities).

24. *Id.*

25. *Id.* at 20.

The final category of agglomeration gains is knowledge spillovers.²⁶ Firms and individuals learn from one another if they are close together. Software firms do not set up shop in Silicon Valley for the low rents or the vibrant social scene; they do it for the intellectual ferment.²⁷ This is reflected in wage growth, which is higher in cities than it is in rural areas. Employers pay for productivity, and urban workers learn from others at higher rates, causing their wages to rise.²⁸

On the other side of the equation is the problem of congestion, or high rents. If you look for a downtown apartment, it is going to be much more expensive per square foot than a house in the suburbs. Residents make a decision balancing the agglomeration benefits of living downtown against the costs of real estate and the other assorted hassles of city living. Robert Lucas summed this up when he said, “What can people be paying Manhattan or downtown Chicago rents for, if not for being near other people.”²⁹

Some agglomeration economies are regional. For instance, virtually everyone in a region gets the benefits of depth in most labor markets because people can live in one place and commute to another. But others are highly local.³⁰ You do not go to lunch with, and hence get knowledge spillovers from, someone who lives 100 miles away. You cannot have a choice of dozens of neighborhood bars and walk home if you do not live near them. And it is really hard to date someone who lives on the other side of a metropolitan area.

These localized agglomeration economies make individual location decisions sticky. They are not, however, transaction costs. Individuals stay in cities because they like the people there, and do so despite the fact that those other people might have very different preferences for local policy.³¹ Exit is thus limited as a way to constrain government

26. Alfred Marshall, the leading macroeconomist of the turn of the last century and the first major theorist of agglomeration economics, described the effect of industrial concentration on information: “[T]he mysteries of the trade become no mystery but are, as it were, in the air . . .” ALFRED MARSHALL, *PRINCIPLES OF ECONOMICS* 271 (8th ed. 1940).

27. See Glaeser, *Are Cities Dying?*, *supra* note 20, at 148 (explaining that learning occurs through interaction between specialists in a particular industry).

28. Edward L. Glaeser & David C. Maré, *Cities and Skills*, 19(2) *J. LAB. ECON.* 316, 316–19 (2001). There is roughly a 33% urban wage premium. *Id.*

29. Robert Lucas, *On the Mechanics of Economic Development*, 22 *J. MONETARY ECON.* 3, 39 (1988) (emphasis omitted).

30. See Schleicher, *The City*, *supra* note 19, at 37–38 (explaining that the spreading caused by extensive zoning has a negative effect on agglomerative efficiency because as people spread out, the degree to which they are a part of the same labor, consumption, and social markets decreases).

31. *Id.* at 37–42.

policy because people do not want to abandon their favored set of neighbors.

Both the benefits of agglomeration and the costs of its flip side—congestion and high rents—are felt most heavily in big cities.³² When you decide to live in Chicago rather than some suburb, you are doing it because you like the amenities of living downtown and because you are willing to pay the increased cost per square foot in order to get them. A single person who likes the ability to go out to Chicago bars every night is not going to want to move to Arlington Heights merely because she cannot stand Mayor Daley.

Now, this should not be overstated. City residents do frequently leave cities because they do not like city services, be it schools, policing, or something else. But city residents are less sensitive to government policies than someone choosing between two suburbs, where tax rates, land use regulation, and school quality are likely to be the determinative factors. The result is that exit and entrance—the ways in which current and future residents affect policies by deciding where to live—is less of a constraint on big city policymaking than it is on suburban policymaking.

This has effects on what types of policies are chosen. It also affects how much agglomeration there is; sorting reduces the efficiency of agglomeration, as I have argued elsewhere.³³ For our purposes here, however, it provides an explanation for why big cities may be less resistant to corruption than suburbs. Corrupt suburban governments will be punished by a strong fall in property values and tax revenue because people leave (and do not come back to) governments that squander public money. People in Chicago hear about political corruption and just go to their favorite hot dog place (of which they have many, many choices) and write it off as another cost of living in a big city.

III. “YOU’RE LIKE NEW YORK, JEWISH, LEFT-WING, LIBERAL, INTELLECTUAL, CENTRAL PARK WEST, BRANDEIS UNIVERSITY, THE SOCIALIST SUMMER CAMPS AND THE, THE FATHER WITH THE BEN SHAHN DRAWINGS”³⁴: THE FAILURE OF BIG CITY PARTY COMPETITION

If exit does not constrain big city political corruption as much as it does in the suburbs, what about voice? Why does political competition

32. *Id.*

33. *Id.* at 43–48.

34. You are catching on to the theme. ANNIE HALL, *supra* note 6.

not cause corrupt politicians to lose power and reward squeaky-clean reformers?

In small towns, there is evidence that voters are relatively well informed and police local government actions.³⁵ They do so because of the possibility of influence and the effect on their biggest investment, their home. However, big cities do not work this way; voters are as distant from the government of the City of Chicago or the City of New York as they are from state and national governments.³⁶ In larger governments we generally rely on party competition to constrain corruption, but big American cities do not have party competition.³⁷

Why not? Well, this is a puzzle. Most big cities favor one party in national elections.³⁸ Under basic theories of how parties compete, we might expect this fact not to matter in local elections. The local branch of the minority party should, following Anthony Downs's famous Median Voter Theorem model, tack to the middle of the local electorate on local issues to make local elections competitive.³⁹ But it does not happen. This is particularly surprising because there is a lot of evidence that opinions about national politics—war, income taxes, health care reform—do not track closely with preferences about local issues (e.g., zoning, methods of teaching reading, whether to build sports stadia, etc.).⁴⁰

35. FISCHEL, HOMEVOTER HYPOTHESIS, *supra* note 18, at 1–10.

36. Fischel argues that cities of over 100,000 do not have the same dynamics as smaller ones, but the number is merely an approximation (and is probably too high). *Id.* at 14–16, 89–94.

37. There is a massive literature on political party machines and their utility in acclimating immigrant groups into a modern economy. See generally DENNIS R. JUDD & TODD SWANSTROM, CITY POLITICS: PRIVATE POWER AND PUBLIC POLICY 64–68 (1998) (discussing how urban party machines brokered a deal: business elites gave control over the local governments to working-class ethnic politicians, and machine politicians promised to leave business alone). This article will not address this literature except to note that one-party dominance has lasted long after the machines and their ethnic patronage mills left the political scene. To the extent that we want to explore lack of competition in modern cities, we need a generalizable theory.

38. See David Schleicher, *Why Is There No Partisan Competition in City Council Elections?: The Role of Election Law*, 23 J.L. & POL. 419, 438–39 (2007) [hereinafter Schleicher, *City Council Elections*] (noting that most American cities are dominated by one party).

39. See ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 114–17 (1957) (explaining that, in a two-party system, each party would move toward the ideological “middle” of the electorate to attract the majority of voters).

40. See Schleicher, *City Council Elections*, *supra* note 38, at 439–45 (arguing that national policy preferences do not correlate strongly with local policy preferences). In fact, a growing body of research shows that partisan affiliation tells us almost nothing about local politicians. Fernando Ferriera and Joseph Gyourko have found that the party of the winning candidate in close mayoral elections has no effect on the size of local government, the allocation of local spending, or crime rates. Fernando Ferriera & Joseph Gyourko, *Do Political Parties Matter? Evidence from U.S. Cities*, 124 Q. J. ECON. 349, 399 (2009). Elizabeth Gerber and Daniel

The best explanation (or at least the one I have offered elsewhere) lies in the interaction between election laws and predictable aspects of voter behavior.⁴¹ In cities with partisan elections, a variety of laws guarantee that national parties—the Democrat and the Republican—get on the ballot. Further, election laws and party rules create substantial costs for individuals who wish to switch parties between elections. Finally, parties have a constitutional right to use funds raised for one type of office to conduct campaigns for another.

Election laws guarantee that voters see Democrats and Republicans on the ballot. This turns out to be crucial if we make a basic assumption about big city voters—that they do not know much about individual local candidates. This assumption makes sense. Voters everywhere have little incentive to become well-informed about politics, and there is a great deal of empirical evidence that most voters know very little about most candidates and policy issues at any level of government.⁴² Certainly, upon reflection, very few of us know much about the policy positions of our alderman or city councilman. However, voters do develop impressions of political parties over time. In political scientist Morris Fiorina's famous term, voters use whatever impressions they have about politics to develop "running tallies" of their preferences about parties.⁴³ When it comes time to vote, they can use their collected recollections about parties as a guide. This can work at the national level. As long as parties are consistent, both internally and over time, running tallies allow voters to use elections to hold politicians accountable for their decisions.⁴⁴ Relevant and useful party labels on

Hopkins found that the mayoral party does affect spending on local police and fire-fighting departments (Republican and Independent mayors spend more than Democratic mayors) but not any other public policy variable. Elizabeth Gerber & Daniel Hopkins, *When Mayors Matter: Estimating the Impact of Mayoral Partisanship on City Policy* (Sept. 28, 2010) (working paper), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1475237.

41. See Schleicher, *City Council Elections*, *supra* note 38, at 449–51 (detailing the set of election laws and party rules that form the causal mechanisms that permit national parties to dominate local elections, e.g., a rational and uninformed voter will vote for her preferred national party).

42. See *id.* at 457–60 (showing that, absent partisan identification, voters have little useful policy-based information about candidates); David Schleicher, *What if Europe Held an Election and No One Cared?*, 52 HARV. INT'L L.J. (forthcoming 2011) [hereinafter Schleicher, *What if Europe?*], available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1525015.

43. MORRIS P. FIORINA, *RETROSPECTIVE VOTING IN AMERICAN ELECTIONS* 89 (1981).

44. Schleicher, *What if Europe?*, *supra* note 42, at 61–67; see also FIORINA, *supra* note 43, at 65–78, 193–200 (1981) (discussing retrospective voting, voter rationality, and electoral accountability). This brief article is not the place to rehash the long debate about how good party heuristics are at making uninformed voters (or voting populations) act as if they were informed. See Schleicher, *What if Europe?*, *supra*, at 61–67 (maintaining that voters use a scorecard to keep track of a political party's past that serves as a guide for their future votes). However, suffice to

the ballot are tools for voters; with them, voters can use their vote (at least to a degree) to comment on the successes and failures of different public policies.

Voter ignorance of local candidates is more costly, as national party membership tells us very little about candidates at the local level. Knowing someone is a Democrat or Republican may tell you a great deal about her preferences about abortion or health reform but will not tell you much about her preferences about zoning. However, this does not make it less likely that voters rely on party labels in local races. Party labels may tell voters very little about local candidates, but as voters have little other information, it is better than nothing. So an individual's preference in national elections is reflected in local voting.

But why does the minority party not respond by taking popular issue stances on local issues, as we would expect them to in a Downsian model?⁴⁵ If the local Republicans (or Democrats) are losing local races, they could theoretically adopt popular positions about schools or policing and make races competitive. This does not happen for two reasons.⁴⁶ First, laws require the use of primary elections at the local level. If preferences on national issues and local issues do not track each other particularly closely, then members of the minority party will not be consistent on local issues. Its candidates, chosen in primaries, will not be consistent across town and across time. This makes it difficult for local parties to successfully brand themselves on local issues. Second, the limits on party switching mean that voters (and more crucially candidates and activists) will not switch parties for the purpose of local elections and local primaries. This means that the minority local party will not attract voters who do agree on local issues and produce consistent candidates. Further, the minority party will not attract popular potential politicians because these ambitious types will not be able to climb the ladder and run for other types of office after they have joined the local minority party. The result is a lack of competition between the major parties—the party that is popular in national elections is guaranteed to win local elections—and the

say that voters without useful party heuristics are worse than those armed with them.

45. Downs, *supra* note 39, at 114–17.

46. See Schleicher, *City Council Elections*, *supra* note 38, at 450–53 (explaining that local legislative elections are low salience, and it is nearly impossible to convince voters to pay attention to a purely local party and even more impossible to convince voters to abandon their pre-set party identification; the only way around these barriers is to compete at both the national and local level, which is also nearly impossible as national campaigns are extremely competitive and costly).

elections end up telling us very little about local preferences of local issues.

Despite the lack of competition, there is not much entry by local-only third parties.⁴⁷ Local-only third parties face the same hurdles that all third parties in American politics do—what political scientists call Duverger's Law, or the desire of voters not to waste their votes (and the desires of donors and activists to support winners and not also-rans).⁴⁸ Further, the limits on party switching doom these local-only parties to be without candidates, organizers, and a representative primary electorate. And the constitutionally protected right of major parties to use their financial and organizational muscle in local elections puts local-only parties at an even greater disadvantage.

Thus, the lack of competition between parties is caused by a mismatch between the level of the election and the level of the party system. But what about primaries? Why are primaries inside the local majority party not enough to produce locally representative results? The fundamental flaw of urban elections is that uninformed voters do not have access to a high-value informational heuristic, the party label, that allows them to vote based on policy preferences.⁴⁹ In general elections in big cities, party labels are only very weak guides to the local policy preferences of politicians. But in primaries, voters have no heuristic whatsoever. There are no party labels on a primary ballot—every candidate runs on his or her own. And as a result, primaries do not regularly feature ideological competition, and winners are determined by things like ethnic voting, interest group effort, or campaign spending.⁵⁰

Absent political parties that push one another over time to produce representative results, political officials have a great deal of slack. This breeds corruption. Reformers win now and again, when things get really bad, but absent the ability to organize and access the ballot, they are doomed to have only a passing influence on politics in a big city. As George Washington Plunkitt, the bard of New York City's Democratic Party Tammany Hall Machine once said, "[Reform committees] were mornin' glories—looked lovely in the morning and

47. *Id.* at 452. There is only one major local-only third party in the United States, the Charter Party of Cincinnati. *Id.*

48. AREND LUPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES 165–70 (1999) (stating that plurality representation systems tend to marginalize small political parties and encourage two-party systems).

49. Schleicher, *City Council Elections*, *supra* note 38, at 460–63. The same thing goes for non-partisan elections.

50. *Id.*

withered up in a short time, while the regular machines went on flourishing forever, like fine old oaks.”⁵¹

Competition permits voice, and voice checks government corruption. Given the lack of competition in local elections, we should expect corruption—political competition, far more than sunlight, is the best disinfectant.⁵² Unlike small cities, where it is easy to monitor local officials and the threat of exit constrains government choices, big cities need functioning elections to check corruption. But they do not have them.

IV. “EVERYTHING OUR PARENTS SAID WAS GOOD IS BAD. SUN, MILK, RED MEAT . . . COLLEGE”⁵³: REFORM AND ITS DISCONTENTS

This section will only briefly discuss prior efforts to limit urban political corruption (one could go on endlessly on the topic, as the desire to limit corruption has driven much of the development of local government law in the twentieth century). However, this short section will suggest one basic theme has run through a huge number of very different attacks on local corruption: reformers regularly throw the proverbial baby of local democracy out with the corrupt bathwater of big city politics.

The problem of big city political corruption has, from time to time, become a major national political issue, and when it has, a number of different tools have been used to slay the old political machines (which largely have gone the way of the dodo bird). These changes have had some successes in limiting local political corruption—there are not the old-school political machines and corrupt docks that there used to be—but have come with their own costs.

I will only use a few examples. Financial crises in cities that funded railroads led to the development of Dillon’s Rule, the state court rule that cities had no powers that were not directly delegated to them by the state government and that all delegations should be interpreted

51. WILLIAM L. RIORDON, *PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS* 30–31 (Bibliolife 2009) (1905). Plunkitt makes clear that the failure of reformers to form parties that engage in politics is the reason they could not dent Tammany Hall’s power over the long term. “The fact is that a reformer can’t last in politics.” *Id.* at 34.

52. There is an interesting debate about the importance, or usefulness, of transparency in politics. See Mark Fenster, *The Opacity of Transparency*, 91 *IOWA L. REV.* 885, 942 (2006) (proposing that a better informed public would result in more accountability on the part of the government).

53. Once again, ANNIE HALL, *supra* note 6.

narrowly.⁵⁴ Although most big cities are now governed by some version of “home rule,” which gives cities more power to initiate policies and sometimes provides state constitutional protection against state legislative incursion on local autonomy, the powers of local governments are still substantially circumscribed.⁵⁵ This may limit corruption, but it also limits local democratic decision making and the amount of local variation in policies, and hence the fit between individual preferences and policies.

The Progressive Movement at the turn of the century pushed for a number of reforms of city governance in response to the political control exercised by party machines, but this article will only discuss two: non-partisan elections and special-purpose governments. Removing all party notations from local ballots did not, as was claimed, produce politics that were more competitive. Voters are even more ignorant in non-partisan local elections than they are in partisan ones. Just as in primaries, voters do not have labels on the ballot that allow them to determine a candidate’s position on the issues. As a result, turnout falls, and non-policy variables determine who wins elections.⁵⁶ Non-partisan elections have generally been successful in removing party machines in favor of reform alliances but have done so at the cost of limiting the ability of locals to shape local policy.

Similarly, special-purpose governments have reduced local political autonomy. Unelected or specially elected bodies provide many local services.⁵⁷ The most well known of these are school boards, but water, roads, transportation, and many of the other major local services are provided by these institutions. Whether these organizations provide better or worse services (or less corruption) is an open question, but, as elections to them are even less likely to be salient when they occur, they have the effect of removing political autonomy from locals about local policies.

Even more centrally, America’s most important local government policies are rules that encourage the creation of many local governments

54. JOHN F. DILLON, TREATIES ON THE LAW OF MUNICIPAL CORPORATIONS 101–02 (1872); see RICHARD BRIFFAULT & LAURIE REYNOLDS, STATE AND LOCAL GOVERNMENT LAW 314–17 (7th ed. 2009); Joan Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83, 92–95 (1986) (discussing how Dillon’s Rule, by making cities subservient to the state, limited cities’ power to undertake any activity, not only in the context of selling bonds to help finance railroads, which was a typical scenario that emerged after the Civil War, but in all activities).

55. BRIFFAULT & REYNOLDS, *supra* note 54, at 331–36.

56. Schleicher, *City Council Elections*, *supra* note 38, at 465–67.

57. BRIFFAULT & REYNOLDS, *supra* note 54, at 13–16.

in every region. As noted earlier, small governments, unlike big ones, are usually very democratically responsive, giving residents the influence by means of both exit and voice. But having lots of small governments has costs as well. First, it reduces the extent of agglomeration gain across a region by encouraging sorting to places that are not necessarily where people would have located absent the existence of lots of local governments.⁵⁸ Second, it increases the likelihood of externalities between localities, particularly because contracting between local governmental entities is costly.⁵⁹

Finally, cities have an internal system of separated powers. For example, district attorneys—and often other officials—are elected separately from mayors and county executives. This may have benefits, but limiting corruption is not likely one of them. As Richard Pildes and Daryl Levinson have shown on the national level, separation of powers is not likely to create checks where one party controls all the different entities.⁶⁰ Local officials usually come from the same party and thus will have little incentive to check one another. If an official criticizes a co-partisan, the party becomes less popular, and they both will be harmed politically. Further, individual politicians rely on support inside local parties, giving them little incentive to investigate their patrons and co-partisans. There is simply no reason to believe that local officials in big city governments are likely to check one another.⁶¹

58. If the governments were small enough, perhaps, there would be no harm to agglomeration because it would not cause anyone to move from their preferred neighborhood; if each small tract had its own government, the agglomeration costs of sorts would fall. But this would increase the harms of externalities and would ensure that local governments were not the optimal size to provide public goods efficiently. See Schleicher, *The City*, *supra* note 19, at 37 n.161 (noting that zoning will distort housing choices among both non-residents of a jurisdiction, by barring them from entering, and residents of a jurisdiction, by affecting their housing choices).

59. See Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 192–209 (2001) (discussing attractiveness and difficulties with inter-city contracting); Clayton P. Gillette, *The Conditions of Interlocal Cooperation*, 21 J.L. & POL. 365, 367–82 (2005) (same).

60. See Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311, 2315 (2006) (noting that when the legislative and executive branches are controlled by a single party, competition may disappear entirely).

61. Rick Hills, in probably the best law review article written about local political corruption, makes a provocative claim about how we should prosecute bad local political actors. Roderick M. Hills, Jr., *Corruption and Federalism: (When) Do Federal Criminal Prosecutions Improve Non-Federal Democracy?*, 6 THEORETICAL INQUIRIES L. 113, 144 (2005). He claims that differences in the kind of democracy practiced at the federal and local levels makes it unwise to apply federal anti-corruption and conflict of interest laws to local actors. Democracy at the federal level is “bureaucratic populism,” or a system in which the people selecting Congress, because of the high salience of its decisions, are able to monitor it through elections. At the local level, the model is different; it is according to Hills, “participatory populism,” which “mix[es] professional and lay decision-making” as the “elected legislators are often—indeed, usually—part-time, under-paid officers with substantial private interests in the community,” and where the

These policies have benefits and costs, and this is not the place to resolve these debates. Instead, this article will suggest that there are other ways of dealing with local corruption and the lack of representativeness in big city local politics.

V. "I HAVE TO GO NOW, DUANE, BECAUSE I, I'M DUE BACK ON THE PLANET EARTH"⁶²: BRINGING ORDINARY POLITICS TO BIG AMERICAN CITIES

If exit and voice are two ways to check urban political corruption, which should be encouraged? Encouraging exit, or rather encouraging it further, is problematic. As it stands, the multitude of local governments in most metropolitan areas already encourages exit. Although this promotes gains from Tiebout sorting, it also reduces the efficiency of urban agglomeration.⁶³ Systems with many small local governments encourage people to move away from their ideal location in a metropolitan area to receive their preferred package of governmental policies, and this reduces regional economic efficiency. Further, if there are any fixed costs in providing public services (and there surely are), reducing the size of local government by too much will increase the average costs of providing public services.

However, the pathways of political competition could be improved. Instead of mandating non-partisan elections, which makes the lack of competition worse, states could pass laws that would either enable local branches of national parties to better differentiate themselves from their national parents or encourage the development of purely local parties.

The most attractive ideas are those that encourage rebranding at the local level. A city could, as Chris Elmendorf and I have recommended, give high profile mayoral candidates the ability to endorse other local

"whole structure of lay decision-making is pervasively subjected to neighborhood, municipal, and state-wide plebiscites." *Id.* at 115. Conflicts of interest are a major problem in bureaucratic populism, as they interfere with the ability to trust government actors, but strong limits on conflicts of interest may interfere with the way local governments create responsiveness through their encouragement of broad participation. With respect to smaller cities, I think this an extremely powerful argument. Its logic does not extend in an uncomplicated fashion to megacities like Chicago, however. The prudential concerns Hills identifies about federal prosecution of local officials only apply if there are relevant differences in the way residents of big cities approach their local government than the federal government. It is an open question—one that bears future study—whether "participatory populism" describes big city politics. That said, there is no reason to believe that federal prosecution provides much of a check on institutionalized local corruption in places like Chicago. At best, it would be like a game of whack-a-mole played at an extremely fast speed. No prosecutor has a fast-enough hammer to hit all local corrupt actors.

62. Last one, guaranteed. ANNIE HALL, *supra* note 6.

63. Schleicher, *The City*, *supra* note 19, at 42–48.

candidates on the ballot.⁶⁴ This would leverage what people know about high profile figures, like Mayor Daley, into a quasi-party democracy at the local level. Or states could use election law to create real local party democracy. States could repeal laws that guaranteed ballot placement in local elections to parties that did well in gubernatorial elections, and could pass laws that in a number of ways reduce the penalties for switching parties between elections (e.g., same day registration).⁶⁵ This would make it more likely that the national party that is the minority at the local level could rebrand itself for local elections. More radically, states and cities could permit fusion at the local level only, or even bar parties registered at the state-wide level from ballot access in local elections.

There are many ways one can think of achieving the goal of increasing competition at the local level. I am not sure I have all or the best of them. But I do think that the best way to fight the problem of urban political corruption is with more rather than less politics.

64. Chris Elmendorf & David Schleicher, *Making Democracy Work in San Francisco*, S.F. CHRON., Feb. 28, 2010, at E4, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/02/27/IN931C4HQ4.DTL>.

65. Schleicher, *City Council Elections*, *supra* note 38, at 468–73.