

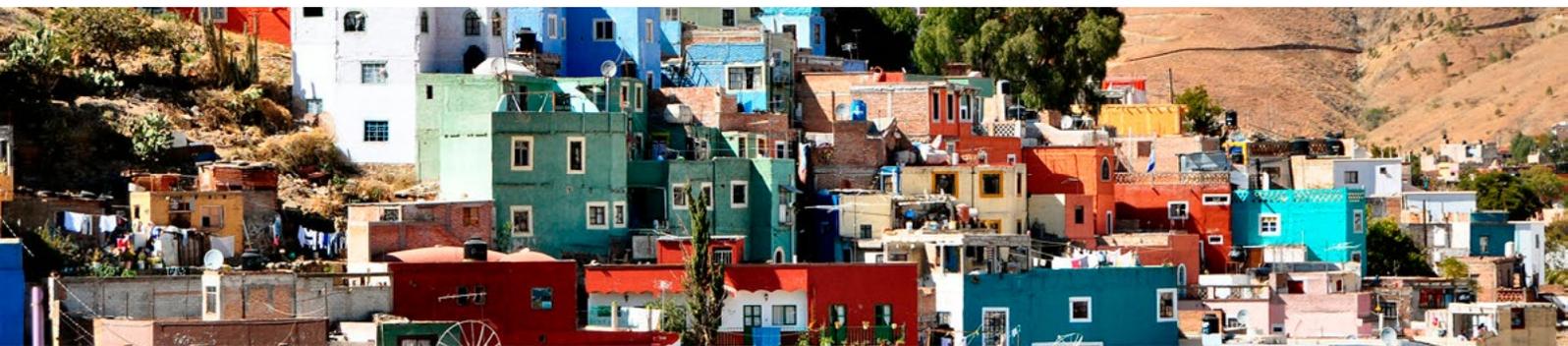


People's Participation in Local Decision-Making

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Foreword

LoGov aims to form a global research and training network and to provide **solutions for local governments** in order to address the **changing urban-rural interplay** and to manage its impacts. As a consortium composed of 10 European and 8 non-European partners, we seek to achieve the following specific objectives:

- to identify, evaluate, compare and share practices in five major local government areas: local responsibilities and public services, local financial arrangements, structure of local government, intergovernmental relations of local governments and people's participation in local decision-making;
- to encourage the effective application of these practices by local governments;
- to strengthen international and intersectoral collaborative research on local government;
- to enhance the skills and career perspectives of the staff exchanged between the project partners.

LoGov's methodological approach relies on a comprehensive comparative analysis that draws on findings from **15 countries** or wider regions on six continents, the extensive **involvement of local policy-makers** through local government associations and a multi- and interdisciplinary approach that is facilitated by the Consortium's expertise in four disciplines: public law, political science, public administration and economics.

LoGov is a project funded by the European Commission under the Horizon 2020 MSCA RISE Programme and runs from February 2019 to September 2024.

The LoGov consortium is pleased to present this document which summarises the output of the research conducted regarding the identification, evaluation, and comparison of practices in the local government area of people's participation in local decision-making.



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1. Summary of the Evaluation of Practices on People's Participation in Local Decision-Making

Erika Schläppi, *Ximpulse GmbH*

1.1 The Work Process and its Outputs

As a starting point, the LoGov project identified a series of guiding questions that should inspire the identification, description and assessment of practice examples from the participating countries, with a view to facilitating the comparison of the examples in the last phase of the LoGov research.

These guiding questions were:

- How do urban-rural differences and changing relations between local authorities and other government levels influence consultation processes and direct popular participation in local decision-making? What are the relevance and effects of specific citizen engagement tools on public participation dynamics and development/service provision outcomes? What role is played by the use of information and communications technology (ICT)?
- How do urban-rural differences play out in the ambit of representative democracy, for instance, with often diverging voting patterns of urban and rural electorates?
- What are the factors that influence inclusive participation of less powerful social groups (women, marginalized groups, poor citizens) in urban and rural settings? How do participation mechanisms particularly impact on gender relations in rural and urban settings?
- How do inclusive direct participatory processes of local decision-making, both formal and informal, and representative democracy impact on multilevel cooperation and balancing of interests among ULGs and RLGs? Are such processes weakened in fields in which local governments cooperate in order to fulfil their responsibilities?
- How does participation impact on other principles of good governance (accountability, rule of law, transparency, equality and non-discrimination, responsiveness) in both ULGs and RLGs?

As a required introduction for all work packages, LoGov partners explained the legal and political situation governing people's participation in local governance in their countries. These thematic introductions describe in a nutshell the background and the main issues at stake for participation in local governance in all the 16 countries that are represented in the LoGov network of research institutions. These introductory texts reflect the diversity of local governance systems as well as the diversity of perspectives and academic disciplines represented in the LoGov project. Participatory approaches can (and should) be looked at from different analytical angles, from the legal, social, economic perspective as well as from the perspective of political science. Thus, some introductory texts focus on explaining the legal and institutional framework and the formal instruments for political participation, others add



political considerations and effects that can be observed with regard to political participation at local level, in urban and rural areas.

Following the pre-defined LoGov working process (see above) 32 practice examples from 16 countries were identified as relevant, described and assessed by the LoGov partner institutions. The thematic introductions and practices were then assessed through interviews and workshops. The semi-structured interviews included some general questions on the country context which were tailored to rural and urban areas and aimed at identifying some key challenges and dynamics for local governments. The interviews also discussed questions around the specific practices that had been identified by the drafters for the work package 5. This provided an initial short individual evaluation of the specific practice examples from an outside expert point of view and provided a further possibility to take in practical considerations in the assessment section. There was also space for additional country-specific questions. The workshop debates provided new insights from additional perspectives on the practice examples as well as on the introductory texts for the countries at stake. Suggestions were made for additional practices to be described and assessed. Some debates were addressing the different conditions for participatory approaches in urban and rural areas, more complex bigger cities and more simply structured smaller municipalities.

Taking up the outcomes of the evaluation workshops and interviews, the draft texts were revised and finalized.

1.2 The Addressed Topics and Dimensions

The examples take up a big variety of topics and participatory processes. A series of topics came up several times in the practice examples, although in a variety of forms. Eight examples explained forms of participatory budgeting that ensured the citizen's participation to the decision-making on the allocation of local funds ("Participatory Budgeting in Italy: The Case of the Municipality of Mals" [Italy]; "Participatory Budgeting in 'Decide Madrid'" [Spain]; "Participatory Budget in the Vienna District of Margareten" [Austria]; "Participatory fund in cities" [Poland]; "Participatory Budgeting, in the City of Pazin" [Croatia]; "Participatory Budgeting process in Chisinau" [Moldova]; "Participatory Budgeting" [South Africa]; "Municipal budgeting and planning during Covid-19" [South Africa]).

Eight examples took up issues around citizens' participation in urban planning or the planning and implementation of infrastructure projects in urban and rural areas ("Citizen's petitions for referendum against essential large-scale infrastructure projects in urban areas" [Germany]; "Citizen's participation in urban planning" [Germany]; "Promoting Public Participation in Urban Planning Processes as a Bottom-up Process. The Differences Between Urban and Rural Areas" [Spain]; "Participation in a road development project in Albisrieden/Zürich" [Switzerland]; "Citizens' participation in decision-making on public investment in Huttwil" [Switzerland]; "Participation in an Environmental Conflict in Malvinas Argentinas, Cordoba Province" [Argentina]; "Community Participation in Local Decision-Making Regarding Lithium Production in Jujuy" [Argentina]; "Public Consultation in the Drafting of Structure/Local Plans" [Malaysia]).



Many practices focus on issues around individual citizens and/or local groups that are taking initiatives or are invited or (sometimes randomly) selected by the authorities to be involved formally or informally in local decision-making procedures (for example, all practices on participatory budgeting; “District Laboratories (‘laboratori di quartiere’) in the City of Bologna” [Italy]; “Regulations on Common Goods” [Italy]; “Local and interest-driven parties or independent groups of voters” [Germany]; “The Experience of ‘Local Action Groups’ as Quality Participation in Rural Areas” [Spain]; all examples from [Switzerland]; “Open Government Initiative Vienna” [Austria]; “People’s participation in Vorarlberg, Bürgerräte und Gemeindeentwicklungsprojekte Götzis/Langenegg” [Austria]; Youth Commune Council in Poland” [Poland]; “Atelier Kanina - 100 Albanian Villages - Civic Engagement Towards Urban-Rural Linkages in Albania” [Albania]; “Participation in Urban Water Management Board in Adama/Oromia” [Ethiopia]; “Participation in an Environmental Conflict in Malvinas Argentinas, Cordoba Province” [Argentina]).

Some also refer to the links between local initiatives and public consultations and the work of elected local assemblies that are formally expected to represent local interests (all examples from [Switzerland]; “Participatory Budgeting” [South Africa]; “Municipal Budgeting and Planning during Covid-19” [South Africa]).

Issues around local referenda and elections were discussed in some practice examples (“Citizens’ petitions for referendum against essential large-scale infrastructure projects in urban areas” [Germany]; “Decisions on Expanding the City Territory at the Expanse of the Rural Area. Consultations with Residents or a Local Referendum?” [Poland]; “Citizens’ participation in decision-making on public investment in Huttwil” [Switzerland]; “Adopting Ranked-Choice Voting in London, Ontario [Canada]). More generally, the interlinkages and dynamics between more formalized ways of participation (where authorities provide formal space for participation and invite citizens to contribute) and more informal ways (where specific interest groups “invent” space and take initiatives on their own) is discussed in several practices (for example, “Regulations on Common Goods” [Italy]; “Participation in a road development project in Albisrieden/Zürich” [Switzerland]; “Citizen’s participation in decision-making on public investment in Huttwil” [Switzerland]; see also “Local and interest-driven parties or independent groups of voters” [Germany]).

The examples show that participatory approaches serve different purposes that are often mixed and not always made explicit. Most cases aim in one way or another at improving the responsiveness and effectiveness of local decision-making and service delivery, lastly contributing to the legitimacy of and trust in local governance. They give voice to citizens and citizens’ groups and aim at assessing local needs, interests and preferences more broadly, beyond local elites whose interests tend to be over-represented in policy-making and resource allocation. In some cases, participatory approaches follow more top-down purposes of information and political education, with the idea of raising public awareness about and seek broad acceptance for plans, processes and decisions taken by authorities (for example, “People’s participation in Vorarlberg, Bürgerräte und Gemeindeentwicklungsprojekte Götzis/Langenegg” [Austria]) – or for empowering those groups of citizens that tend to be excluded and have less access to political and social power (for example, “Youth Commune Council in Poland” [Poland]). Many examples see participatory approaches more generally as ways and means to promoting civic engagement and setting the local political agenda in a



bottom-up logic (for example, “Participatory Budgeting in ‘Decide Madrid’” [Spain]; “Regulations on Common Goods” [Italy]). Some examples present participatory approaches as a means for holding local authorities accountable ex-post for specific decisions (for example, “Transparency in Local Government Procurement during Covid-19” [South Africa]).

A key question of participation relates to who is consulted and who is participating. Many practice examples are talking about local residents, citizens or civil society and their (equal) right to participate, without referring to possible differences in practice where appointments or self-selection processes may lead to unequal levels of representation of social groups. Other practice examples are explicitly addressing the dimension of exclusion and inclusion that may be detected in various formats of participation, in different ways. Gender issues were particularly at stake in a practice example from Ethiopia (“Local Governance and Gender in Family Relations” [Ethiopia]). With the purpose of including less powerful voices in local decision-making, some practices discuss the involvement of specific groups (for example, “Youth Commune Council in Poland” [Poland]; “Promoting Public Participation in Urban Planning Processes as a Bottom-up Process. The Differences Between Urban and Rural Areas” [Spain]; “Participatory Budgeting” [South Africa]; “Participation in the Development of the City Charter of Biel/Bienne” [Switzerland]). Some practices refer to the representation of different groups or sectors in the participatory process but do not discuss in detail how the group representatives are selected (for example, “The Experience of ‘Local Action Groups’ as Quality Participation in Rural Areas” [Spain]). Other examples refer to the random selection of participants to specific procedures, with a view to having a better representation of usually more marginalized groups (for example, “People’s participation in Vorarlberg, Bürgerräte und Gemeindeentwicklungsprojekte Götzis/Langenegg” [Austria]; “Participation in the Development of the City Charter of Biel/Bienne” [Switzerland]). Two practice examples point to the risk of manipulation of participatory bodies through the selection of its members by the authorities or through coopting by private business actors (“Participation in Urban Water Management Board in Adama/ Oromia” [Ethiopia]; “Community Participation in Local Decision-Making Regarding Lithium Production in Jujuy” [Argentina]). While digitalization may open participatory processes to a wider circle of participants (for example, “Participatory Budgeting in ‘Decide Madrid’” [Spain]; “Participation in the Development of the City Charter of Biel/Bienne” [Switzerland]), other practice examples highlight the risks that the digital divide leads to the systematic exclusion of citizens without access to digital communication (for example, “Participatory Budget in the Vienna District of Margareten” [Austria]; “Municipal budgeting and planning during Covid-19” [South Africa]).

Several practices show the often challenging relation between the outcomes of participatory consultation processes (that are not binding) and their actual implementation by the local authorities that have the formal power to make decisions. The latter might follow law-making procedures and management processes that do not take up the results of participatory processes. This may frustrate the expectations of participants to influence the decisions (for example, “Participatory Budget in the Vienna District of Margareten” [Austria]; “Participation in the Development of the City Charter of Biel/Bienne” [Switzerland]; “Participation in Urban Water Management Board in Adama/ Oromia” [Ethiopia]). Some practices demonstrate that this can finally lead to the need for inventing new spaces and forms of participation (for example, “Participation in an Environmental Conflict in Malvinas Argentinas, Cordoba



Province” [Argentina]; “Community Participation in Local Decision-Making Regarding Lithium Production in Jujuy” [Argentina]).

Participatory approaches can be used in different phases of the decision-making process. Many practice examples refer to the collection of information, the establishment of local needs, local initiatives and public consultations that happen in the preparation phase, before a decision is taken, with a view to making sure that the decision-makers are informed about the current situation and the (various) needs, interests and views of citizens (for example, “District Laboratories (‘laboratori di quartiere’) in the City of Bologna” [Italy]; “Regulations on Common Goods” [Italy]; petitions to initiate a planning process in “Citizen’s participation in urban planning” [Germany]; consultation on the incorporation of smaller communes into cities in “Decisions on Expanding the City Territory at the Expense of the Rural Area. Consultations with Residents or a Local Referendum?” [Poland]; “Youth Commune Council in Poland” [Poland]; digital formats of public consultations in “Participatory Budgeting in ‘Decide Madrid’” [Spain]; “The Experience of ‘Local Action Groups’ as Quality Participation in Rural Areas” [Spain]; the consultation processes in “Participation in the Development of the City Charter of Biel/Bienne” [Switzerland] ; “Open Government Initiative Vienna” [Austria]; “Participatory Budget in the Vienna District of Margareten” [Austria]; in general: all the examples relating to participatory budgeting). Some examples describe participatory approaches – be it informal or formal ones – in taking a decision itself (for example, “District Laboratories (‘laboratori di quartiere’) in the City of Bologna” [Italy]; all examples from [Switzerland]; “Atelier Kanina - 100 Albanian Villages - Civic Engagement Towards Urban-Rural Linkages in Albania” [Albania]; “Community Participation in Local Decision-Making Regarding Lithium Production in Jujuy” [Argentina]; “Adopting Ranked-Choice Voting in London, Ontario [Canada]). Some practices relate specifically to the implementation of decisions, either to challenge the decision and block its implementation (for example, “Citizen’s petitions for referendum against essential large-scale infrastructure projects in urban areas” [Germany]; “Participation in an Environmental Conflict in Malvinas Argentinas, Cordoba Province” [Argentina]) or with a view to holding authorities accountable for compliance ex-post (for example, “Transparency in Local Government Procurement during Covid-19” [South Africa]; “Sanitation Development” [India]). Finally, some examples refer to actors or processes that ensure participation in all phases, from the preparation of the decision until the implementation (for example, “Participatory Budgeting, in the City of Pazin” [Croatia]; “Government Goals Plan: Citizen Participation in the Control of Compliance of the Mandates in Cordoba (Action Plan of the Government)” [Argentina]; “Participation in a road development project in Albisrieden/Zürich” [Switzerland]; “Citizen’s participation in decision-making on public investment in Huttwil” [Switzerland]).

In general, the practice examples describe and assess participation practices specifically in urban and/or rural environments – and focus less on comparing urban with rural conditions, or on the relations between urban and rural areas. However, some examples explicitly compare urban and rural participatory approaches to planning (“Promoting Public Participation in Urban Planning Processes as a Bottom-up Process. The Differences Between Urban and Rural Areas” [Spain]) or focus on planning in rural areas, taking to account their linkages to the neighboring urban centers (“Atelier Kanina - 100 Albanian Villages - Civic Engagement Towards Urban-Rural Linkages in Albania” [Albania]). Other examples relate to topics and phenomena that are at the core of urban-rural relations (for example, the socio-



economic differences and political dynamics between the rural municipalities and the cities in the examples “Participatory fund in cities” [Poland]; “Decisions on Expanding the City Territory at the Expanse of the Rural Area. Consultations with Residents or a Local Referendum?” [Poland] and the recent migration trend towards rural areas in South-Africa in the interview in relation to the specific practice on “Participatory Budgeting” [South Africa]). One example compares the meaningful use of a participatory mechanism in rural and urban areas (“Participatory Budgeting” [South Africa]).

In the interviews and workshops the urban-rural linkages were discussed in greater detail. Some experts stressed the contextual differences between rural and urban areas and their effects on participation methods and aims, for example, the differences in the proximity and (informal) relations and trust between citizens and authorities, the complexity of issues at stake, the financial and human resources available (e.g., expertise, self-confidence, time of citizens to contribute to broad participatory processes). Participation processes and aims were also seen to offer a unique possibility to take into account and effectively respond to changing dynamics and trends of rural-urban (and urban-rural) migration (in the interview in relation to the specific practice on “Participatory Budgeting” [South Africa]), or in other complex contexts (for example, in the interview on Citizen participation in decision-making on public investment: “Citizens’ participation in decision-making on public investment in Huttwil” [Switzerland]).

1.3 Cross-cutting and Transversal Topics

A series of issues were taken up in the practice examples that are of relevance also from the perspective of other work packages. As participation is an important dimension of decision-making, particularly at local level, it is per se a cross-cutting topic which is relevant for all the LoGov work packages.

- With regard to Work Package 1 (Local responsibilities and public services) practice examples under Work Package 5 have shown that participatory approaches are important features to prepare informed and responsive decisions in the local sphere of responsibilities, particularly on local investments and services, by identifying local needs and interests of different groups. The planning of and decisions on large-scale (public and private) investments were addressed in various practice examples (see above).
- Regarding Work Package 2 (Financial arrangements) participatory approaches were identified particularly in the areas of budgeting and financial planning. Some practice examples also referred to the fact that participatory approaches are not without costs, they need financial resources – be it only for digital data collection and communication – and an investment in human resources at local level (for example, “Participatory Budget in the Vienna District of Margareten” [Austria]; “Participation in the Development of the City Charter of Biel/Bienne” [Switzerland]).
- Regarding Work Package 3 (Structure of local government), one practice example focuses on a participatory process in relation to amalgamation plans aiming at incorporating rural municipalities into a bigger city. This reflects the assumption that local or national decisions addressing territorial reforms such as amalgamation or splitting may be among the issues that citizens have a particular interest in giving their



views on, arguably because these reforms may conflict with strong and historically grown local identities. In addition, intermunicipal cooperation may be a relevant factor for effective and meaningful participation. While in some cases the (informal) mobilization for citizens' movements can even be easier in a more regional perspective that goes beyond individual municipalities (for example, in the cases from Argentina), more formal participatory arrangements tend to be organized in a municipal logic and may be not well placed to address intermunicipal issues that are often negotiated and decided by the executive structures of the involved municipalities. The fact that there are no practice examples in Work Package 5 relating to intermunicipal cooperation, may confirm this assumption.

- Regarding Work Package 4 (Intergovernmental relations of local governments with the national and, if existing, subnational governments) the participatory dimension is less visible. However, the way how the municipal structures, competences and decision-making processes are legally framed, institutionalized and funded, is of particular importance for meaningful participation– and these decisions are taken mainly at national or subnational level. This is particularly visible in the introductory texts to the practice examples from each country. While all practice examples are focusing on citizens' participation at the local level, some examples also point to the usefulness of locally based participatory approaches, with a view to influencing the subnational and national level decision-making and, with that, intergovernmental relations (for example, “Community Participation in Local Decision-Making Regarding Lithium Production in Jujuy” [Argentina]). In addition, local initiatives are often also linked to national civil society organizations that are able to take up local participatory deficits at subnational or national level (for example, “Participation in an Environmental Conflict in Malvinas Argentinas, Cordoba Province” [Argentina]).

While all decision-making processes at local level can be looked at from a participatory perspective, participation can take a variety of forms with various effects (representative and direct, consultative and binding, invited and invented, formal and informal) in the four work packages.

The practice examples show that local participation is particularly concerned with digitalization – a transversal topic that constitutes a great potential for more effective local governance in all work packages. The possibilities to collect data and share information between authorities and citizens, to produce and disseminate know how among citizens, and the ways and means of residents to get involved are much greater than in analog times. However, digital ways of communication work best if and where there is already a trustful relation between the authorities and the citizens, and specific capacities are needed to make fully use of this potential. Finally, there is a great risk to exclude digital illiterate people from these processes. More generally, transparency and information have been implicitly referred to in many practices and explicitly emphasized as a key feature and pre-condition of successful participatory approaches in the practice example from Malaysia (“Public Consultation in the Drafting of Structure/Local Plans” [Malaysia]).

Gender issues were not discussed explicitly except in one practice example referring to the responsibility of local governments to make local (ethnically defined) customary law compatible with gender equality (see “Local Governance and Gender in Family Relations”



[Ethiopia]). However, gender and inclusion are transversal topics that are relevant for participation as well as in all other fields that were taken up in LoGov work packages.

1.4 Conclusion

The discussion has shown that participatory approaches are practiced at the level of local governance, in a variety of forms and contexts, with different purposes, involving different actors. A variety of demographic, social, political, historical, economic and psychological dimensions were mentioned that are relevant to make participation successful in urban and rural areas. Comparative analysis of the practice examples (and beyond) could focus on a series of burning issues, such as:

- What are the purposes of participation? What approaches and methods work best for a specific purpose?
- How do participatory approaches feed into the architecture of local decision-making? How do participatory methods influence the decisions on policies and allocation of funds? How to make participatory methods more effective and sustainable, in terms of ensuring inclusive and responsive decision-making in the wider system of local governance?
- Who is participating? Whose voices are heard – and finally taken up in the decisions? How does the choice of methods and approaches influence the representation of different interest groups, men and women? What are the risks of manipulating public participation for specific interests?
- How do participatory approaches work in rural and urban local settings – and in the context of current political and demographic dynamics between urban, peri-urban and rural areas? What are the success factors in urban, peri-urban and rural contexts?



2. People's Participation in Local Decision-Making in Italy

2.1 The System of Local Government in Italy

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Types of Local Governments

In Italy, there are three main types of local governments which are recognized under Article 114 of the Constitution as making up, together with the 20 regions¹ and the State, the Italian Republic. These are the municipalities (*comuni*), 14 metropolitan cities (*città metropolitane*) and 83 provinces (*province*). The basic units of local government throughout the country are the 7,914 municipalities (*comuni*). However, in order to facilitate the social and economic integration of urban agglomerations, there are the metropolitan cities (*città metropolitane*). While their establishment had been discussed time and again at least since the 1950s, fierce resistance, especially from the regions, had made their actual creation impossible. Only the constitutional reform of 2001 introduced the metropolitan cities into the Constitution. Then it took over a decade to clarify how they would actually operate and to overcome resistance from other government levels. The Ordinary Law no 56/2014 ('Delrio Law') finally established the metropolitan cities.² The third type of local governments that is recognized under Article 114 as a constituent unit of the Italian Republic are the provinces. They are umbrella entities between the regions and municipalities. Similar to second-tier local governments in other countries the main function of the provinces is the coordination of policies and public services.

Apart from these three main types enshrined in the Constitution, the Legislative Decree no 267/2000 mentioned some more types of local governments. The unions of municipalities (*unioni di comuni*) are composed of two or more municipalities and are an institutional form of cooperation in order to jointly exercise certain functions.³ A similar rationale is behind specific local government entities for particular geographical areas, namely the mountain communities (*comunità montane*) and the island communities (*comunità isolane*).

¹ There are 15 regions with ordinary statute and five regions with special statute, recognized under Article 116 of the Constitution, namely Sardinia, Sicily, Trentino-South Tyrol, Aosta Valley and Friuli-Venezia Giulia.

² Giovanni Boggero, 'The Establishment of Metropolitan Cities in Italy: An Advance or a Setback for Italian Regionalism?' (2016) 8 *Perspectives on Federalism* E-1, E-5.

³ Italian Constitutional Court, Judgment no 50/2015.



Legal Status of Local Governments

According to the above-mentioned Article 114 of the Constitution, '[t]he Republic is composed of the Municipalities, the Provinces, the metropolitan cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution'. Even if this provision seems to suggest that the constituent parts of the Italian Republic are on an equal footing, the Constitutional Court soon emphasized the special role of the state vis-à-vis the other government levels.⁴ While Article 114 ensures that the three main types of local government enjoy autonomy within constitutional principles, it does not go any further in regulating them.

Article 117(2)(p), however, determines that national government shall establish the rules regarding the 'electoral legislation, governing bodies and fundamental functions of the municipalities, provinces and metropolitan cities'. The relevant law consolidating pre-existing rules is the above-mentioned Legislative Decree no 267/2000. The regional legislator can only become active in a complementary manner on the basis of the residuary power under Article 117(6). This is true, however, only for the 15 regions with ordinary statute (hereinafter, ordinary regions). The five regions with special statute (hereinafter special regions) are allowed to regulate their local governments in their autonomy statutes (e.g. Article 4(3) and Article 61-65 of the Statute of Trentino-South Tyrol) and, more in details, through ordinary regional legislation.

(A) Symmetry of the Local Government System

There are certain types of local government with special status that take into account different realities in urban and rural areas, like the above-mentioned metropolitan cities, unions of municipalities, mountain communities and island communities. Certain variations follow from Italy's system of asymmetrical regionalism, more concretely, from the different regulatory regimes concerning ordinary regions and each of the five special regions.

Nonetheless, the local government system is quite symmetrical. This is because the system is rooted in ideas of municipal organization from the French Revolution and Napoleonic times. These ideas were supported by the House of Savoy and after their founding of the Kingdom of Italy in 1861 extended to the whole country by enacting the laws of administrative unification in 1865. This explains adherence, in principle, to the French model of uniform municipalities, which are supposed to carry out the same functions irrespective of territorial size, demography, economic power, as well as urban or rural character.

Political and Social Context in Italy

⁴ Italian Constitutional Court, Judgment no 274/2003.



The political situation at the national government level and, to a lesser extent, in the regions has in recent years witnessed profound changes of the party system. At the national level, a coalition government formed by the Five Star Movement and the League came to power in 2018 and was replaced by a coalition between the Five Star Movement and the Social Democratic Party (PD) in 2019. As for the regions, candidates from the League over the last decade have been elected Presidents in Veneto, Lombardy and Friuli-Venezia Giulia, while Brothers of Italy, another right-wing party, took power in the Abruzzo region in 2019. At the local level, there is a similar tendency. When about half of Italy's municipalities were called to vote in 2019, the center-right block led by the League won, from among those with over 15,000 inhabitants, in 75 municipalities (up from 36).

A good indicator for the social and demographic context of local governments is the OECD definition of functional urban areas as composed of a densely inhabited city and a surrounding area (commuting zone) whose labor market is highly integrated with the city. Following this definition, only 30 per cent of Italy's population live in metropolitan areas (more than 500,000 inhabitants), 20 per cent in small- and medium-sized urban agglomerations (50,000 to 500,000 inhabitants), compared to an OECD average of 49 per cent and 18 per cent, respectively.

As for the structure of municipalities, only 144 of them have more than 50,000 inhabitants, while 70 per cent have less than 5,000 inhabitants and are thus, according to the Italian classification, 'small municipalities'. The average population size is 7,653. But this, of course, says little in view of an extremely wide spectrum ranging from Rome's almost 2.9 million inhabitants to 33 in the municipality of Morterone in the Region of Lombardy.

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2.2 People's Participation in Local Decision-Making in Italy: An Introduction

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In recent years, representative democracy has been experiencing a crisis in relation to all levels of government: local, provincial, regional, national and supranational. The most striking evidence of this crisis are the low turnout at the polls and the widespread disinterest in issues linked to society and citizenship. Although it is recognized that the instruments of representative democracy, elections in particular, are still the method that allows modern systems to be governed democratically, a new phenomenon is slowly taking hold: that of 'participatory democracy'.

'Participatory democracy' can be intended as the synthesis of practices, devices and procedures that create ways for citizens to be actively and effectively involved in decision-making processes of public administrations. In other words, these are 'processes or institutions, that are new to a policy issue, policy role, or level of governance, and developed to reimagine and deepen the role of citizens in governance processes by increasing opportunities for participation, deliberation and influence'.⁵ The purpose of this innovative policy-making tools is to enhance the legitimacy of political decisions, to improve the quality of democratic policymaking, and, finally, to increase their level of effectiveness.

In recent years, in particular at local level, a growing interest in the instruments of participatory democracy can be witnessed.⁶ In line with this tendency, also many Italian municipalities are employing more and more frequently decision-making tools that are intended to involve common citizens in the traditional (representative) decision-making structures. The Italian constitutional structure allows municipalities, even if not explicitly, to adopt regulations that introduce consultative participatory procedures. This has been also confirmed by the Italian Constitutional Court.⁷

The Italian Constitution does not contain any explicit reference to participatory democracy and its democratic nature is based on Article 1 (particularly paragraph 2) which regulates the principle of popular sovereignty. The democratic principle is concretely implemented through instruments of representative and direct democracy, explicitly provided for by the constitutional text. Nonetheless, a constitutional connection to participatory democracy can be identified in Article 3 paragraph 2 of the Constitution, which provides for '...(the) effective participation of all workers in the political, economic and social organization of the Country'.⁸ In addition, Article 118 paragraph 4 of the Constitution stipulates that 'State, Regions, metropolitan Cities, Provinces and Municipalities encourage the autonomous initiative of

⁵ Stephen Elstub and Oliver Escobar 'Defining and Typologising Democratic Innovations' in Stephen Elstub and Oliver Escobar (eds), *Handbook of Democratic Innovation and Governance* (Edward Elgar 2019).

⁶ Birte Gundelach, Patricia Buser and Daniel Kübler, 'Deliberative Democracy in Local Governance. The Impact of Institutional Design on Legitimacy' (2017) 43 *Local Government Studies* 218.

⁷ Constitutional Court, Judgement no 379/2004; Constitutional Court, Judgement no 235/2018.

⁸ Pier Luigi Zampetti, 'L'art. 3 della Costituzione e il nuovo concetto di democrazia partecipativa' in *Studi per il ventesimo anniversario dell'assemblea costituente* (vol 2, Vallecchi 1969).



citizens, individuals and associates, for the conduct of general interest activities, based upon the principle of subsidiarity'. This is the principle of horizontal subsidiarity that paves the way for forms of collaboration between citizens and administrations as part of the management of material and concrete activities, rather than the development of general legislative acts.⁹

With particular regard to the local system, the ways in which citizens can participate in decision-making processes are, to one extent, traditional instruments of representative democracy, in particular elections of the local council, and that of direct democracy, like consultative referenda; on the other hand, municipalities can adopt regulations for promoting the participation of citizens in local decision-making, as stated by Article 8 of the Consolidated Law on Local Authorities.¹⁰ This norm represents the legislative translation of Article 3(2) of the Constitution. The provision stipulates that the municipalities must promote organizations of participation in the local administration, by way of the introduction in their statutes of 'forms of consultation of the population as well as procedures for the admission of requests, petitions and proposals of individual or associated citizens aimed at promoting interventions for the best protection of collective interests'. The Consolidated Law on Local Authorities is the source that underpins formal legitimacy and the extent of the municipal regulatory competence in terms of adoption of institutes of participatory democracy.

According to Valastro,¹¹ about a third of the Italian municipalities have equipped themselves, over time, with one or more regulations that in various ways regulate participatory democracy procedures. Looking at the ca. 8,000 Italian municipalities almost 3,000 regulations can be identified: a rather high number if we consider that the first ones have begun to be approved at the beginning of the 1980s. With regard to the geographical distribution, the regulations are spread all over the country with a prevalence to be identified in the northeastern regions that are characterized by a high density of municipalities.

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⁹ Francesco ME Emmanuele, 'La sfida della sussidiarietà ed il nuovo assetto istituzionale' (2006) 4 *Federalismi.it*.

¹⁰ Italian Legislative Decree no 276/2000.

¹¹ Alessandra Valastro, 'La democrazia partecipativa alla prova dei territori: tendenze e prospettive dei regolamenti comunali' (2016) 3 *Osservatorio sulle fonti* 1.



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2.3 Participatory Budgeting in Italy: The Case of the Municipality of Mals

Martina Trettel, *Eurac Research*

Relevance of the Practice

Participatory Budgeting (PB) is currently one of the most used instruments of what has been described as 'participatory democracy'.¹² In the last ten years a massive employment of PB has been witnessed globally, especially at the local level.¹³ PB started in the City of Porto Alegre (Brazil) in 1989¹⁴ and can be briefly described as a democratic process in which community members decide how to spend part of a public budget through consensual and deliberative approaches towards decision-making.¹⁵

As in many other parts of the world, also in many local entities in Italy, PB has been practiced.¹⁶ Even if the Italian local practices of PB show similarities and commonalities in the way in which they are conceived and designed for allowing the participation of non-elected citizens in the allocation of public finances,¹⁷ each experience is unique since they take place in very specific (cultural, social, economic, political, geographical, etc.) environments with different preexisting conditions.¹⁸

¹² Stephen Elstub, 'Deliberative and Participatory Democracy' in André Bächtiger, John S Dryzek, Jane J Mansbridge and Mark Warren (eds), *The Oxford Handbook of Deliberative Democracy* (Oxford University Press 2018).

¹³ Yves Sintomer, Carstberg Herzberg, Anja Röcke and Giovanni Allegretti, 'Transnational Models of Citizen Participation. The Case of Participatory Budgeting' (2012) 8 *Journal of Public Deliberation*; Brian Wampler, 'Participatory Budgeting. Core Principles and Key Impacts' (2012) 8 *Journal of Public Deliberation*; Brian Wampler and Janette Hartz-Karp, 'Participatory Budgeting. Diffusion and Outcomes Across the World' (2012) 8 *Journal of Public Deliberation*; Public Policy Institute for Wales, 'Participatory Budgeting: An Evidence Review' (2017).

¹⁴ Santos Boaventura de Sousa, 'Participatory Budgeting in Porto Alegre. Toward a Redistributive Democracy' (1998) 26 *Politics society* 461.

¹⁵ Brian Wampler, 'A Guide to Participatory Budgeting' (2000)

<http://www.partizipation.at/fileadmin/media_data/Downloads/themen/A_guide_to_PB.pdf>; Ernesto Ganuza and Francisco Francés, 'The Deliberative Turn in Participation. The Problem of Inclusion and Deliberative Opportunities in Participatory Budgeting' (2012) 4 *European Political Science Review* 283; Anja Röcke, *Framing Citizen Participation. Participatory Budgeting in France, Germany and the United Kingdom* (Palgrave Macmillan 2014).

¹⁶ Matteo Bassoli, 'Participatory Budgeting in Italy. An Analysis of (Almost Democratic) Participatory Governance Arrangements' (2012) 36 *International Journal of Urban and Regional Research* 1183.

¹⁷ Valter Canafoglia, 'Cicli procedurali dei Bilanci Partecipativi: alcuni esempi italiani' in Umberto Allegretti (ed), *Esperienze e prospettive in Italia e in Europa* (Firenze University Press 2010).

¹⁸ Jelizaveta Krenjova and Ringa Raudla, 'Participatory Budgeting at the Local Level: Challenges and Opportunities for New Democracies' (2013) 14 *Halduskultuur – Administrative Culture* 18.



In South Tyrol, the experience of the municipality of Mals/Malles is particularly interesting in many respects. Mals has to face issues related to the urban-rural divide given that it is located in a remote mountainous area. The municipality only has ca. 5,000 inhabitants but it spreads over a huge territory of 250 km². This gives rise to big issues when it comes to involving citizens with instruments of participatory democracy. Furthermore, the current local administration has paid particular attention to the involvement of citizens through democratic innovations in the last years, that is also demonstrated by the fact that the regulation of the municipality includes an entire section on citizens participation.¹⁹

Description of the Practice

The process of PB in Mals foresees that each citizen has the chance to submit proposals (maximum three) on how to allocate a specific portion of the budget (decided by the municipality on a yearly basis). The process has a yearly cycle that starts in September of each year. In the first phases, citizens advance proposals of projects to be implemented with the reserved resources. These proposals are then presented to fellow residents in dedicated assemblies organized by the municipality. Once the proposals are submitted and presented, the municipality checks the project's legal, technical and financial feasibility in collaboration with a council of 15 randomly selected citizens. If a project or proposal is not feasible for one of these reasons, this must be indicated and justified. The projects that are admissible are published and put to an online vote. The projects are ranked and those getting the most votes are then implemented, until reaching the limit of the available resources.

As an example, under the 2016 PB (for 2017) citizens submitted 33 projects, out of which 10 were voted as 'the best projects'. The 200,000 euros available that year allowed to finance all of them: nine projects have been implemented in 2017 and one in 2018.

As regulated by the municipality, further specific rules of PB in Mals are the following:

- any number of citizens can support a proposal. Members of the city council and the city committee are not allowed to submit proposals;
- proposals may concern investments in the municipality and savings in the municipal budget;
- if two or more proposals have the same purpose, they will be brought together after consultation with the participants;
- a proposal can only be submitted by one individual, but can be supported by other people with signatures;
- proposals from associations and interest groups are not allowed;
- anonymous suggestions and ideas will not be accepted;
- the submission of project proposals does not entail any legal obligation for the municipality of Mals;

¹⁹ Elisabeth Alber and Martina Trettel, *Partizipation und partizipative Demokratie in der Europaregion Tirol-Südtirol-Trentino. Denkanstöße und Beispiele* (EURAC Research 2015); Elisabeth Alber, Alice Engl and Günther Pallaver (eds), *Politika 2018. Südtiroler Jahrbuch für Politik* (Raetia 2018).



- legal feasibility: The municipality of Mals must be responsible for this type of investment or activity; Financial feasibility: It must be possible to finance the proposal within the limits of the funds available but not yet committed for each year; Technical feasibility: The proposal must be technically feasible with a reasonable effort.

Assessment of the Practice

Generally speaking, participatory budgeting has filled a vacuum in an era when intermediate bodies such as churches, trade unions and parties have decreasing significance, which results in polarization between the municipality as political institution, on the one hand, and the individual, on the other. Participatory budgeting is a mechanism to link the two by involving people in local decision-making and in this respect the process is actually at least as important as the result.²⁰ In the case of the PB in Mals this main objective of involving citizens in the formation of the budget has clearly been achieved. As in any other (face-to-face) practice of the so-called participatory democracy, the direct involvement concerns (especially in the first years) a small percentage of the entire population; however, in a small (and rural) municipality such as Mals, it is easier to involve a larger percentage of citizens given the limited number of inhabitants that facilitates the spread and exchange of information. As the PB process relied on self-selected participation, which is more prone to an imbalanced representation of opinions, it would be interesting how this issue was dealt with.²¹ After all, inclusiveness, i.e. the capacity of a participatory process to give voice to a plurality of opinions in order to enhance a decision's legitimacy (also in the eyes of those not involved) is a key indicator for the assessment of any attempt to involve the local population in policy-making. As some observers pointed out, the practice has achieved in addition to participation also the aim of evaluating local policy-making in general and thus to reinforce the legitimacy of the local administration as the core of representative democracy.²²

Despite this specific aspect, there is evidence that the most voted ideas proposed by the citizens in the context of PB have been then translated into concrete actions by the local administration. Therefore, it is possible to affirm that the practice has been successful. Next to issues of implementation, it is a general limitation of participatory budgeting in many cases that it is more suited for immediate decisions than medium- or long-term choices and that these decisions often are not integrated into broader visions for the territory, thus entailing a certain risk of fragmentation and incoherence.²³

In general, we must be aware of the fact that PB processes often strongly depend on the political will of the municipality (especially its mayor). Hence, a change of the dominant political force can lead to the interruption of a practice of participatory democracy, such as the PB. This

²⁰ Interview with Gianfranco Pomatto, Researcher, IRES Piedmont (15 June 2021).

²¹ Statement by Gianfranco Pomatto, Researcher, IRES Piedmont (LoGov Country Workshop, Public Participation in Local Decision-Making, 19 March 2021).

²² Interview with Fulvio Cortese, Director, Faculty of Law, University of Trento (23 June 2021).

²³ Interview with Giovanni Allegretti, Senior Researcher, Centre for Social Studies, University of Coimbra (23 June 2021).



is an inherent limit of democratic innovations. Mals, however, went a step further by introducing in the regulation of the municipality (*Statuto comunale*) an explicit reference to the PB. This gives to this instrument a legal guarantee that the future local administration will not be able to simply ignore this instrument, even if there is no direct sanction for not using this new policymaking tool.

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2.4 District Laboratories (*'laboratori di quartiere'*) in the City of Bologna

Martina Trettel, *Eurac Research*

Relevance of the Practice

The district laboratories (*laboratori di quartiere*) are an initiative of the City of Bologna, started in 2017 and continued each year thereafter. Bologna is a medium-sized city, with 389,009 inhabitants and a density of 2419,87 people per km², and it is the capital city of the Region Emilia-Romagna which strongly promotes participatory instruments and policies. This is demonstrated by the fact that in 2010 the region adopted an organic law on civic engagement in local and regional policymaking²⁴ which was recently reformed in 2018.

In this participation-friendly environment, Bologna represents an interesting example because it shows a way in which large urban local governments can still manage – despite their size – to involve citizens in local decision-making. It also has to be noted that the City of Bologna, in line with the Region in which it is situated, has a long tradition of cooperative movements, and in the field of public debate and civic participation it has developed a long series of initiatives and shared actions. In the last 15 years Bologna has tried to devise innovative policies for co-designing urban development and taking care of common goods together with citizens.²⁵

Description of the Practice

Bologna established in 2005 the Urban Innovation Foundation (previously called Urban Centre Bologna) with the purpose of connecting citizens and policymakers in an efficient and sustainable way. In the framework of the activities of the foundation, the Civic Imagination Office (*Ufficio immaginazione civica*), in particular, operates as a development and research laboratory and connects the resources, choices and projects of the administration with the needs and capabilities of citizens and communities.

The main tool through which this office operates are the district laboratories that started in 2017. These are organized and managed by the Governance Unit, the city Districts, and the University of Bologna. They are intended as spaces of interaction among public servants of the City of Bologna and organized and non-organized groups of citizens. The aim is to activate and manage participatory processes in order to map, listen, consult, co-design, report and measure what is happening in the neighborhoods of Bologna.²⁶

²⁴ Marco Ciancaglini, 'Tra democrazia partecipativa e concertazione. La legge regionale 3/2010 dell'Emilia-Romagna' (2011) 2 *Le Istituzioni del Federalismo* 215.

²⁵ Michele d'Alena, Simona Beolchi and Stefania Paolazzi, 'Civic Imagination Office as a Platform to Design a Collaborative City' (ServDes2018. Service Design Proof of Concept Conference, Milan, June 2018).

²⁶ *ibid.*



District labs are intended to be permanent. In fact, as stated by one of the project creators Michele d'Alena in an interview: 'At the beginning of every year we design the team, with the resources, and then we go to the neighborhood to involve the community and enterprises. We can build up social capital, we can learn new instruments, we can learn with the people how we can do better, and we know every year much more about the city'.²⁷

Concretely, the district labs are organized over three different phases, repeated every year.

First, the Civic Imagination Office sets out the strategic guidelines and selects the neighborhoods in which labs should be activated, as they take place every year in different neighborhoods. Secondly, the Office meets the relevant stakeholders of each neighborhood in order to collaboratively identify problems, priorities, available resources and consequently design the framework for the development of each district public space. In a third and final phase, the Office opens the process to all citizens, through the implementation of community engagement initiatives, among others offline and online meetings, performances, neighborhoods walks, bike rides etc., mainly in order to attract the attention of the public to the participatory activities. Furthermore, workshops open to all citizens are organized through the Open Space method to give to all participants the opportunity to advance proposals on how to improve life in the district and discuss these together with the relevant stakeholders and people responsible in the administration (see image). Once all the proposals have been advanced, and project ideas are finally shaped, all residents can vote through a ballot for one winning project in each district. The latter will then be implemented during the year.

Assessment of the Practice

To some extent the district labs are similar to other practices included in this report. It has been pointed out, for example, that they can be seen as an evolution of the regulations on common goods.²⁸ Moreover, the district labs are in a way also similar to practices of participatory budgeting, as the municipality's administration devotes some resources to the organization of deliberative gatherings where citizens together with other relevant stakeholders decide which project should be activated in order to improve the life quality of the neighborhood. However, the district labs are something that reaches beyond participatory budgeting by creating a permanent participatory initiative in the different districts, where citizens can meet with different purposes, through the above-mentioned community engagement initiatives, and not only with the aim of identifying specific projects. As for the Open Space method, it is key to know how solutions were elaborated and evaluated during these meetings. This is because the capacity of problem-solving, i.e. the extent to which the outcomes of the participatory processes are both effective in addressing the problem at hand

²⁷ See Rob Hopkins, 'Bologna, the City with a "Civic Imagination Office"' (*resilience*, 7 March 2019) <<https://www.resilience.org/stories/2019-03-07/bologna-the-city-with-a-civic-imagination-office/>>.

²⁸ Interview with anonymous expert, Faculty of Law, University of Trento (29 June 2021).



and implementable for the administration, is a crucial indicator for the success or failure of mechanisms involving local populations.²⁹

As for the concrete outcomes, it can be said that the district labs produced a number of tangible positive results which are reflected in innovative projects each year and extensive participation. As for the numbers of citizens involved, more than 2,000 took part in the workshops in 2017 and more than 2,500 in 2018. Importantly, the district labs also drew attention to and provided answers for certain non-material needs and they also worked in a way as a recruitment mechanism by collecting competences that the local administration did not have.³⁰

The practice can be positively assessed not only by looking at numbers but also given the fact that the district labs have become a permanent part of the municipality's policymaking structure by redefining the relation between the local administration and citizens. Rather than being only passive information receivers, the latter can be active players able to promote change and innovative solutions for their city.³¹

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³⁰ Interview with anonymous expert, Urban Innovation Foundation Bologna (11 June 2021).

³¹ See 'Laboratori di Quartiere' (*Comune di Bologna*) <<http://partecipa.comune.bologna.it/laboratori-di-quartiere>>.



2.5 Regulations on Common Goods

Martina Trettel, *Eurac Research*

Relevance of the Practice

Regulations of Italian municipalities on the shared administration of public goods are for at least two reasons an important example for local participation. The first one concerns the way in which a prototype of this local regulation concerning common goods has been developed by researchers and made accessible to all Italian municipalities. The second one is the large number of municipalities that decided to adopt it and make extensive use of the possibilities that were made available. As a result, the regulation gave rise to many local practices that spread quickly all-around Italy (in both urban and local areas). Hence, this represents an interesting pathway with regard to citizens' participation in Italian local entities that cannot be ignored.

Description of the Practice

In 2014 the Association Labsus (*Laboratorio per la sussidiarietà*) elaborated a prototype regulation on the collaboration between citizens and the public administration on activities aiming at the care for and regeneration of common goods.³² Labsus aimed at realizing in practice the so-called 'principle of horizontal subsidiarity' contained in Article 118(4) 4 of the Italian Constitution which states the following: 'The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, in carrying out activities of general interest, on the basis of the principle of subsidiarity'. This principle was introduced by the constitutional reform of 2001, recognizing that citizens can act for the common good and instructing institutions to actively support and encourage such efforts.

Labsus developed the 'Regulation on the Shared Administration of Common Goods' as an application of the principle of subsidiarity and foresees that public administrations should support citizens in the development of autonomous initiatives aiming towards the collective interest. The Regulation acts as a general framework in which citizens, individually or organized in groups, can submit project proposals (through a specific form available online) to be developed on a spontaneous basis with voluntary effort of the parties involved, making competences, resources and energy available to the collective good. Such projects are disciplined by the Regulation through a series of specific agreements, called Collaborations

³² Common goods are natural and cultural resources accessible to all members of a society. They are called this way because they are not owned privately but held in common. Some typical examples include community gardening, urban farms on rooftops and cultural spaces. See Marco Bombardelli, 'La cura dei beni comuni come via di uscita dalla crisi' in Marco Bombardelli (ed), *Nuove risorse e nuovi modelli di amministrazione* (University of Trento 2016); Fulvio Cortese, 'What are Common Goods (beni comuni)? Pictures from the Italian Debate' (2017) *Revista da Faculdade de Direito* 121.



Pacts, in which both the citizens and the public administration agree on the terms of their cooperation. The commons in this regulation are intended as material spaces as public squares, green areas or schools, but also immaterial commons, such as education and social inclusion and digital commons like applications and digital alphabetization.³³

The value of this pioneering regulation has been to attempt to provide a legal framework for projects promoting the commons that were taking place spontaneously in the city, often outside if not even in contrast to the existing regulations. In fact, collective cleaning of public spaces, paintings of murals or creation of street furniture have become frequent valuable initiatives thanks to the legal clarity in which they can take place.

Assessment of the Practice

The regulation was adopted in 2014 by the City of Bologna as a first experiment. After the positive experience of this municipality, many others followed this example and adopted the regulation in order to create a framework in which citizens and local administrators can cooperate for the management of common goods. At the time of writing, 217 municipalities adopted the regulation.³⁴ Furthermore, it has to be noted that many metropolitan cities adopted it (i.e. Torino, Bologna, Bari, Milan, Reggio Calabria). That makes this figure even more impressive, as in these big cities a high number of citizens can benefit. On the other hand, however, also smaller and rural municipalities have adopted the regulation. Examples are Ala and Lavis in the mountainous north of Italy, each with less than 10,000 inhabitants, or the island municipality Isola del Giglio with as few as 1,400 inhabitants.

Of course, as some observers highlight, the conceptualization of what actually is a common good is not so straightforward and definitions have in fact been quite different in different local contexts. But this challenge can arguably be turned into a strength by not trying to achieve one uniform definition and rather leaving the conceptualization of common goods to the local population.³⁵ This is in line, more generally, with the adaptability of the framework regulation to the local needs, generating as many possibilities for citizens' collaboration with the local administration as the number of cities that introduced the regulation in their local structure. Given the widespread circulation in the country, as well as its adaptability and actual adaptation to the needs and specific circumstances of many different local governments, both urban and rural, the regulation is widely seen as a success. Overall, this has enabled people in many different local contexts to engage in a co-design experiment creating solutions tailored to individual circumstances and, importantly, to do so without being represented in institutions or even associations.³⁶

³³ Daniela Patti, 'Regulating the Urban Commons – What We Can Learn from Italian Experiences' (*cooperative city magazine*, 21 November 2017) <<https://cooperativecity.org/2017/11/21/urban-commons-learning-from-italy/>>.

³⁴ Labsus, 'I Regolamenti per l'amministrazione condivisa dei beni comuni' (*L'Amministrazione condivisa dei beni comuni*, undated) <<https://www.labsus.org/i-regolamenti-per-lamministrazione-condivisa-dei-beni-comuni/>>.

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3. People's Participation in Local Decision-Making in Germany

3.1 The System of Local Government in Germany

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Types of Local Governments

In Germany, government at the local level is administered through municipalities (*Gemeinden*) as well as second-tier local governments such as counties (*Kreise*). Larger municipalities with more than 100,000 citizens are often assigned the status of independent city or county-free city (*kreisfreie Stadt*); in addition to their municipality responsibilities, these cities also carry out (second-tier) county responsibilities. In some of the German *Länder*, there are even third-tier local governments, for example districts (*Bezirke*) in Bavaria.³⁷ There are no areas that fall directly under federal or *Länder* rule, as the system of local government extends to the entire territory of the country. However, as jurisdiction over the organizational powers of local authorities lies with each of the 16 *Länder*, 'local government' may come in different shapes. This is particularly true for its internal organization, but may equally be said of its precise powers and responsibilities. Nevertheless, there are several common features of local government.

The German concept of local self-government, as enshrined in Article 28(2) of the Basic Law, implies that local government entities have a general competence (*Allzuständigkeit*) to carry out all responsibilities that are relevant to the local community. Since this general competence is comprehensive, there is, as a result, no such thing as single purpose local governments in Germany. This means that local governments in Germany may, for instance, run public libraries, museums, theaters, opera houses or concert halls, that they can provide airport facilities, energy/water supply, waste/sewage disposal, run hospitals, kindergarten facilities or homes for the elderly. Of course, these vast competences do not go unchecked; local authorities may engage in such activities only within their financial capacity and, in all their activities, local authorities have to abide by the laws and limitations of federal and *Länder* legislation. Nevertheless, contrary to the Anglo-Saxon concept of 'ultra-vires'³⁸, local authorities do not act illegally if they take measures in areas that do not fall within responsibilities explicitly transferred to them by federal or state legislation. In view of their

³⁷ For these and the following considerations see Martin Burgi, 'Federal Republic of Germany' in Nico Steytler (ed), *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press 2009) 140-142.

³⁸ See Veith Mehde, 'Steering, Supporting, Enabling: The Role of Law in Local Government Reforms' (2006) 28 *Law & Policy* 164, 165.



general competence, they just need not to be empowered specifically to take action at the local level.

Legal Status of Local Governments

The right of local governments to self-government (i.e. to carry out all responsibilities falling within their ‘general competence’) is constitutionally enshrined at the federal level in Article 28(2) of the Basic Law (BL).³⁹ This provision reads as follows: ‘Within the limits prescribed by law, municipalities shall be guaranteed the right to regulate all local affairs in their own responsibility. Within the limits of their responsibilities as defined by law, associations of municipalities shall equally have the right of self-government according to the laws. The guarantee of self-government shall include the basis of financial autonomy; it shall comprise the right of municipalities to a source of tax revenues that corresponds with the economic ability of the tax debtors (e.g. business tax – *Gewerbesteuer*), and the right to fix the rates at which these sources shall be taxed.’ Provisions similar to Article 28(2) BL are also contained in the constitutions of the 16 *Länder* which thus reinforce the constitutional recognition of local authorities and their right to self-government. The constitutional recognition of local government is generally the same for all municipalities, regardless of size or socio-economic importance.

In contrast, the constitutional standing of counties and districts is weaker. Compared to the comprehensive self-government of their constituent municipalities, these second- and third-tier local government entities may not carry out all responsibilities of local importance but are granted the right to self-government only ‘within the limits of their responsibilities as defined by law’ (Article 28(2) BL).

It is important to stress that Article 28(2) BL as well as the corresponding constitutional provisions at *Länder* level do not grant local autonomy as an absolute right. Local autonomy is only guaranteed in principle, while its precise scope is subject to legislation. Thus, it is the law-makers at federal and *Länder* level that define the precise extent and limitations of local self-government. In practice, the sheer volume of (sometimes very detailed) federal and *Länder* statutes has considerably limited local autonomy. However, as local autonomy is constitutionally guaranteed in principle, local governments are protected by virtue of Article 28(2) BL against excessive and immoderate restrictions of local autonomy and preserves a ‘core sphere’ (*Kernbereich*) of responsibilities that must remain with municipalities (i.e. finances, local planning, personnel matters, organizational autonomy and the freedom to engage in joint administration with neighboring communities). In addition to that, Article 28(2) BL protects local authorities, to some extent, against the revocation of responsibilities (*Aufgabenentzug*) e.g. by reallocating them at a higher (more centralized) administrative level (*Hochzonung*). As a result, only *very substantial* gains in cost-efficiency, for instance, may justify that responsibilities are taken away from local governments.

³⁹ See Burgi, *Federal Republic of Germany*, above, 143-146.



(A) Symmetry of the Local Government System

As pointed out, the legal status is primarily the same for all municipalities regardless of their size and socio-economic importance, although larger municipalities (and especially independent cities) have, with no doubt, more political bearing. As a general principle, the German system follows a symmetrical approach towards the legal status of local governments. However, this symmetry of responsibilities *de jure* can be modified in various ways which may result, *de facto*, in an asymmetrical allocation of responsibilities.

Local authorities may, for example, agree among themselves to join forces and create joint administrative units to carry out specific responsibilities in forms of what is called inter-municipal cooperation (*interkommunale Zusammenarbeit*). For instance, they may, with regard to capacity and cost-effectiveness, share their resources and establish a joint inter-municipal corporation (*Zweckverband*) which is assigned to take care of sewage and/or waste disposal. Such cooperation is particularly common between smaller municipalities but are equally practiced within larger conurbations and between counties and independent cities.

Because of their size, independent cities are capable of carrying out both municipal and county responsibilities through their city administration as a single unit. In rural areas, by contrast, county responsibilities are carried out by counties along with their constituent (smaller) municipalities. The precise division of duties between counties and their municipalities is laid down in *Länder* statutes and may therefore vary. As a general rule, the allocation of responsibilities depends on the capacities of the individual local unit. This means that for reasons of administrative efficiency, counties will regularly assume the execution of duties that cannot be effectively handled by their constituent municipalities. For instance, hospitals will usually be run at county (or even district) level while minor administrative duties such as citizen registration may remain with the constituent municipalities.

Political and Social Context in Germany

Despite the recent turbulences in the course of the financial and migration crises, the political system established under the Basic Law has proven to be relatively stable. In the overall perspective, two parties, the Christian Democrats (CDU/CSU) and the Social Democrats (SPD) still each win between 20 to 40 per cent of total votes while four smaller parties, the Liberal Free Democrats (FDP), the Greens (*Bündnis 90/Die Grünen*), the Left Party (*Die Linke*) and the Alternative for Germany (AfD), attract between 5 and 20 per cent of all voters. In the East German 'new' *Länder*, *Die Linke* and AfD are usually stronger in elections than in West Germany. On the *Länder* level and on the local level, the landscape of political parties is more diverse. In addition to the aforementioned parties, there are several parties which are particularly active in certain regions and municipalities, taking account of political issues with specific relevance for the respective region or municipality. In Bavaria, for example, the Independent Voters (Freie Wähler) are usually quite strong in the elections – they won 11,6 per cent of the votes during the 2018 elections for the Bavarian *Landtag* and are hence currently part of the Bavarian government, and they are represented in numerous municipal councils.



The spatial distribution of the population still reflects, to a certain extent, the decentralized structure of the Federal Republic of Germany. 27 per cent of the population (i.e. around 22 million people) live in smaller municipalities with 5,000 – 20,000 inhabitants. Another 27 per cent live in medium sized cities (*Mittelstädte*) with 20,000 – 100,000 inhabitants. 31 per cent of the German population live in major cities (*Großstädte*) with more than 100,000 inhabitants. The largest cities with more than 1,000,000 inhabitants each are Berlin (3,700,000), Hamburg (1,890,000), Munich (1,470,000) and Cologne (1,080,000). Of course, many smaller municipalities and medium sized cities are part of a metropolitan area (*Ballungsraum*). Together with Böblingen (50,000), Waiblingen (55,000), Sindelfingen (64,000), Tübingen (89,000), Ludwigsburg (93,000) and Esslingen (93,000), for instance, Reutlingen (115,000), Heilbronn (123,000) and Stuttgart (634,000) as well as all surrounding municipalities form the Stuttgart metropolitan area (total population: 5,300,000). In this perspective, around 77 per cent of the German population nowadays live in metropolitan regions.

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3.2 People's Participation in Local Decision-Making in Germany: An Introduction

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The most important form of participation in political decision-making at local level is the active and passive voting right, especially the election of the local council (municipal or county council) or the election of the mayor or county administrator. While individuals naturally run for office in mayoral/county administrator elections, lists of the local divisions of the political parties active nationwide dominate in local council elections. Elections at the local level are regulated in the respective Local Code (Municipal or County Code) and in the respective Local Election Law (*Kommunalwahlgesetz*). The constitutional basis therefore is Article 28(1)(2) of the Basic Law (BL), according to which 'the people' are also to be found in the 'counties and municipalities (...) must have a representation which has resulted from general, direct, free, equal and secret elections' (electoral principles). There are great differences in the individual countries in the definition and design of the respective electoral system. Complicated mixing systems have arisen here within the scope defined by Article 28(1)(2) BL. The principle of the proportional representation system, in which the seats are distributed in proportion to the votes cast for the nominations, is consistently practiced. In numerous *Länder*, however, this has been supplemented by personnel elements (e.g. Baden-Württemberg with a so-called 'favorites list' / 'diversion'). The system of majority voting, in which applicants run directly against each other and the one with the highest number of votes wins the seat, is only envisaged under strict conditions, especially if one or no list has been submitted. In the various countries, either the d'Hondtsche method or the Hare / Niemeyer method or the 'divisor method with standard rounding' according to Sainte-Laguë / Schepers are used in the calculation.⁴⁰ In various *Länder*, attempts have been made to introduce a blocking clause in order to avoid splitting the municipal councils into many small groups and to ensure their functionality. However, under the current framework conditions, the Federal Constitutional Court considered this (especially the 5 per cent clause) to be a violation of the principle of equal election.

The citizens of the respective local government are entitled to vote and are therefore holders of an active right to vote. Citizens are all residents of a local government who are entitled to vote in local elections in accordance with the provisions of the respective Local Election Law. Accordingly, citizens are all Germans (Article 116 BL) or EU foreigners, provided that they are residents (main residence) in the local government (municipality/county) concerned for between 16 days and six months (depending on *Länder* law) and have reached the age of 16 or 18 (also depending on *Länder* law). The provisions on the right to stand as a candidate (eligibility for election, also passive right to vote) are linked to this, but in some cases provide for a longer period of residence in the local government's territory and/or a higher age. After the conclusion of the Maastricht Treaty in 1992 and the introduction of citizenship of the Union, the constitution was supplemented by Article 28(1)(3) BL. It states that 'persons who

⁴⁰ Comparative Bernd Grzeszick and Jochen Rauber, 'Reformoptionen für die Sitzzuteilung in kommunalen Vertretungskörperschaften' (2018) 149 BayVBl 577.



are nationals of a Member State of the European Community' are 'entitled to vote and to be elected in elections in counties and municipalities' in accordance with the law of that state.

But it is becoming increasingly difficult for parties to recruit committed political personnel for local political mandates and offices. Particularly in rural small local governments, where local politics is based purely on volunteer work (with at least an expense allowance),⁴¹ the parties often fail to fill the election lists with suitable candidates. The reasons for this are the burden of bureaucracy and the very high expenditure of time involved. At the same time, local politicians see themselves exposed to incitement and hostility in the increasingly coarse interactions in the society which can have both psychological and physical effects. Especially the honorary mayor's office represents a great challenge with regard to the compatibility of work and family.

While no plebiscitary elements are provided for in the Basic Law at the level of federal policy, they play a major role at the local level. Extensive regulations have been created in the local regulations of all *Länder*, some of them only in the recent past. Both the names and the requirements vary depending on the *Land*, but are comparable across the board. In addition to the voting right(s), the citizens of a local government are entitled to plebiscitary possibilities such as the citizens' proposal (*Bürgerantrag*), the citizens' assembly (*Bürgerversammlung*) and the citizens' petition (*Bürgerbegehren*) aimed at the implementation of a referendum (*Bürgerentscheid*). With the citizens' proposal, citizens can request that the local council deals with a specific matter while leaving its decision-making powers untouched. The citizens' assembly cannot make a decision, it can only make proposals and give suggestions. Through the citizens' petition, the citizens of a local government can request that they decide on a matter of the local community themselves instead of the local council. This gives them additional room for participation in terms of political organization. Nevertheless, the local council remains the guiding body of the representative democracy at the local level, which is why various requirements are placed on the admissibility of a citizens' petition and large areas of local policy are excluded from the citizens' petition (or referendum). If the local council declares the citizens' petition admissible, the content of the question must be engaged with. In a local council meeting it is therefore necessary to decide whether the content of the citizens' petition should be complied with. If the local council makes this decision, a referendum will not take place and the further legal situation results from the relevant local council decision. If the council does not comply with the admissible citizens' petition, a referendum must be made within a certain period.

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Burgi M and Wolff D, 'Repräsentative und plebiszitäre Demokratie auf Kommunalebene: Ordnungsbedarf im Konkurrenzverhältnis' (2021) NdsVBl 65

⁴¹ Three out of four mayors in cities and towns with a size of 2,000 or more exercise their office full-time. 25% are honorary mayors. However, due to the widely differing regulations and exceptions to differentiate between full-time and – if at all provided – voluntary work in the individual *Länder*, in-depth analyzes are not possible and that's why there are no reliable numbers existing.



Meyer H, 'Kommunalwahlrecht' in Thomas Mann and Günter Püttner (eds), *Handbuch der kommunalen Wissenschaft und Praxis, Band 1: Grundlagen und Kommunalverfassung* (3rd edn, Springer 2007)

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3.3 Citizens' Petitions for Referendum Against Essential Large-Scale Infrastructure Projects in Urban Areas

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Relevance of the Practice

The crown of plebiscitary possibilities at the local level is the citizens' petition. Citizens' petitions and referendums have been used in spectacular cases that have caused a sensation nationwide. This applies, for example, to the referendum in Dresden on the construction of the *Waldschlösschenbrücke*.⁴² On the other hand, citizens' petitions to withdraw from the 'Stuttgart 21' project have remained unsuccessful.⁴³ Stuttgart 21 (Baden-Wuerttemberg) is a traffic and urban development project for the reorganization of the railway junction Stuttgart. The core of the project is the conversion of Stuttgart's main railway station into an underground through-station. As it is more common regarding large-scale infrastructure projects and those happen to occur in urban areas, rural local governments don't see themselves confronted with citizens' petitions for referendum that often (or at all). Only the residents of the respective local government may participate in such a local decision, regardless of whether the project has effects beyond the territorial boundaries - which is often the case with large-scale infrastructure projects. Even though German administrative law has so far not offered too great a lack of opportunities for public participation in infrastructure projects, there is discussion about further strengthening public participation in large-scale projects. In principle, public participation is required by law at all levels of planning (demand planning, regional planning procedures, planning approval procedures) of an infrastructure project. Nevertheless, in the past, many citizens have felt that they were not sufficiently and, above all, not involved early enough in the expansion of transport routes. In practice, the people were often not reached, so that new forms of citizen participation were required to accompany the planning process. For this reason, the Federal Ministry of Transport and Digital Infrastructure published the 'Handbook for good citizen participation in the planning of major projects in the transport sector'⁴⁴ in November 2012 with suggestions for improving citizen participation under administrative law. In addition to that or maybe because the participation under administrative law isn't sufficient, it was recently proposed to develop a 'right of participation' as an independent legal category. In a certain contrast to the public participation in large-scale projects, citizens' petitions and referendums are governed by local law. The regulations standardized in the Local Codes grant citizens 'real' rights of initiative and decision-making at the local level.⁴⁵

⁴² BVerfG, decision of 29.05.2007 – 2 BvR 695/07.

⁴³ VG Stuttgart (Administrative Court), judgement of 17.07.2009 – 7 K 3229/08.

⁴⁴ An English version can be downloaded here: <<https://www.bmvi.de/SharedDocs/EN/publications/manual-for-good-public-participation.html>>.

⁴⁵ See for an overview Friedrich Schoch, 'Rechtsprechungsentwicklung – Bürgerbegehren und Bürgerentscheid im Spiegel der Rechtsprechung' (2014) NVwZ 1473, 1473ff.



Description of the Practice

Only an admissible citizens' petition can be successful, which is why the prerequisites for this shall be examined in more detail here. The various Local Codes impose structurally different but largely comparable requirements on matters that are eligible for a citizens' petition. In most cases there are negative catalogues with matters that cannot be the subject of a citizens' petition. In any case, the local government must have the respective decision-making authority – the decision has to be a local responsibility – and the local council must be responsible in accordance with the local government's internal rules of competence. It is also indispensable that the petition follows a legitimate goal. Often excluded are matters with financial implications (or the budget statutes or the levying of levies), complex planning decisions and planning approval decisions. Such decisions can simply not be made by a simple yes or no question (as is the case with the subsequent referendum). As a second condition, the citizen's petition must be signed by a certain number of citizens (quorum), while the quorums are usually graded according to the size of the local government. There are great differences in the individual *Länder*.⁴⁶ The petition must be submitted in writing and the question to be decided, which must be answered with yes / no (ambiguous question leads to inadmissibility) together with a justification. It is also necessary to designate some persons (usually three) who are entitled to represent the undersigned. The first period requirement is that only those matters are eligible for a citizens' petition that have not recently been the subject of a petition or referendum within a certain period of time (1 to 3 years). Incidentally, a differentiation based on its effect must be made: Cashing citizens' petitions (*kassierende Bürgerbegehren*) which are directed against a local council decision are only admissible within a certain period of time from the challenged local council decision. Initiating citizens' petitions (*initiiierende Bürgerbegehren*) that do not turn against a specific local council decision but raise an object themselves are not time-limited.

If a citizens' petition has been submitted, the further procedure depends on the decision of the local council. If the council declares the petition admissible, it must deal with the content of the formulated question. In a local council meeting, it must be decided whether the content of the petition should be complied with. If the local council makes this decision, then there will be no referendum. If the local council does not comply with the permissible petition, a referendum is to be held within a certain period of time. The question put to the citizens by this is decided in the sense in which it was answered by the majority of the valid votes. This majority must again correspond to a certain proportion of citizens. If the local council decides that the petition is inadmissible, no referendum can be held. In this case, the representatives of the petition can seek legal protection. This is done by filing an action at the Administrative Court, which is directed against the local council's finding that the petition is inadmissible. After filing an admissible action, the Administrative Court will decide whether the petition submitted was admissible.

Concerning Stuttgart 21, the project opponents collected signatures for a citizens' petition concerning the exit of the City of Stuttgart by not signing any further contracts and by

⁴⁶ While in North Rhine-Westphalia, depending on the size of the local government, a quorum of 3 - 10% of the population suffices, in Saxony a quorum of 10% of the citizens is required.



concluding a termination agreement with the project partners. On 14 November 2007, 67,000 signatures against the project were handed over in the town hall. 61,193 proved to be valid; 20,000 were necessary. On 20 December 2007, the Stuttgart local council rejected the application for approval of a referendum on the 'withdrawal of the state capital from the Stuttgart 21 project' by 45 to 15 votes, on the grounds that it was legally inadmissible. The referendum was directed against fundamental decisions of the local council from 1995 (framework agreement) and 2001 (supplementary agreement) and was limited in time in accordance with the Local Code for Baden-Wuerttemberg, which provides for an application period of six weeks after publication of the local council decisions. In addition, the aim of the annulment was inadmissible because it concerned a financial principle decision reserved to the local council. This decision has been confirmed by the court. The three other citizens' petitions against the large-scale infrastructure project Stuttgart 21 also failed (for similar reasons).

Assessment of the Practice

At local level, there are instruments such as citizens' petitions and referendums that serve the direct democracy. However, their practical benefits are often hampered by restrictive state legislation – e.g. a comprehensive negative catalogue, strict conditions of legality – and sometimes less citizen-friendly case law. But it can recently be seen that by and large the scope of citizens' petitions is extended and the hurdles for their implementation are lowered. In some *Länder* (e.g. Hesse, Lower Saxony, Rhineland-Palatinate), the hurdles have recently been reduced by changing fixed quora in terms of the number of supporters' signatures to staggered (and thus more flexible) quorums. In Lower Saxony there is a peculiarity that the citizens' petition has a blocking effect until the time of the referendum, so that no conflicting decision in this regard may be made until then.⁴⁷ Forms of direct democracy seem to be in high demand. It can be observed that citizens' petitions are often used against large-scale infrastructure projects and thus more in urban regions, but with moderate success. It is still a great tool of people's participation in local decision-making and should be further developed in a citizen-friendly way. However, it is problematic that these instruments for participation do not contribute to an interplay between urban and rural. A local decision is only brought about by residents of the affected community, although the project can also have an impact on the surrounding rural area and vice versa. A good example of this is the long-standing discussion about the 3rd runway at Munich Airport. Munich Airport is not located in the territory of Munich City (ULG), but on the territory of a surrounding (much smaller) RLG. For this reason, only these (numerically 'few') rural residents decide on a citizens' petition for the 3rd runway, while the approximately 1.5 million inhabitants of the City of Munich who would mainly benefit from it (also in respect of the major economy located in the city) have no right to participate. Because of the regional (and not only municipal) relevance of large infrastructure projects there is a need for more flexible perimeters and methodologies for participation. One idea for a region like Munich is to create a further third-tier administrative unit, that means Munich as

⁴⁷ See, for further details, Christopher Schmidt, 'Die Entwicklung von Bürgerbegehren und Bürgerentscheid seit 2016' (2018) *KommJur* 165.



an independent district,⁴⁸ in order to unite rural and urban interests on one level and to balance unilateral burdens as best as possible.

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— *Bürgerbegehren und Bürgerentscheid in Bayern* (70th edn, Carl Link 2019).

⁴⁸ See, therefore, report section 5.3. on the Creation of a Further Third-Tier Administrative Unit.



3.4 Local and Interest-Driven Parties or Independent Groups of Voters

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Relevance of the Practice

Citizen-oriented local politics is characterized in particular by focusing on the main political issues of a single municipality, which is why independent groups of voters (i.e. Townhall Parties, Independent Voters' Association, Voters' Community, Voters' Association, Voting Block, Political Union, Political Association, Citizens' Association, Citizens' List, Non-party members) frequently appear alongside traditional parties at the local level. These are mergers of individual citizens of the municipality to pursue certain municipal political concerns. In certain – mainly rural – regions (e.g. Baden-Württemberg and Bavaria), they sometimes account for up to 44 per cent of all local councils (*Gemeinderat*) and 24 per cent of all county councils (*Kreisrat*) of elected representatives in local governments and even provide mayors. They are to be distinguished from 'Other Political Associations' (*Sonstige Politische Vereinigung, SPV*), which are – according to paragraph 8(1) EuWG (European Election Law) – enabled to run for the European Parliament and are therefore not a typical appearance in local governments.

Description of the Practice

Voter groups are not parties within the meaning of paragraph 2(1) PartG. Despite the fact that the Federal Republic of Germany is formed as a parties' state, the voter groups are authorized to take part in all elections to local governments, especially because of Article 28(2) of the Basic Law (BL).⁴⁹ The principles of universality and equality of election laid down in Article 38(1) BL maintain the right to nominate candidates in general; prima facie it is not limited to parties. Thus, in conjunction with the local self-government guarantee (*Selbstverwaltungsgarantie*) in Article 28(2) BL it is maintained that also 'local voter groups pursuing only local interests [i.e. issues of a single municipality] [have] the right to nominate candidates and their candidates must be guaranteed equal opportunities to participate in local elections'.⁵⁰ In particular, they are to be treated equal to the parties with regard to their financing and tax advantages.⁵¹ In general, the prerequisites for a voters' group candidacy are a legal foundation, a proper statute and proof of the democratic appointment of the executive committee. Frequently, voter

⁴⁹ BVerfGE 11, 266, recital 24. Also, see above in section A. 2. of the General Introduction to the System of Local Government in Germany.

⁵⁰ Guidelines BVerfGE 11, 266; furthermore, with regard to groups of voters with regard to the generality and equality of the election BVerfGE 121, 108; 78, 350 (358); 99, 69 (78).

⁵¹ Hans H von Arnim, 'Werden kommunale Wählergemeinschaften im politischen Wettbewerb diskriminiert?' (1999) 114 DVBl 417, 421ff; Martin Morlok and Heike Merten, 'Partei genannt Wählergemeinschaft – Probleme im Verhältnis von Parteien und Wählergemeinschaften' (2011) 64 DÖV 125, 128ff.



groups organize themselves in the legal form of a registered association (*eingetragener Verein e.V.*).

Local self-government has a long legal and actual tradition in Germany. Already during the Weimar Republic numerous local voter groups existed, which were then purely factual restricted to local interests.⁵² This continues up to this day. It is in the nature of local self-government to depend on the support of fellow citizens and to require adaptation to the specific local needs of the community. Voter groups exist in both rural and urban areas, although their influence and significance in rural local government (RLG) is usually stronger than in urban local government (ULG). That is because well-known citizens, who are particularly familiar with their local circumstances, become more important in local politics as municipalities get smaller. Also, this increased influence in rural areas is particularly evident in the many communities where voters' associations provide the mayor or in some cases even make up a dominant part of the local government. In large cities, on the other hand, groups of voters initially had less weight. However, current developments such as ongoing gentrification, the issue of migration as well as concerns due to climate change seem to indicate a change in ULG as well (see below).

Voters' groups often arise from citizens' initiatives, i.e. associations with specific topics.⁵³ The positions of voter groups vary widely and are both local and issue-specific. However, they do have a high degree of commonality in their advocacy of strengthening plebiscitary elements. In some cases, voter groups are a kind of melting pot of non-party, but politically interested and committed citizens who do not want to join a party but want to combine – usually – forces of moderate conservative (i.e. middle-class) opinions. Since local election law is a *Länder* competence, there are considerable differences in the legal bases for the participation of a voters' group in a local election. The more personal the voting process is designed (i.e., strong elements of the personality vote), the more likely non-party candidates are to have a chance of success.⁵⁴ This is the case in almost all *Länder*-local election laws: They allow splitting and cumulating votes, thus highly developed elements of the personality vote are to be found.

Assessment of the Practice

Though municipal election turnout is declining,⁵⁵ most recent developments show an increased politicization focused on specific topics, which can often be attributed to emotional and short-term issues. Citizens' petitions for referendum (see above) and citizens' initiatives occur more often, proving the increase of participation in local decision-making in general. This may lead to an increased appearance of local voter groups or at least a higher involvement in such already existing groups. In addition, there is widespread dissatisfaction with the

⁵² BVerfGE 11, 266, recital 35.

⁵³ See report section 6.2. on Citizens' Petitions for Referendum Against Essential Large-Scale Infrastructure Projects in Urban Areas.

⁵⁴ Martin Burgi, *Kommunalrecht* (6th edn CH Beck 2019) para 11 Rn16.

⁵⁵ Angelika Vetter, 'Kommunale Wahlbeteiligung im Bundesländervergleich – Politische Institutionen und ihre Folgen' (2008) 61 DÖV 885: the voter turnout in local elections is roughly at 45% (comparison: in federal elections around 80%).



traditional political parties, which thus struggle in fulfilling their constitutional duties (Article 21 BL) such as the recruitment of upcoming mandate holders and focusing on long-term issues. As voters' associations gain relevance, voices become louder that demand the imposition of the duties of parties on the voters' associations as well.⁵⁶ Actually, this is a purely local political phenomenon, but in the course of time, parties have already emerged from such voter groups, as only parties can participate in elections to the *Bundestag* or a *Landtag* (most prominent examples: Freie Wähler, Bündnis 90/Die Grünen). Thus, independent groups of voters can become highly relevant also for other sorts of participation.

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⁵⁶ Morlok and Merten, 'Partei genannt Wählergemeinschaft', above, 133f.



3.5 Citizens' Participation in Urban Planning

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Relevance of the Practice

When looking at participatory possibilities at the local level, one cannot leave untouched the possibility of citizens to participate in the process of urban planning. Planning processes are prevalent both in urban and rural areas with both urban local governments (ULGs) and rural local governments (RLGs) facing the same legal requirements for the participatory processes. As communities willing to enable land development have to resort to planning most of the times,⁵⁷ and citizens' participation is required by law for every process, the practical relevance of this practice is quite high from a quantitative point of view. Participation seems at first sight to be most relevant for large-scale infrastructure projects.⁵⁸ However, depending on the scope and content of the planned projects, even minor projects might substantially affect citizens, making planning in general very important and participation thereto even more desirable.

Description of the Practice

Before going into the different possibilities of civil participation in the planning process, it is important to first briefly introduce the urban planning process as a whole. Urban planning is assigned to LGs within/in accordance with Article 28(2) of the Basic Law (BL)⁵⁹ that enshrines the municipalities' planning authority.⁶⁰ The planning process itself is foreseen and regulated in much detail in the Federal Building Code (*Baugesetzbuch, BauGB*).⁶¹ The most important aim of the process is the just balancing of public and private interests.⁶² According to the regulatory framework, urban planning is conducted as a two-step process: first, the LG has to pass a so-called preparatory land use plan (*Flächennutzungsplan*) that contains the broad-brush planning for a municipality's entire territory. Afterwards,⁶³ the LG may proceed with one or several so-called mandatory/legally-binding land use plans regulating the use of specific areas within its territory (*Bebauungsplan*), thereby adding details to the policies outlined in the preparatory land use plan. Within these plans, the LG can determine in great detail what types

⁵⁷ See below for the possibility to issue building permits without a previous planning process.

⁵⁸ See report section 6.2. on Citizens' Petitions for Referendum Against Essential Large-Scale Infrastructure Projects in Urban Areas.

⁵⁹ Art 28(2) BL (see General Introduction to the System of Local Government in Germany) grants the right to urban planning on each community's territory.

⁶⁰ See for the core authorities enjoyed by municipalities Horst Dreier, 'Art. 28' in Horst Dreier (ed), *GG* (3rd edn, Mohr Siebeck 2015, marginal nos 120ff.

⁶¹ Federal Building Code, first chapter, section one (Arts 1-13(b)).

⁶² This is stipulated in Art 1(7) of the Federal Building Code. Para 6 of this article contains a (non-exhaustive) list of interests that (potentially) are to be considered.

⁶³ There is also the possibility to merge the two processes and move forward with both plans at the same time.



of development should be permitted (e.g. housing, industrial use) and set out highly specific requirements for buildings.⁶⁴ Once the legally-binding plan has become effective, building permits (*Baugenehmigungen*) may be issued.⁶⁵ This process is covered by state laws (e.g. the Bavarian Building Ordinance, *Bayerische Bauordnung*) and handled by the second-tier LGs (e.g. county authorities or independent towns/cities⁶⁶). While this shows that the law makes planning a general precondition for the issuing of building permits, permits can under certain prerequisites also be issued for development in (already developed) areas that are not covered by a legally-binding land use plan (*Bebauungsplan*).

For citizens,⁶⁷ there are two main ways⁶⁸ in which they can participate in the process of urban planning. First, citizens may by way of petition initiate a planning process. Second, Article 3 of the Federal Building Code gives citizens the right to participate in the process itself (statutory participation). Concerning the first possibility, the framework for a successful citizens' petition has already been described in the first report entry. There is however one addition that poses a limit to the effectiveness of a petition concerning urban planning: As a successful petition has to be implemented by the municipal authorities, a petition demanding a specific plan would prejudice the outcome of the balancing the planning process is meant to safeguard. Therefore, only petitions that concern the initiation of a planning process and leave substantial room for the balancing process are permitted.⁶⁹ Concerning statutory participation, there are two stages of participation taking place one after the other. The purpose of this participatory regime is both to inform the public about the planned mechanism, giving them the opportunity to submit information or concerns, and to enable the planning authority to identify all relevant interests and to evaluate the importance of each aspect.⁷⁰ As a first step, the authority has to conduct a so-called early public participation (*frühzeitige Öffentlichkeitsbeteiligung*)⁷¹. It aims

⁶⁴ The potential regulations that can be included in the mandatory planning are included in Art 9 of the Federal Building Code.

⁶⁵ The law makes planning a general precondition for the issuing of building permits, although building permits can under certain prerequisites also be issued for development in (already developed) areas that are not covered by a legally-binding land use plan (*Bebauungsplan*).

⁶⁶ See also General Introduction to the System of Local Government in Germany for a more detailed explanation of the several layers of local government.

⁶⁷ While the rules on petitions differ among the different *Länder*, only the residents of the respective local government may participate in such a local decision. In most *Länder*, the participation is limited towards citizens that are able to vote (see, e.g., Art 18(a) and 15 of the Bavarian Municipal Code). See for further information report section 6.2. on Citizens' Petitions for Referendum Against Essential Large-Scale Infrastructure Projects in Urban Areas.

⁶⁸ Please note that there also exists a right to participation for third parties in the process of permitting specific projects, especially for owners of adjacent/neighborland (e.g. Art 66 of the Bavarian Building Ordinance). This however rather relates to their possibility to take legal action against planning permits and does not give them a right to participate further in the decision by the planning authorities. Additionally, citizens can of course always resort to informal participation by holding assemblies or establishing associations advocating for certain planning decisions.

⁶⁹ The municipal council decides on the admissibility of a petition, see, e.g., Art 18(a)(8) of the Bavarian Municipal Code. This decision can however be challenged in court. See only this recent decision by the Higher Administrative Court of Bavaria, Decision of 18 January 2019, case no 4 CE 18.2578, especially marginal nos 19ff.

⁷⁰ c.f. Alexander Schink, '§ 3 Beteiligung der Öffentlichkeit' *BeckOK BauGB* (48th edn, 2019) marginal no 3.

⁷¹ Art 3(1) of the Federal Building Code.



mainly at informing the citizens about the general concept of the proposed plan.⁷² Therefore, the authority is required to begin with the participatory process as early as possible, so that citizens' statements bringing up concerns or specific issues might be included in the further process.

Once the authority has come up with final draft(s), the process enters the second stage of public participation, the so-called formal public participation (*förmliche Öffentlichkeitsbeteiligung*)⁷³. In this stage, the final draft(s) have to be made public⁷⁴ for at least a month, together with several additional reports pertaining inter alia to the environmental consequences of the suggested planning. After a recent amendment, the government is also required to make the documents available online. During the month-long period, citizens can again participate by submitting statements. All statements duly submitted have to be considered before the final decision is taken, while statements submitted too late might be disregarded. The government has to notify the citizens of the result of such consideration. If the plan is changed in reaction to one or several statements, it is necessary to repeat the formal public participation part at least for the changed part. It is important to note that, for both stages, the group of citizens granted the right to participate is not limited to people living in the area covered by the respective plan or living in the area of the acting LG.⁷⁵ Additionally, associations and NGOs are also given the right to participate.

There is one special mode of planning where adjacent municipalities can draw up a joint preparatory land-use plan (*Gemeinsamer Flächennutzungsplan*).⁷⁶ This model is exceptional for its deviation from the municipality's constitutionally enshrined planning authority. However, each participating municipality is responsible to conduct the participatory process described above for 'its' part of the joint plan, i.e. relating to the parts of the plan covering its

⁷² Thomas Lüttgau, 'Das Mandat im Bauplanungsrecht (para 7)' in Heribert Johlen and Michael Oerder (eds), *MAH Verwaltungsrecht* (4th edn, CH Beck 2017) marginal no 42.

⁷³ Art 3(2) of the Federal Building Code.

⁷⁴ This is usually done by displaying the plan and additional documents in a publicly accessible government facility. As this was rendered impossible by the Covid-19 pandemic, the federal government enacted a law to enable municipalities to fulfill the legal requirements of participation by uploading the documents online (*Planungssicherstellungsgesetz*), see BT-Drs. 19/18965 and BGBl. 2020 I, p 1041. The law only foresees this mechanism temporarily, but it can also be seen as a pilot project for further digitalization of the participatory process. See Jan Thiele and Maximilian Dombert, 'Öffentlichkeitsbeteiligung in Zukunft übers Internet?' (*LTO*, 8 May 2020) <<https://www.lto.de/recht/hintergruende/h/bauprojekte-oeffentlichkeitsbeteiligung-online-planungssicherstellungsgesetz-oeffentliche-auslegung-digitalisierung/>> accessed 3 June 2020.

⁷⁵ Schink, '§ 3 Beteiligung der Öffentlichkeit', above, marginal nos 17ff.

⁷⁶ See Art 204(1) of the Federal Building Code. This should be done under this article if the land development is determined by common factors and requirements or if the involvement of several communities enables a just balancing of the different interests involved. See for further remarks and examples of such planning practices Gerhard Hornmann, '§ 204 Gemeinsamer Flächennutzungsplan, Bauleitplanung bei Bildung von Planungsverbänden und bei Gebiets- und Bestandsänderung' *BeckOK BauGB* (48th edn, 2020) marginal nos 4ff. However, there seems to be hardly any practical application of joined planning which is apparently due to the fact that it limits the planning authority of each municipality.



territory.⁷⁷ The outcomes are then discussed by the participating communities to include them in the joint plan.⁷⁸

Failures occurring in the participation process might however be compensated by the possibility to challenge plans before the higher administrative court in order to have the court rule on the plan's (in)validity. However, the possibility to invoke the invalidity of a plan requires standing (i.e. an alleged interference with a protected right), which is only accepted for people directly affected by the plan.⁷⁹ Consequently, there is a discrepancy between the group of potential plaintiffs and the people able to participate in the planning process.

Assessment of the Practice

The possibility for citizens to participate in the planning process improves the legitimacy of the plan as well as the quality of the outcome by enabling the citizens to voice any concerns they might have.⁸⁰ An interesting aspect is that the participatory rights during a planning process are not limited to people living in the area covered by the plan, but are also granted to the public in general, including NGOs. This is different for the right of petition which is limited to residents of the respective municipality. As people living in adjacent municipalities are thereby able to make remarks and identify issues that would otherwise remain unaddressed in the planning process, this can contribute to an interplay between adjacent communities. Because planning can have impacts that reach (far) beyond the area that is covered by the plan,⁸¹ it is commendable that all affected people are given the right to participate as this can increase the acceptance of far-reaching planning decisions. One could however ask the question whether totally unaffected persons should have a right to participate in such planning processes. However, it might sometimes be too difficult and impractical to draw a clear line between affected and unaffected people. Additionally, any perceived 'overparticipation' is mitigated by the fact that the right to challenge planning decisions in court is limited to people actually affected by the plans. Furthermore, the participatory means have a positive impact on the transparency and responsiveness of the LG's decision-making, as plans have to be publicly displayed and the government is obliged to reply to citizens' statement made within the timeframe.

However, there are several aspects warranting further attention. A potential problem especially for smaller RLGs lacking legal and administrative expertise might lie in the rather complex legal requirements of the planning process and the potentially high amount of citizens' statements. While this is not the focus for report section 6 on people's participation, a potential solution thereto could be the improvement of inter-governmental cooperation in

⁷⁷ *ibid* marginal nos 16ff.

⁷⁸ *ibid*.

⁷⁹ See for this requirement in general Reinhardt Giesberts, '§ 47 Sachliche Zuständigkeit des Oberverwaltungsgerichts bei der Normenkontrolle' *BeckOK VwGO* (52th edn, 2020) marginal nos 34-42.

⁸⁰ Schink, '§ 3 Beteiligung der Öffentlichkeit', above, marginal no 3.

⁸¹ Consider, e.g., a shopping mall project. While the mall itself (i.e. the area covered by it) would be the subject of the plan, the fact that a mall will be built can have economic impact on other businesses in several adjacent municipalities.



this regard, which could in turn improve both the ability to conduct the participatory process and also the (inclusive) quality of planning itself. Focusing on a participation-based perspective, there are certain limits in terms of the quality of the participation, as potential remedies against (alleged) violations of participatory rights might be less effective as it seems due to the issue of standing and due to the fact that only certain violations of participatory rights lead to the invalidation of the plan itself.⁸² Nevertheless, the possibility for citizens to initiate and influence the urban planning process is a valuable tool enabling all (!) citizens to participate in local decision-making without a high threshold barring participation, especially since the plans have to be put online as well. This has a potential to positively impact inclusive participation. It should also be noted that the (formal) means of participation described above might be less meaningful for citizens in ULGs. As described above, LGs may grant building permits without prior planning when the area concerned is already sufficiently developed and the permitted project fits into the area. As - by definition - ULGs are comprised of already developed areas, this possibility is regularly made use of in such urban areas which means no comparable participatory process is/has to be conducted. Nonetheless, citizens in urban areas can still voice their opinions and concerns by engaging in means of informal participation (e.g. public gatherings, district council meetings).

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⁸² Arts 214, 215 of the Federal Building Code.



4. People's Participation in Local Decision-Making in Spain

4.1 The System of Local Government in Spain

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Types of Local Government

The Spanish Constitution assigns public authority to four levels of government: the central state, autonomous communities, provinces and municipalities. Spain consists of 17 autonomous communities, two autonomous cities (Ceuta and Melilla), and two types of local bodies: 50 provinces and 8,131 municipalities.

The Constitution includes two principles regarding local government: the right to 'local autonomy' from all public authorities including the state legislature, and legislative powers over local government given to the central state and autonomous communities. The constitutional recognition of a right to local autonomy (Article 137 of the Constitution [CE]) implies that the municipalities and provinces are not merely internal divisions of the autonomous communities, but part of the state as a whole. The Constitutional Court has ruled that the guarantee of local autonomy 'does not ensure specific contents or spheres of authority established and fixed once and for all, but rather the preservation of an institution in terms that are recognizable for the image that society has of such institution in each time and place' (Ruling of the Constitutional Court [STC] 32/1981). Local autonomy is contrary to any hierarchical position of the local governments under the state or the autonomous communities.

Legal Status of Local Governments

The legal system of local government falls under the concurrent jurisdiction of the state and the autonomous communities. The state has the power to establish the 'basis of the legal system of the public administrations'. On the other hand, the statutes of autonomy confer to the autonomous communities complementary powers over local government. In interpreting the Constitution together with the statutes of autonomy, the Constitutional Court has concluded that the Spanish local system has a 'two-fold nature'. The state is responsible for the 'fundamental' regulations while the autonomous communities are responsible for the 'non-fundamental' or so-called 'development' regulations (STC 214/1989, FJ 4). When regulating the local government system, both state and autonomous communities' laws must respect local autonomy, as directly guaranteed by Article 137 of the Constitution. But the Constitution does not specify what this local autonomy shall consist of, since it limits itself to a vague connection between local autonomy and 'matters of local interest', without specifying



what these are. Consequently, both state and autonomous communities' laws have a wide margin for regulating the functions and organization of local governments.

The current fundamental regulations of the state on local government are primarily found in two Acts repeatedly amended: Law of the Basis of the Local System (LBRL) of 1985, and a Royal Legislative Decree of 2004, which approves the Restated Text of the Local Tax Authorities Act (LHL). This far, the state has interpreted its own 'fundamental' powers broadly, limiting the legislative and executive powers of the autonomous communities. The amendment of several statutes of autonomy since 2006 has not changed this situation.

Generally speaking, Spain's current local government system includes very limited state and autonomous community supervision or control on municipal and provincial activity. The Constitutional Court has ruled that the local autonomy guaranteed by Article 137 excludes these governmental controls to a great extent (STC 4/1981). In the absence of such controls, only courts are ordinarily responsible for oversight of the administrative activity of local councils. The LBRL replaces state and regional controls on local governments with a complex system of intergovernmental relations based on the idea of full respect for the powers of local institutions and the principle of cooperation. Basically, the LBRL establishes legal instruments to prevent conflicts between state and autonomous communities on one hand, and local authorities on the other while obliging local governments to share information with other government levels. To prevent or resolve conflicts of authority, the law promotes the 'free cooperation' of public administrations, either in the form of agreements or by participation in collaborative bodies, and by encouraging local level administrations to participate in the decision-making processes.

On this legal basis, the Spanish local government system has overall functioned satisfactorily since 1985. Local government is thoroughly democratized and has been receptive to new forms of participatory democracy. The elimination of controls from the upper-level territories has resulted in significant improvements to local public services, despite some cases of corruption in urban planning.

(A)Symmetry of the Local Government System

The Spanish local government system is very uniform and symmetrical due to the approaches of both the central state and most autonomous communities: the central state has established a common two-tier system with few variations for all Spain; and the autonomous communities have introduced very few particularities for the local government of their territory.

First, the state maintains a structure of local government that, to a large extent, was defined in 1833. That is, each village, town or city is a municipality. And the whole territory of Spain is divided into 50 provinces which currently (not originally) act as the second level of local government. Every municipality is integrated in a province.

Second, regional particularities within the 17 autonomous communities are scarce. It has been said before that each autonomous community has legislative power to develop the state basic legislation on local government. But since the state basic legislation is in fact very intense and extensive, and imposes a local government scheme made up of municipalities and provinces,



the possibilities of innovation for any autonomous community are quite limited. Particular institutions have appeared especially in Catalonia and Aragon, which add a third level of government: the townships (*comarcas*). Also, in the areas of some large cities such as Barcelona, Madrid, Vigo or Valencia there are some metropolitan government structures, normally focused on the management of very specific municipal services. The metropolitan area of Madrid does not have its own government structure because that space is occupied by the regional government (the Autonomous Community of Madrid).

Political and Social Context in Spain

Local politics is largely symmetrical to national and regional ones. National or regional parties also act at the local level. And this limits the effective autonomy of local politicians, even though they are elected locally. Currently, after the municipal elections of May 2019, most municipalities have leftist governments, although many of them are minoritarian. Some very important cities, such as Madrid, Malaga or Zaragoza, have conservative municipal governments.

Provincial governments are indirectly elected, by the councilors of the municipalities in each province. In that indirect election the political parties have great power. In this way, provincial governments normally reproduce municipal political majorities.

Beyond the local level, the general political situation shows common features to many other European countries: strong polarization of politics and absence of clear majorities. This has led to the current – and for the first time since 1978 – coalition government, between the traditional center-left Social Democratic Party (PSOE) and a new radical left-wing party (Unidas Podemos).

The general social and political situation is marked by two circumstances. A national economy that, although formally recovered from the great crisis of 2008, still shows very high unemployment rates (around 15 per cent of the active population), and where income inequalities dramatically increase. The second major social and political concern is the territorial integrity of Spain. Since approximately 2010 a very strong independence movement has emerged in Catalonia, which is one of the richest regions in Spain. This secessionist movement has the support of approximately 50 per cent of the population of the region.

More than 80 per cent of the 8,131 Spanish municipalities are very small having less than 5,000 inhabitants. Given the technical and economic incapacity of these municipalities, in many tasks they are replaced by the 50 provinces, which show a remarkable financial capacity. In some autonomous communities such as Catalonia or Aragon there are, in addition to the provinces, other intermediate supra-municipal local entities.

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4.2 People's Participation in Local Decision-Making in Spain: An Introduction

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The 1978 Spanish Constitution created a legal context that favors citizen participation. Under Article 9(2), all public authorities (and thus local governments) should 'facilitate the participation of all citizens in political, economic, cultural and social life' and Article 23(1) provides, as a fundamental right, (i.e., enforceable before a court of law, including the Spanish Constitutional Court) that citizens are entitled to 'participate in public affairs, directly or through representatives'. In compliance with the constitutional provisions, the Spanish Local Government Act (Act 7/1985, of April 2, LBRL) lays down a set of guarantees and procedures ensuring public participation at a local level and currently displays three sets of legal provisions regarding citizen participation. First, the so-called 'open council' or 'town meeting' (*concejo abierto*), a form of local government for small municipalities (usually not exceeding 100 people) where citizens gather in an assembly to rule the town (Article 29 LBRL). Second, Article 18(1)(b) LBRL expressly grants the enforceable right 'to participate' to all residents. Third, this same act also provides for several mandates addressed to local governments with the aim of promoting citizen participation (Articles 69 to 72 LBRL).

In sum, national and regional provisions have created a legal framework favoring citizen participation. However, these legal provisions often fail to implement tools and mechanisms to make such public participation effective. For a country like Spain where levels of social capital and citizens' involvement in public affairs are rather low, it is up to each municipality to implement strategies that make peoples participation effective. Actually, there are major differences between municipalities that simply allow for participation, yet they do not facilitate it or purposefully promote it and others that facilitate it and promote an inclusive participation. Differences can be explained by factors such as the availability of resources in place, a municipality's social fabric or the political orientation of the municipal government.

Recently, the presence of new political parties in municipal councils during the 2015-2019 period (classified as 'alternative left', such as Podemos), has reinvigorated participation in those municipalities ruled by them (including major Spanish cities like Madrid, Barcelona, Valencia or Zaragoza) emphasizing the importance of open and inclusive decision-making mechanisms and putting them in place.

These local strategies can take several forms but they respond to one of the two main types of participatory logic: people's participation is either implemented through permanent institutions or through processes open to all citizens. In both cases, the impact and results of



citizens' participation (i.e. level of citizen information on the projects, transparency in policy making, political accountability) is an open question to be analyzed.

As the most relevant example of the first strategy, we find the so-called advisory boards or advisory councils (*consejos consultivos*). They can be either sectoral (engaging public and private actors in connection with a sector or sector-specific policies: the elderly, culture, sports or education, among others) or territorial (the actors engaged and the interests at stake revolve around a given district or neighborhood). These advisory boards are the oldest and most commonly used participation mechanisms in local governments in Spain. Despite their little media visibility (they are somewhat overshadowed by the new forms of online citizen participation, popular consultations or participatory budgeting), they are probably the main form of dialogue between governments and organized groups. Some of the municipal councils that took office in 2015 are drawing up plans to reinvigorate and activate advisory boards. Madrid, for instance, is turning them into bodies more open to citizens and not only to the associations' representatives.

In the second type, we find strategies like local referendums and public consultation processes in local planning. Concerning referendums, they are hardly held in Spain due to its regulation, that requires the national government's prior authorization, thereby subjecting this participation initiative to stringent procedural requirements unparalleled in other legal systems. But public consultations have experienced a remarkable increase recently. They have typically played a prominent role regarding two areas: urban planning and local budgeting, but there are also other fields where these consultations are carried out, including participatory budgeting.

In addition to this, recent legal provisions (local, regional and national) have regulated bottom-up citizen participation, under which citizens directly submit proposals to municipal councils regarding specific measures or public policies. For this type of initiative, a qualified majority of voters (at least 10 per cent in municipalities exceeding 20,000 people) are entitled to submit specific proposals to the local government, which must be subsequently voted in the municipal assembly. Due to its legal complexity and demanding requisites, this form of bottom-up participation has been barely used so far.

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4.3 Participatory Budgeting in ‘Decide Madrid’

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Relevance of the Practice

‘Decide Madrid’ is a form of public consultation implemented in the nation’s capital city. Inspired in principles derived from the theory of direct democracy, public consultations seek public input from individual citizens to be applied to local policy making. They can be organized through ICT tools in big cities like in this case or as traditional referendums using ballots in medium and small towns. Public consultations are an interesting case for the urban-rural interplay analysis as they are implemented in both territorial settings, in small towns or villages and in urban spaces, but supported in different tools or strategies; small spaces would privilege traditional mechanisms such as public audiences or referendums. We have selected the case of a public consultation strategy in a big city because it is implemented through a digital tool (a website) which presents the opportunity to investigate key issues and current academic debates in the field of participation, such as inclusive participation, quality of deliberation, digital literacy or levels of participation and impact on governance. In addition, this project allows for a hands-on experience on how to develop citizen participation ICT tools that guarantee individual rights (i.e. intimacy, protection personal data).

Many aspects of this participatory strategy make it relevant for in-depth analysis, among others:

- to what extent ‘Decide Madrid’ achieves broad participation of citizens, overcoming the disadvantages that other participatory settings – such as consultative boards – present in big cities (information about the projects, interaction between citizens);
- to what extent it achieves inclusive participation of citizens, overcoming the reluctance or unfeasibility to participate for those who are not digital natives;
- technical and legal complexity. There are many aspects that can jeopardize its effective implementation, such as proposals’ viability, legality or cost;
- to what extent voted and accepted proposals are finally implemented (effectiveness of citizens’ participation);
- the rules of the procedure and the extent to which they meet the goals of equality or efficiency;
- the quality of the deliberation among citizens.

Description of the Practice

‘Decide Madrid’s goals, as stated by the city government are, i) to increase resident participation in decision-making on the city’s projects; ii) to generate a forum of debate where people can discuss the issues that matter to them the most.



The main strategy tool of this practice is its website.⁸³ It is an online platform launched by the City Government of Madrid to facilitate direct, individual participation in the city's public affairs. Once registered on the platform, all residents can create discussion threads, assess, comment on or support the various proposals, participate in the different processes and vote online on the participatory budgets. The website also encompasses information about the different projects (technical conditions, budget, time for execution, among others).

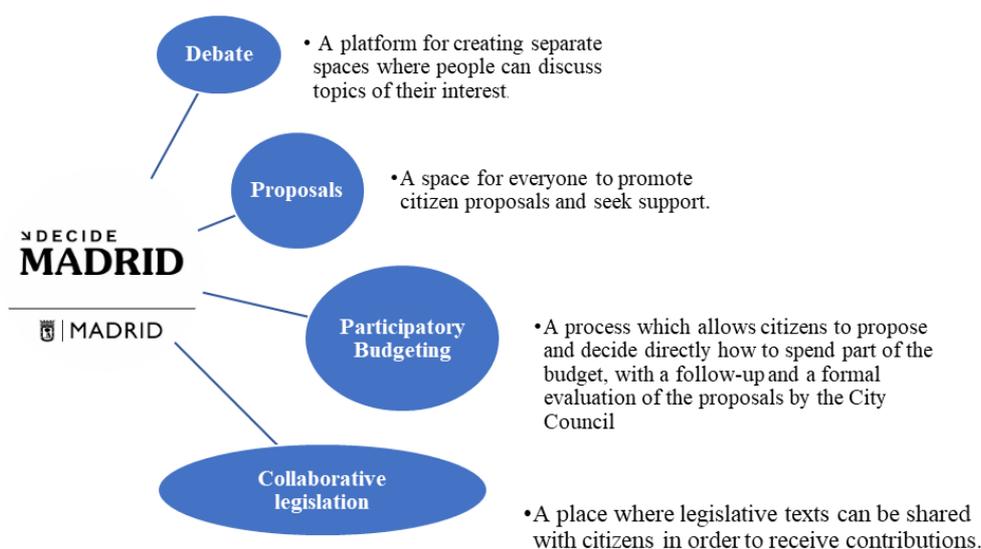


Figure 1: Functionalities of 'Decide Madrid'; own elaboration.

Decide Madrid allows users to elaborate their own proposals for courses of action to be undertaken by the city government and to support those of others, digitally. The platform enables proposals attaining support from 1 per cent of the city's registered population aged 16 years and above to be submitted for acceptance or rejection by the people; when the vote is favorable, the proposals are undertaken by the city government.

The website is also a tool for participatory budgets initiative, facilitating the submission of the spending proposals, gathering the support needed for them and making the presentation of the situation, collecting the support for the same and making possible the final electronic vote. In 2018, residents voted for proposals valued in EUR 100 million in total that are intended to be implemented in 2019. Some proposals that are repeatedly presented by citizens include building or renovation of sports centers, bikes paths, music schools, street lighting or kindergartens.

Assessment of the Practice

This tool has only been recently put in place, so it is challenging to make an assessment, even if it is preliminary. If one takes into account that there are currently 421,211 people registered

⁸³ Municipality of Madrid, 'Decide Madrid: portal de participación ciudadana del Ayuntamiento de Madrid' (*Decide_Madrid*, 2021) <<https://decide.madrid.es/>>.



on the website out of 3.2 million inhabitants in the municipality, and that no other type of open strategy for all citizens had been implemented before, then it deserves a positive evaluation. In addition, United Nations has awarded a prize to Decide Madrid for the best public service in 2018 in the category of 'Making institutions inclusive and guarantying participation in decision-making'.

However, a more refined analysis on the aspects mentioned in the previous lines (inclusiveness, effectiveness, deliberation quality, etc.) would allow us to assess this practice from a more integral and systematic perspective.

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4.4 The Experience of ‘Local Action Groups’ as Quality Participation in Rural Areas

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Relevance of the Practice

In the 1990s, the European Union launched the LEADER initiative to respond to the social, economic and demographic problems of rural Europe: unemployment, aging and emigration, low levels of income and the weakness of its production systems. This rural development policy inaugurated an innovative model of public financing management that relies on the endogenous resources of the territories in question. Its method is to actively involve actors from civil society and making them design and manage development plans to be funded by LEADER. Local Action Groups (LAGs) represent, in rural areas, institutionalized governance networks in which local state and citizens – represented by their organizations – interact.

Their main function is the implementation of European rural development strategies, through the design, implementation and management of their local development strategies, which are the result of their own analysis of the needs of their territory and the consensus achieved between the different parties and interests. LAGs are agents for revitalizing the social and economic fabric of their area by promoting, among other things, the involvement of the population in their own development process and governance. They help to create municipal infrastructures, generate businesses, provide services for the population and generate employment. In this way, they give support to their respective rural areas especially through the implementation of small-scale projects. Their activities do not replace municipal action. They rather represent a form of local state – society relations, as consortia. They are non-profit associations which put public and private members together having as incentive the EU LEADER funds. According to the EU LEADER strategy. Through this approach, LAGs can target better the particular needs and priorities of their territory since they are part of the territory itself. This is the assumption of the EU LEADER strategy; but to the extent that it has been implemented for 20 years in all EU countries with this approach it might also be a conclusion.

Description of the Practice

At the beginning of each LEADER programming period, the LAGs are selected through a public call for proposals by the autonomous communities. Once in place, the LAGs work to stimulate the social and economic activity of their area, favoring, among other things, the involvement of the population in its own development process and governance. There are currently 3,098



LAGs⁸⁴ spread over all European members; 252 in Spain also known as Rural Development Groups.⁸⁵

LAGS are legally established as non-profit associations in most of the cases, following the principles and obligations of the Spanish law regulating the right of association.⁸⁶ As such, they have their own by-laws establishing their governing institutions and their functioning rules. LAGs are in parallel to the local political institutions and organized around two types of institutional bodies where public-private interactions occur: the general assembly and the executive board. The general assembly is the main body of these networks, comprised of representatives of the public, social and economic sectors of each municipality associated with the LAG and partners from upper-level government. It also includes managers, technicians, administrative staff and other employees of the association who can influence decisions by 'voice' but not by 'vote'. The average number of assembly members in Spain is 103, but the variation is very high; six assemblies have fewer than 10 members and 53 have more than 150. The executive committee – elected by the general assembly – is the governing, management and representative body of the association. In addition, sector-specific working groups serve as consultative bodies for debates and the analysis of problems and solutions.

Public⁸⁷ and private actors agree in getting associated in LAGs. On the side of actors coming from the civil society they can be classified in three groups:⁸⁸

- members from the productive economic sector: companies, agricultural cooperatives and business associations. It is the most numerous and influential group among the private members. LAGs membership is not set from above. As associations, actors either agree in setting up a LAG or ask for joining it once it has been created;
- members representing the interests of certain groups: women's associations; youth associations; trade unions and professional agricultural organizations; and other associations and foundations;
- members linked to the educational and the financial sectors and others.

The program requires a balanced participation of public and private spheres in the assemblies (public actors may not exceed 50 per cent). However, despite this compulsory provision, not all the LAGs meet this standard.⁸⁹ In addition, studies point to an underrepresentation of both youth associations and women's associations. This reflects the rural state of affairs (an aging

⁸⁴ 'LAG Database' (*European Network for Rural Development*) <https://enrd.ec.europa.eu/leader-clld/lag-database_en>.

⁸⁵ 'Grupos de Acción Local' (*Red Rural Nacional*, last updated 19 August 2020) <<http://www.redruralnacional.es/leader/grupos-de-accion-local>>.

⁸⁶ Organic Law no 1/2002, 22th of March, reguladora del Derecho de Asociación.

⁸⁷ Local governments and sometimes representatives of other levels of government like provincial or regional authorities

⁸⁸ Pedro B Moyano Pesquera, 'La implicación de los agentes sociales y económicos en el desarrollo rural: una necesidad insatisfecha' (2018) 17 *Economía Agraria y Recursos Naturales* 55.

⁸⁹ *ibid.*



population) in which there does not seem to be a critical mass of certain groups from which associations might emerge.⁹⁰

Assessment of the Practice

This so-called LEADER method has had a major impact in Spain in terms of geographical coverage and mobilization of funds.⁹¹ Most of LAGs in Spain have significant accumulated experience, having already been present during previous programming periods (2/3 are from LEADER I or II, and another 20 per cent joined LEADER +).⁹² In total, the LEADER initiative has been managed by 264 Local Action Groups that have acted in 7,047 municipalities, covering a total area of 448,207 km² – 88.8 per cent of Spain's territory – and affecting a population of 12.4 million inhabitants (26.8 per cent of the national total).⁹³ In some regions, these percentages are even higher: in Extremadura region, in the period 2007-2013, LAGs covered 98.9 per cent of municipalities, and 70.9 per cent of the population, this meant that all the municipalities in Extremadura apart from the four urban ones were covered. In terms of budget allocation (total expenses) LAGs vary greatly, from the less financed with between EUR 1.5 and 2 million, to those of EUR 10 million.

There is evidence that LAGs, at least to a certain extent and in some territories, have become the driving force behind economic development processes, and that they are tools that serve to improve the resilience and adaptability of the rural areas.⁹⁴ Evaluation reports based on surveys of LAG members also make a very positive assessment of the experience of LAGs, but point to the need to reinforce the active participation of societal actors, considering that the social fabric in many cases does not emerge autonomously but is rather 'created'.⁹⁵

For the Spanish case, the involvement of local society in decision-making means a complete change as compared with traditional top-down strategies of rural development, and has constituted a way to empower local society.⁹⁶ In the academic classification of ways of addressing societal problems (hierarchies, markets and networks) this would be an illustration of network. The most important innovation of this approach to rural development has involved putting in the hands of local actors a large part of the decisions and management of their own

⁹⁰ See Javier Esparcia and Rafael Mesa, 'Leader en España: cambios recientes, situación actual y orientaciones para su mejora' (Universidad de Valencia 2018)
<http://www.redruralnacional.es/documents/10182/563684/Conclusiones_Propuestas_Evaluacion_LEADER_Esparcia_Mesa.pdf/5c5b29e6-54de-4dd5-b688-689a92cdb2de>.

⁹¹ See Javier Esparcia, Jaime Escribano and J JavierSerrano, 'From Development to Power Relations and Territorial Governance: Increasing the Leadership Role of LEADER Local Action Groups in Spain' (2015) 42 Journal of Rural Studies 29.

⁹² See Esparcia and Mesa, 'Leader en España', above.

⁹³ See Moyano Pesquera, 'La implicación de los agentes sociales y económicos en el desarrollo rural', above.

⁹⁴ Hugo S Lopez, Francisco M Arroyo and Jose LY Blanco, 'Los órganos de decisión de los grupos de acción local en el periodo 2007-2013 en España: relaciones entre los actores del medio rural' (2016) 245 Revista Española de Estudios Agrosociales y Pesqueros 47.

⁹⁵ Esparcia and Mesa, 'Leader en España', above.

⁹⁶ Moyano Pesquera, 'La implicación de los agentes sociales y económicos en el desarrollo rural', above.



development. The extent to which real partnerships emerge can be initially analyzed by assessing how balanced and diverse LAGs actually are, which implies a brief look at the composition of the LAG governing bodies and the diversity among the private actors.

An approach to the autonomy, stability and relevance of the network will throw the following preliminary assessment:

First, in terms of autonomy, the setting-up of LAGs is incentive driven rather than completely voluntary or imposed by the public authorities; these networks probably would not exist without the support of EU funds and the LEADER approach which demands that networks for defining and implementing common goals for rural economic development be established before funds are transferred. The initiative relies on public actors – the municipality – but internal coordination is the result of a joint action both by the assembly and by the executive committee, and the decisions are taken by majority vote. Rules are not strictly pre-defined, but LAGs have to meet certain broad criteria, such as the requirement of a limit (maximum 50 per cent) of public actors in the governing bodies.

Second, in terms of stability, the several institutions comprising LAGs (assembly, executive committee, working groups) are stable in character and meet periodically. They have accumulated experience after four rounds of LEADER programs, from which it can be inferred that they have developed common ground regarding the aims and forms of interaction even if those aims and forms are likely to be defined fairly broadly due to the diversity of actors in the network.

Finally, LAGs are among the most relevant participatory experience in Spain measured by the degree of impact of citizens' will in public decisions. According to the Arnstein ladder of participation, they will be placed at the level of 'partnership'⁹⁷ due to their theoretical capacity to design and implement the strategies of rural development jointly decided by their members. Indeed, it seems to involve a distribution of power among public and private groups, which form partnerships and share decision-making responsibilities, particularly in the executive committee. However, this trait should be verified through empirical methods.

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⁹⁷ Arnstein's 'ladder of participation' differentiates from more citizen power to less citizen power between: i) 'delegated power', i.e. potentially high impact on policy; ii) 'partnership'; iii) 'placation'; iv) 'consultation' (= 1.25) and v) 'information', i.e. participations, but no ensured impact on policy. See Sherry R Arnstein, 'A Ladder of Citizen Participation (1969) 35 Journal of the American Institute of Planners 216.



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4.5 Promoting Public Participation in Urban Planning Processes as a Bottom-up Process: Urban-Rural Differences

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Relevance of the Practice

One of the basic principles of Spanish urban law, since 1956, is that the development of planning instruments includes public participation, not only of the landowners but of any citizen, because the ‘city belongs to everyone’. However, this process has traditionally been led by the municipal administration: a top-down approach. This has been considered a failure of participatory processes since in the ‘city of architects, expert designers know more, and they design cities and spaces for people, but they do not feel comfortable designing with people’.⁹⁸

Sustainable Development Goal (SDG) 11 ‘Make cities inclusive, safe, resilient and sustainable’, and more specifically target 3, requires to ‘enhance inclusive and sustainable urbanization and capacity for participatory, integrated and sustainable human settlement planning and management’. It is in this context that the regulation of Article 4(2)(c) of Royal Legislative Decree no 7/2015, of 30 October, which approves the revised text of the Law on Land and Urban Renewal, sets public participation as a weighting process. It is conceived as a decision-making process that requires prior identification of the relevant interests and imposes a procedure for the participation of all possible affected parties. It is thus oriented towards a bottom-up logic, especially in the case of the so-called ‘tactical’ urban planning i.e. the planning that focuses on specific and concrete actions instead of giving a general and holistic vision over a territory.

Description of the Practice

Public participation in urban planning can be analyzed by comparing two real cases, one referred to as the medium-sized city (Torrelodones) and a second one regarding a small village (Lerín).

The Municipality of Torrelodones, located in the metropolitan area of Madrid, is characterized as a medium city (28,000 inhabitants). In 2017, the city government decided to start the urban planning procedure to renovate a central green area, the Pradogrande park, which covers more than 4 hectares, through a collaborative design process in which the different agents were targeted to be involved. The objective was to reform the park, as defined by the residents

⁹⁸ David de la Peña, ‘Barcelona’s Superilles hit a snag’ (*David de la Peña*, November 2016) <<https://daviddepena.com/2016/11/23/superilles/>>.



and users themselves. To this end, an innovative public participation methodology has been implemented that has managed to involve the population not only in the diagnosis and identification of the park's problems but also in the definition of architectural solutions.

The process was divided into three phases:

First, involve: The objective was to involve as many people as possible, for which an issue of the municipal magazine was dedicated to the process, a video was shot and disseminated on social networks; a letter was mailed inviting residents, it was taken to six meetings, in addition to involving associations and social agents.

Second, listening: The objective was to capture the participation of individuals and social agents through interactive mappings based on printed maps distributed among the citizens of the surroundings and user groups in the park itself, diagnostic and proposal walk open to all citizens, user interviews, digital questionnaires, and face-to-face questionnaires.

Third, transformation: The objective was to capture the participation of all those involved in the design of the specific solutions to the problems detected in previous phases so that the project implemented includes the preferences of the maximum number of perspectives of what the park should be.

The results of the process were as follows:

Involvement and listening

Individual participation through interactive tools: an interactive physical map and a digital questionnaire. In addition, interviews were carried out to groups and users, an open action mapping, plus other complementary ones that allowed to move the debate to the group.

- interviews and preparation of perceptive maps of the park with associations, groups, technicians, and other agents of interest (15 interviews);
- an online questionnaire (114 responded, 63 per cent women, 47 per cent men, all age groups mostly between 30 and 60 years);
- big map of the park with instructions and stickers to leave proposals (73 maps, 52 per cent women, 48 per cent men, all age groups, mostly <20);
- mapping, tours of the park where proposals can be collected by groups;
- mapping of the elderly in the social center (6 participants over 65);
- open mapping (70 participants).

Transformation

Individual participation through the same interactive tools, but in this case, is aimed at evaluating the design alternatives resulting from the previous phase. Group participation was carried out through a temporary collaborative design office in which the details of the project are specified and discussed in depth.

- an online questionnaire to evaluate alternatives (117 participants, 61 per cent women 39 per cent men, all age ranges, the majority between 60 and 30 years old);
- assessment of alternatives for the renovation of the park (137 participants, 51 per cent women, 49 per cent men, all age ranges, the majority range between 30 and 50 and <15);
- a design office open for five days at the culture center (8 design sessions, 15 participants).



This has been considered a successful experience, but public participation seems to face more challenges in municipalities located in rural areas, with a smaller, older population, and, urban contraction processes. This was the case of Lerín (Navarre), 1,725 inhabitants (2018 census). In 2019 the Autonomous Community of Navarre led a project of inclusive urbanism like the one described above in the design of public spaces, developed from the perspective of active aging. It included measures such as improving pavements and pedestrian routes to ensure full accessibility, eliminating architectural barriers, limiting road traffic, improving lighting, the vegetation of the spaces, strategic placement of fountains or benches adapted and ergonomic as points of socialization, and improving access to public buildings and services or promotion of local commerce. The participatory process was open to all residents in the town, but it was particularly oriented towards the involvement of older people and has been developed over the last eight months in three participatory sessions, two of them in the local civic center and another in the Town Hall Square. The process has been articulated in three participative sessions, open to all citizens and with a playful character. One of the meetings took place practically through a tour of the most controversial places in the town, which allowed them to experience them collectively. But these processes involved only 4, 10, and 12 people (mostly women).

Assessment of the Practice

The advantages of these urban planning participatory processes are found, fundamentally, in their capacity to educate citizens on public issues and policy challenges, in this case in the field of planning, where the daily experience of citizens in urban design also generates an active and critical view of the environment. It is possible to appreciate that in the process of urban planning the main input comes from the local population (bottom-up), although filtered and complemented by the technical approach of the professional team responsible for the planning instrument. In any case, the participatory results become a valuable tool for the local administration. These participation mechanisms provide social legitimacy to the urban planning solutions adopted by the local authorities, making them resistant to wear and tear and increasing the sense of belonging of citizens, thus being framed in the notion of governance. While in urban areas participation is broader, in rural communities it seems that greater involvement of local and regional authorities is required to foster participation that goes beyond mere testimony, at least in the case analyzed.

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5. People's Participation in Local Decision-Making in Switzerland

5.1 The System of Local Government in Switzerland

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Types of Local Governments

The Swiss model of federalism, based on the principle of subsidiarity, is structured in three layers of political representation, i.e. the Confederation (national government), the cantons and the municipalities. The Constitution of the Swiss Confederation, however, focuses on two layers only, the national and cantonal. In its Article 1 it not only lists the official 26 cantons but also gives them constitutive effect. In Article 3 it sets the rules for the power-sharing arrangements between the Confederation and the cantons: 'The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation.' However, one must bear in mind that the term 'competent' would be more appropriate than 'sovereign' to describe the power vested in the cantons. In fact, the cantons have competence on all the tasks and duties that do not fall on the Confederation. But they nevertheless remain subdued to the Confederation, as the majority of the other cantons can impose their will on a canton via a revision of the Swiss Constitution. Indeed, according to the Article 48(a) of the Swiss Constitution, at the request of interested cantons, the Confederation may declare intercantonal agreements to be generally binding or require cantons to participate in intercantonal agreements in the following fields:

- the execution of criminal penalties and measures;
- school education in the matters specified in Article 62(4);
- cantonal institutions of higher education;
- cultural institutions of supra-regional importance; e. waste management;
- waste water treatment;
- urban transport;
- advanced medical science and specialist clinics;
- institutions for the rehabilitation and care of invalids.

The Federal Constitution does not attribute any competence to regulate local government to the national government. The municipalities are therefore created by and subjected to cantonal regulation. Thus, each canton defines the status and the competences of its municipalities in its cantonal constitution and legislation. We therefore differentiate 26 systems of municipalities corresponding to each of the 26 Swiss cantons. Still, one can identify five main types of municipalities:



- the classical political municipalities which are called *commune* in French, *comune* in Italian and *Gemeinde, Ortsgemeinde* or *Einwohnergemeinde* in German depending on the cantons. They are the basic general-purpose type of municipality;
- the so-called *bourgeoise* municipalities that have survived from the Middle Age in some cantons. When in 1798 the Helvetic Republic is proclaimed; the cantons are put on an equal footing and the inhabitants of the Swiss territory receive the Swiss citizenship. The original bourgeois do not agree to share the communal properties (lands, forests, etc.) with the new *bourgeoise*. Thus, the *bourgeoise* municipalities keep the control over the communal properties and the political municipalities guarantee the political rights to the new *bourgeoise*. As of today, in the cantons where such *bourgeoise* municipalities remain, they are mainly land owners and service providers (for example retirement houses, subsidized apartments, young offenders' facilities, etc.);
- the ecclesiastical community is the territorial division that is attached to a church and that is often called parish (*paroisse* in French). They are a single-purpose body;
- the so-called scholar commune *commune scolaire* is also a single-purpose body that deals with the school system on a certain territory within the limits assigned by the canton and that does not automatically match with the political municipality. For example, the school program remains a cantonal competence but the decision to build the school or to organize the carriage of school pupils is, to a large extent, delegated to the scholar municipalities;⁹⁹
- other types of municipalities that exist in some cantons.

Finally, one must add that the majority of the Swiss cantons have put in place an intermediary political level between the cantons and the municipalities called the district (*district* in French, *Bezirk, Verwaltungsregion, Verwaltungskreis, Wahlkreis, Amtei* or *Amt* in German, *distretto* in Italian). Out of the 26 cantons, only six do not have such a subdivision. These districts are very different from each other but they usually correspond to a group of municipalities. Again, the cantons hold the primary competence regarding their internal organization and scope.

Legal Status of Local Governments

The constitution framework that prevailed until 1999 did not mention municipalities, unless incidentally. Only the adoption of a new constitution that year ensured that local autonomy was granted constitutional protection.¹⁰⁰ Article 50 reads as follows: (i) 'The autonomy of the communes is guaranteed in accordance with cantonal law.'; (ii) 'The Confederation shall take account in its activities of the possible consequences for the communes.'; (iii) 'In doing so, it shall take account of the special position of the cities and urban areas as well as the mountain regions.'

The effect of the new provision is limited. The extent of local autonomy remains in the hands of the cantons ('in accordance with cantonal law') and each of them thus continues to autonomously define its internal governance system. Only as far as cantonal law provides for

⁹⁹ Nicolas Schmitt, *Local Government in Switzerland: Organisation and Competences* (forthcoming).

¹⁰⁰ Schmitt, *Local Government in Switzerland*, above.



municipal autonomy, it is guaranteed by the Federal Constitution. Consequently, municipal autonomy is justiciable and the Federal Supreme Court hears disputes concerning violations of it (Article 189(1)(e)). When it does so, it refers to the cantonal constitution and the cantonal legislative framework to determine the scope of local autonomy and decide whether the canton has impinged on it or not.

If the Article 50(2) of the Constitution constrains the Confederation, while fulfilling its tasks (e.g. military, national highways), to be considerate of municipalities, it does not confer additional jurisdiction on the Confederation. Essentially, this constitutional provision aims at fostering vertical cooperation between the three institutional levels of the Swiss federal structure but without bypassing the intermediary level, the cantons. The article refers specifically to the urban-rural divide and explicitly compels the national government to take account of the special priorities and needs of cities and urban areas on the one hand and mountain regions on the other hand. Among the concrete initiatives, the Tripartite Conference can be mentioned. It will be discussed at length further in the Country Report.

(A) Symmetry of the Local Government System

As mentioned above, there are 26 systems of local government corresponding to the 26 Swiss cantons. Thus, there are considerable differences regarding the rules that apply to urban local governments (ULGs) and rural local governments (RLGs), etc. For example, the Canton of Zürich has granted a special status to the cities of Zürich and Winterthur. Most cantons, however, are based on a symmetric system and allocate the same tasks and responsibilities to all municipalities, irrespective of their size.

Despite of the wide variety of cantonal local government arrangements, some common features can be identified. Schmitt demonstrates that all municipalities are run by an executive council of five to ten members who are elected by the citizens and who are compelled to take decisions on a collegial basis.¹⁰¹ While they traditionally are not paid for their work, the elected members of municipalities' councils in the ULGs tend to be professionals.

As regards legislative power, small municipalities (not to say RLGs) have citizens' assemblies that meet regularly to pass new laws and/or to elect the executive council members and other authorities. On the contrary, some cantons have compelled larger municipalities (ULGs) to create a parliament, i.e. an elected legislative body *representing* the citizens. As Schmitt notes, the Canton of Fribourg has adopted the Law on the Municipalities (*Loi sur les communes* in French) that requires eight specific municipalities to set up such a parliament while municipalities with over 600 inhabitants are only invited to do so.¹⁰² Smaller municipalities can keep their citizens' assemblies.

Finally, Schmitt puts a light on an interesting paradox: while municipalities still enjoy a large set of competencies and have the right to collect taxes (and set the tax rates), judicial power is not granted to the municipalities. In fact, the lowest judicial level is, in some cantons, the

¹⁰¹ Schmitt, *Local Government in Switzerland*, above.

¹⁰² *ibid.*



district's judge. Once again, one must look carefully at all the 26 cantonal organizations in order to grasp the subtleties of the local government systems that make Swiss federalism so complex.¹⁰³

Political and Social Context in Switzerland

If the prominent role and the many responsibilities conferred to the municipalities have long been praised and recognized as a key factor for the success of the Swiss political model, one must note that they tend to lose their luster. In fact, the degree of autonomy enjoyed by the municipalities decreases due to the increasing requirements (land use planning, environmental protection, social aid, waste management, etc.) from the Confederation, the cantons and, to some extent, the people themselves. The democratic pressure (complexity of the legal frameworks, over technical policy fields, procedural overload, etc.) on the municipalities is difficult to manage, especially for non-professional elected representatives and somehow encourages the centralization of the decision-making power and the pooling of local tasks and duties at a superior level.

In the last 30 years, Switzerland has thus witnessed a strong acceleration of the number of amalgamations of its municipalities. From more than 3,200 municipalities in 1999, the number has dropped to approximately 2,200 municipalities in 2018. While the rural municipalities tend to merge, it can be observed that urban municipalities tend instead to agglomerate¹⁰⁴ via different types of inter-municipal agreements. In any case, cantons and municipalities follow their own path with little interference from the national government. Today, approximately two thirds of the Swiss population is concentrated in the cities' centers¹⁰⁵ or agglomerations.

According to 2017 data, the 2,212 Swiss municipalities are relatively small, with 1,060 inhabitants on average, but very different in size. The smallest is Corippo with 12 permanent inhabitants and, like many others, spreads on less than 1 km². The largest in terms of territory is Scuol with 438.62 km² and the most populated is Zurich with 400,000 inhabitants. Many municipalities being unable to cope with the organizational requirements of today's life (school facilities, firefighter's service, water sanitation, etc.) and finding it difficult to recruit personnel, a strong process of merging local authorities has begun some sixty years ago and has accelerated in the last thirty years.

The four main coalition parties, namely the FDP. The Liberals, the Christian Democratic People's Party, the Social Democratic Party and the Swiss People's Party are all represented at the Federal level and in almost all the 26 cantons. Interestingly, in the urban cities, the

¹⁰³ *ibid.*

¹⁰⁴ According to the Federal Office of Statistics, the agglomeration can be defined as follows: An agglomeration is a group of municipalities with a total of more than 20,000 inhabitants (incl. overnight stays in converted hotels). It consists of a dense center and usually a crown. The delimitation of the crown is based on the intensity of the commuter flows.

¹⁰⁵ According to the Federal Office of Statistics, the city-center can be defined as follows: The municipality which, among the central municipalities of an agglomeration, has the highest number of HENs (= sum of inhabitants, work places and overnight stays in converted hotels) is considered as a city-center. In some cases, it is possible for an agglomeration to have several central cities.



traditional political parties are well organized and represented while in the smaller rural municipalities, political parties are less active. The peculiarity of small municipalities where every citizen knows each other means that people vote first for a specific candidate rather than for the parties.

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5.2 People's Participation in Local Decision-Making in Switzerland: An Introduction

Erika Schläppi and Kelly Bishop, *Ximpulse GmbH*

The Swiss federal system is characterized by a strong orientation towards power sharing, concordance and compromise. Participation is seen as a means of integrating a diversity of views in decision-making, thus contributing to making state authorities at all levels accountable and responsive to its citizens, improving the quality of decisions taken and mitigating possible resistance, deepening legitimacy and credibility of State authorities, and managing conflicts and tensions between various groups.

To make participation effective, people need political space as well as access to information. The freedom of expression and information is guaranteed by the Swiss constitution (Article 16 of the Constitution). While citizens use various channels to inform and express their opinions, the media is a key contributor in forming an open public debate and serves as an important platform for information sharing and ensuring transparency (Article 17 of the Constitution). The Federal Act on Freedom of Information in the Administration seeks to promote transparency with regard to the mandate, organization and activities of the administration and grants the public access to official documents and information (Article 1 Freedom of Information Act). On cantonal and municipal levels there are similar laws and regulations.

The right to participation in political decision-making is a key feature of the Swiss federal system at all levels. The Swiss Constitution guarantees political rights including the 'freedom of the citizen to form an opinion and to give genuine expression to his or her will' for all levels (Article 34(2) of the Constitution, Article 136 of the Constitution). The exercise of political rights is regulated at federal level for federal matters only (Article 39(1) of the Constitution) while the cantons regulate their exercise at cantonal and municipal level. In the framework of cantonal law, municipalities enjoy 'autonomy' (Article 50 of the Constitution) which in principle includes the way how political processes in the municipalities are organized. In the 26 cantons laws and regulations differ in terms of space left to municipalities to design their own participatory approaches. Formal participation rights are usually reserved for Swiss citizens who are resident in the community at stake (political domicile) (Article 39(2) of the Constitution).

In the Swiss semi-direct democracy, the elected (representative) parliaments and (cantonal and local) governments are coupled with elements of direct democracy. The main instruments of popular participation include the following:

The popular initiative is a powerful tool for citizens, political parties and interest groups to influence the political agenda: At the federal level a constitutional amendment can be demanded with the signature of 100,000 Swiss citizens (see Articles 138ff of the Constitution). When an initiative is disposed, it is discussed by the government and the parliament. They take formal positions on the initiative, which may involve an alternative proposition. Initiatives and counter-proposals must then be submitted to the popular vote. At cantonal and local level, the popular initiative can be used to propose laws and acts as well. The process that leads to popular votes varies among the cantons and municipalities.



Mandatory and optional referenda: At federal level, parliamentary decisions on amending the Federal Constitution, accessing organizations for collective security or supranational communities, and extra-constitutional emergency federal acts must be put to the popular vote (mandatory referendum, Article 140 of the Constitution). With the signature of 50,000 citizens or by the request of 8 (out of 26) cantons, new federal legislation or amendments to legislation can be called for a referendum (Article 141 of the Constitution). At cantonal level, the referenda systems are diverse and often include important administrative acts (such as important decisions on financial expenses, budgets, etc.). At municipal level, what is put to vote, depends on the municipal statute decided by the municipality. The instrument of referendum broadly impacts on the way how political decisions are taken: Swiss authorities at all levels often tend to seek broad majorities for their decisions to avoid a vote.

In smaller rural municipalities (particularly in the German speaking area) main decisions are often taken in citizen's assemblies where all residents of the respective municipality who are Swiss citizens can participate. In conformity with the cantonal law and municipal statutes, the assembly takes legislative, administrative and financial decisions that are mostly submitted by the municipal executive. In other (bigger and urban) municipalities, a municipal parliament is representing the citizens, mostly complemented with a referendum system allowing citizens for direct impact.

Various types of formal and informal consultation processes ensure that the different views of stakeholders are taken to account from the beginning and integrated into political processes – often to mitigate the risk of a referendum that may skip the final decision in the end. At federal level, the government is obliged to invite the cantons, the political parties and interested groups to 'express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties' (Article 47 of the Constitution). Parallel provisions can be found in the cantonal constitutions. Some federal and cantonal laws and regulations foresee specific consultation procedures in particular domains that affect cantonal and/or municipal decision-making in particular. Municipal consultations refer to many policy fields such as spatial planning, local development strategies, infrastructure projects, environment and energy issues, tourism, traffic issues, or municipal amalgamation processes. Such consultations can take many forms (e.g. hearings, exchange platforms, round tables, information campaigns, etc.). They may target the broad public or specific groups that are perceived by the authorities as potential supporters or spoilers. Some municipalities have established specific consultation processes that involve neighborhood residents in decision-making when they are particularly affected by the matter at stake. Individual processes are foreseen in many municipalities to incorporate specific stakeholder groups on particular topics (Children and youth, parents, elderly people, non-Swiss residents).

The right to petition is guaranteed by the Swiss Constitution as well as established at cantonal and municipal level.

In general, the new media have changed the ways how people express their opinion, communicate among interest groups and with the authorities. New forms and collaborative methods of participation have developed in recent years that complement more traditional forms of participation, particularly at municipal level. Recent research suggests that the executive is increasingly perceiving participation as a means of improving governability in complex and politically fragmented situations. The often relatively low numbers of citizens that



are participating also suggest that these new forms are not broadening but deepening participation by targeting certain citizens and groups that are already engaged in political processes.

All these formal instruments invite stakeholders and citizens to participate but in reality, they may not be accessible for marginalized groups, and many of them formally exclude non-citizens. Individual activists and specific interest groups often invent their own spaces and forms to influence the political agenda and the decision-making processes at all levels (e.g. public manifestations of different kinds, protests and 'strikes', media campaigns, citizens' gatherings). In many cases, these 'invented' forms are in one way or another related to more formal instruments such as initiatives and referenda.

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Federal Act on Spatial Planning (Spatial Planning Act, SPA), SR 700

Federal Regulation on Spatial Planning (*Raumplanungsverordnung (RPV)*), SR 700.1

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5.3 Participation in a Road Development Project in Albisrieden/Zurich

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Relevance of the Practice

This practice is an example of a participatory process relating to a road development project in an urban neighborhood. The process includes informal and formal participatory elements throughout the planning and implementation phases. It involves local political authorities, technical services, citizens, interest groups and the private sector in a variety of roles and shows the interplay and linkage between formal and informal mechanisms of participation in an urban setting.

Description of the Practice

Albisrieden belongs to Switzerland's largest City, Zurich, and together with Altstetten is part of district (*Kreis*) 9, which is the largest of the 12 districts of Zurich. At the end of 2018 Albisrieden counted 22304 inhabitants. In 2014 25.6 per cent of the residents were foreign nationals. Most foreign nationals are Germans, followed by Italians and Portuguese.

In 2009, when the renovation of the road superstructure as well as the tram lines were due, the Engineering Office wanted to take the opportunity to improve the utilization of the space along the main road of Albisrieden. The Engineering and Waste Disposal Department Zurich (*Tiefbau und Entsorgungsdepartement Stadt Zürich*) and the Engineering Office (*Tiefbauamt*) of the City planned to make changes to the main road, which lies in the heart of the district. There are numerous shops, restaurants and a post office on this road, which is also used by a bus and a tram line. According to the Communal Structure Plan Transportation (*Kommunaler Richtplan Verkehr*), this road belongs to the pedestrian zone.

The Legal Background

The procedure is predominately laid out in the Cantonal Act on Roads of Zurich (*Strassengesetz* (StrG), LS 722.1). According to Article 12(2) of the Cantonal Act on Roads of Zurich, the City Council is responsible for drawing up new municipal road projects (Article 48 Cantonal Act on Municipalities (*Gemeindengesetz* (GG), LS 131.1) and Articles 48 ff Communal Statute (*Gemeindeordnung* (GO), LS 101.100)). Article 71 (b) GO assigns the construction and maintenance of roads to the Engineering and Waste Disposal Department Zurich (*Tiefbau und Entsorgungsdepartement Stadt Zürich*). Article 13 of the Cantonal Act on Roads of Zurich foresees the participation of the public before a decision on project funding is made. This can be done by a public orientation meeting (*Orientierungsversammlung*) or a tabling of the project (*öffentliche Auflage*) and the public can comment on the project proposal. Further Article 16 of the Cantonal Act on Roads of Zurich envisages that the project proposal is publicly tabled



for a formal objection procedure, which is set out in Article 17 of the Cantonal Act on Roads of Zurich.

The competences for financial decisions on project proposals are further laid down in Article 104(1) GG and Articles 41(c) GO as well as Article 105 GG and Articles 39 (c) Rules of Procedure of the City Council (*Geschäftsordnung des Stadtrats*, AS 172.100).

Participation in the First Stage of Project Planning

Between autumn 2009 and July 2013 the City Engineering Office (*Tiefbauamt*) together with the Traffic Service Department (*Dienstabteilung Verkehr*) elaborated a project plan for the new road. In a first step, the City Engineering Office assessed the needs of the residents and other interest groups (e.g. the local public transport company) in order to develop a first project idea. Of course, the project was also bound to many other legal and policy requirements at the federal, cantonal and municipal level.

Members of City Parliament suggested to involve the residents in an early stage of the project, because they anticipated some tension between the different interest groups. The City Council usually decides to have public information meetings if the project entails major changes and if they anticipate that there are various divergent interests at stake. In this case, the City Council decided to invite the public to an information meeting on 4th December 2012. All the local residents were invited along with other interest groups, such as the Business Association of Albisrieden as well as Protection and Security Zürich (*Schutz und Rettung Zürich*) and the school board (*Schulpflege Schulkreis Letzi*). In addition to the first information meeting, the City invited citizens and representatives of interest groups to four roundtables, with a view to discuss conflicting and converging issues and find compromises among the key stakeholders. During the phase between 2012 and 2013 it was possible to compromise on various issues, however, even after these roundtables the Business Association of Albisrieden did not agree with some key features of the project.

Participation in the Decision-making on the Project

After the technical planning process was completed and the project proposal was established the second phase of participation took place. The power to decide on the main parts of the funding of the project is with the City Parliament. According to Article 13 of the Cantonal Act on Roads of Zurich the project proposal was publicly tabled on July 5, 2013 for comments, which practically coincided with a formal petition of the Business Association of Albisrieden. On July 3, 2013 it launched a petition urging the executive authorities to give up the project.¹⁰⁶ The petition had been signed by 3,200 residents.

The City Council answered to this Petition on 4th December 2013. It did not agree with the view of the petitioners and addressed each point of concern in detail and explained why it does not agree. The City Council rejected the petition and referred to the possibility of objecting to the finalized project according to Article 16 and Article 17 of the Cantonal Act on Roads of Zurich once the project would be submitted to the objection procedure (see below). In accordance with Article 13(2) of the Cantonal Act on Roads of Zurich a detailed report states the replies to

¹⁰⁶ See Engineering Office, 'Petition Against the Planned Restructuring of the Main Road of Albisrieden' (Extract of the Protocol of the City Council of Zurich from 4 December 2013, 1088).



the arguments that were brought forward at this stage (*Einwendungen*), which have not been considered in the finalization of the project.

Later, two members of the City Parliament handed in a postulate (according to Articles 44 *Gemeindeordnung* (GO), LS 101.100, City Statute) with a view to again counter the arguments of the Business Association and urge the City Council to finalize the project taking up the views that were, according to them, coming out of the participatory process that had taken place (see Postulat Pascal Lamprecht (SP) and Markus Baumann (GLP), 20 April 2016, GR no 2016/135). Mr. Lamprecht, one of the authors of the postulate, explained their motives as follows: ‘in our view, the petition of the Business Association of Albisrieden did not reflect the wider opinion that had been expressed during the round tables. Nevertheless, they were able to mobilize a lot of people and gathered 3200 signatures. We wanted to counterbalance this by handing in a postulate and make sure that what had been agreed and discussed during the round tables during the informal participation process was adequately reflected in the final plans of the project’.

Because of the petition and remaining disagreement between the various interest groups the head of the Engineering and Waste Disposal Department Zurich decided to hold an additional round table with selected members of the District as well as members of the City Parliament, in order to discuss the still existing differences and to find a solution. Based on these discussions the project proposal was again revised. The City Parliament that is competent for financial decision of this size then took the funding decision, under the reservation of the formal objection procedure that still has to determine the final shape of the project.

Participation in the Objection Procedure

According to Article 16 StrG the detailed project was publicly tabled in its revised version from 31 March to 2 May 2017 for the objection procedure. This involves the stakeholders that are directly concerned by and have a legally protected interest in the project (e.g. neighbors). Within the 30 days appeal time period, there were 13 objections against the project that are still pending. The decision on implementing the project will be taken by the City Council after the objections have been considered and the finalized project plans have been adapted accordingly.

Assessment of the Practice

A number of conclusions can be made from this practice. First, a variety of participatory processes are available at different stages of a construction project, starting with the assessment of needs, project design, planning to the funding decision and the judicial appeal procedures against the project decision. These procedures are time consuming. In the present case, several years will have been passed from the project idea to the finalized project.

Second, while public participation procedures invite all citizens to participate, the reality is usually different, also in the present case: Only a small number of already engaged or specifically concerned citizens effectively participated in public hearings or submit their opinions. Is this affecting the legitimacy of the result? Or is the possibility to participate enough?



Third, the participatory process involves interest groups that differ in their political weight. The Business Association of Albisrieden is a well-connected and established local organization, which was able to use the instruments in their favor, gather a large number of signatures to support their position. The formal petition right of the Association and the possibility to engage in the formal participation process gave them leverage. Some members of the City Council tried to counterbalance this weight, on behalf of the interests of their own constituency – and for the sake of equal participation. The City Council lastly takes the responsibility to decide on the project and balance the (possibly contradicting) interests of participating groups.

Fourth, the formal instruments of participation forced the authorities from the beginning to take up the interests of the Business Association, in order to avoid a formal objection of the Association later in the process, which can cost time and money. In general, the formally established participation processes seem to have influenced the authorities' decision to give greater consideration to informal participation at the very beginning of the project. These gave the public various entry points (invited spaces) into the project development process.

Fifth, space for participation was available in various forms at different stages of the process, so citizen groups did not feel obliged to 'invent' more spaces. Sixth, the City Council is relatively independent of cantonal or federal authorities to decide how they include citizens and/or directly concerned residents in the participation process, allowing them to adapt their approach to the perceived needs of the particular case. The judicial appeal procedure (open for directly concerned residents) ensures that the legal framework is respected.

Seventh, participatory processes may have a negative effect on the accountability of elected decision-makers who can always say that their project was ineffective because it had to take up bad ideas that they are not responsible for. Eight, communication and information are key to participatory processes, particularly on complex projects.

Representation and legitimacy are a key challenge for formal and informal participation processes: Who is invited to participate? How are group representatives selected? Who is effectively taking part? This is even more an issue in more closed forms of participation: In the present case, the local authorities invited a certain selection of citizens and interest groups to the round tables, without transparent selection criteria.

References to Scientific and Non-Scientific Publications

Legal Documents:

Cantonal Act on Roads of Zurich (*Strassengesetz, StrG*), LS 722.1

Cantonal Act on municipalities (*Gemeindengesetz, GG*), LS 131.

Rules of Procedure of the City Council (*Geschäftsordnung des Stadtrats*), AS 172.100

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5.4 Participation in the Development of the City Charter of Biel/Bienne

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Relevance of the Practice

This practice is an example of a participatory process relating to the development of a new City Charter (municipal statute). The process shows the advantages and limitations of (new) informal participatory tools aimed at inclusiveness (e.g. including youth, socio-economic disadvantaged groups or non-citizens) in an urban setting and the close interaction with established formal elements of representative democracy in the municipality at stake. The practice also shows the interest in innovative forms of political participation and the anchoring of such practices in formal legal texts.

Description of the Practice

The City of Biel/Bienne located in the north-west of Switzerland is part of the Canton of Berne, which is a bilingual canton. Biel/Bienne is the largest bilingual City in Switzerland. 57 per cent of the population are German speakers and 43 per cent are French speaking. In total Biel/Bienne counts 54,456 habitants (31.12.2016¹⁰⁷). 33.2 per cent are non-citizens, around 17 per cent are under 18 years old, both groups are without the formal right to participation in the political decision-making process. The City of Biel/Bienne launched the revision of the City Charter (*Totalrevision der Stadtordnung* also ‘City Charter’) in 2017. The aim of the exercise was to align the Charter to the revised cantonal legal framework, taking into account the evolving demographic situation of the city and adapt the vision of the city’s development.

The process was designed within the relevant federal, cantonal and municipal legal framework. Swiss municipalities have a constitutionally guaranteed right to autonomy, within the scope defined by cantonal and federal law. For Bernese municipalities, the canton determines the basics of the organization of the municipalities (Article 11 of the Cantonal Constitution). The total revision of the City Charter must be submitted to a mandatory referendum (popular vote) in the municipality (Article 116(1) of the Cantonal Constitution). The City Charter must include the principles of the organization, responsibilities and participation of the citizens (Article 51 of the Law on Municipalities), and it must be approved by the responsible cantonal authorities (Article 56 of the Law on Municipalities).

In addition, Article 12(1)(a) of the current City Charter of Biel/Bienne confirms that the total revision of the City Charter falls under the jurisdiction of the citizens of Biel/Bienne. The City

¹⁰⁷ Barbara Brechbühl and others, ‘Statistik der Schweizer Städte 2018. Statistiques des villes suisses 2018’ (Schweizerischer Städteverband/Union des villes suisses 2018) <https://staedteverband.ch/cmsfiles/stst_2018_web.pdf> accessed 6 April 2020.



Parliament however first approves the final version of the revised City Charter based on the draft submitted by the municipal council, the municipal executive before it is submitted to the citizens for their final say.

The municipal government (municipal council) saw the total revision of the City Charter as a project of big political importance. Before the start of the revision process a few fundamental questions were discussed and clarified by a core-group (*Kerngruppe*) consisting of two members of the municipal council, the President of the Supervisory Commission of the City Parliament, the City Chancellor as well as four senior members of the public administration and a legal expert. The core-group developed 20 working hypotheses that the revision process should follow. One of the hypotheses stated that the participation of private persons and new forms of political participation should be considered to be included into the new City Charter. The City Parliament then discussed and decided on the proposed structure of the project, which foresaw five project phases. The extent to which the public should be involved in the revision process was not entirely undisputed. Some members of the City Parliament did find the suggested participatory process too complicated and experimental. They were worried about the influence it would have on the content of the new City Charter and how the raised expectations could negatively affect the political decision-making process at a later stage of the process. The City Parliament nonetheless approved the financing credit of CHF 340,000 for the anticipated project on 16 March 2017.

Phase 1 was aimed at creating a basis for the participative phase of the revision process. The 20 working hypotheses were used as guidelines to frame and outline 13 questions, which could be discussed within a wider participation process. In this first phase, a group of experts from the areas of law, political science and municipal fiscal law were commissioned to give their expert inputs. Factsheets were prepared for the municipal council which submitted them to the Special Commission of the City Parliament. The inputs of the special commission fed into the final version of the Factsheets on 20 December 2017, framing formally the participation of the public in the second phase of the revision process.

The focus of phase 2 was the broad and interactive participation of the public, with the aim of including groups that are not included in the formal decision-making process, largely due to their lack of citizenship. With the support of an external opinion research institute (GFS Bern) the participation process was structured into various steps. The factsheets formed the basis for a direct dialogue as well as an online input dialogue, both for gathering substantial qualitative inputs. The direct dialogue consisted of four (two German and two French) dialogue groups, which took place in February 2018, where members of the special commission presented the factsheets. The members of the dialogue groups were selected at random by lottery among the inhabitants of Biel/Bienne. 59 per cent of the selected persons did attend the group dialog sessions. The main inputs referred to the desired increase of participation rights on municipality level. In addition, the promotion of political participation of youth and non-citizens was raised. The dialogue groups also discussed solutions or new forms and instruments that would be beneficial in promoting substantive political participation. The aim of the indirect online dialogue was to reach inhabitants that prefer to give their opinion in an accessible and low threshold level form. Simultaneously an online-social-media-influencer campaign was launched. The aim of the process was to have as much participation and dialogue with people living in Biel/Bienne as possible, collect different views and opinions, as



well as to increase inclusion of people without formal voting rights. The influencers were expected to motivate inhabitants in their networks to participate actively. The social media inputs were structured to get answers to specific questions as well as additional ideas and opinions of the participants. In April 2018 a structured questionnaire was sent out by mail to 4,000 people living in Biel/Bienne, which also were selected by random. 1,233 questionnaires were returned.

Based on the results from this phase, the municipal council defined benchmarks for the elaboration of the first draft of the new City Charter. Several of the identified public benchmarks that came from the public participatory processes related to political participation: Improving provision on public information, increasing political participation of non-citizens, anchoring bilingualism in participatory processes. The benchmarks stemming from the administration project groups and the parliament were not specifically aimed at political participation but included inputs to financial principles and questions of competences between legislative and executive organs.

In phase 3 a first draft of the City Charter was elaborated. Experts drafted a first version based on the benchmarks defined by the municipal council. In various workshops together with the municipal government and the special commission of the parliament the draft was written and incorporated into the drafting procedure that is legally foreseen for the revision of the City Charter, with various readings of the text in the City Parliament. The municipal council passed the draft on 30 January 2019 and issued a commentary of the draft.

Phase 4 consisted of the formal consultation process. On 5 February 2019 the municipal council's draft and the commentary were presented to the public at a public information event. The two documents together with a questionnaire were sent to political parties in Biel/Bienne, civil society organizations and associations, economic and workers' unions, district organizations as well as religious communities (*Kirchgemeinden*). Interested people got the documents directly at the information event and were able to access them online. The questionnaire also referred to political participation. One question asked whether the proposed new participation rights were deemed useful and effective and whether there were ideas for additional participation forms. The second one asked whether the administration should consult the public on certain issues and which proposed option they would prefer. Half of the consulted organizations as well as some citizens sent their comments on the first draft of the revised City Charter. The replies were made public online. The results of the formal consultation process confirmed, among other things, that there was an overwhelming agreement that new participation forms should be included in the City Charter. Private persons as well as organizations also had additional ideas of how other forms of participation rights could be included into the City Charter.

Based on the consultation inputs the draft was amended in two additional readings by the municipal council. After the first reading, the revised draft was handed over to the cantonal Office for Municipalities and Spatial Planning (*Amt für Gemeinden und Raumordnung*), for preliminary legality check, based on Article 56(1) of the cantonal law on municipalities. This preliminary approval tries to make sure that the draft that the citizens will vote on, will also be approved by the Office once it has been accepted by the citizens. On 13 September 2019 the cantonal Office concluded that there were no legal reservations towards the draft. Some minor



comments were taken up into the draft in the second reading by the municipal council, the rest of the draft remained the same.

The municipal council submitted the draft of the new City Charter to the City Parliament in autumn 2019. Many amendments were proposed.¹⁰⁸ Due to the Covid-19 pandemic, the discussion was delayed. In light of the high number of amendments, the (newly elected) City Parliament decided in December 2020 to refer the draft back to the municipal council for examination and preparation of proposals. It is currently uncertain when the new City Charter will be put to the vote of the citizens of Biel/Bienne and when it will enter into force.

Assessment of the Practice

Looking at this practice in the context of an urban municipality, we can see that participation was a means for collecting inputs from citizens to make the process more responsive to their needs. Informal and formal participative instruments provided substantial ideas into law-making and political decision-making. Informal and formal participation can be combined successfully and lead to substantive results, if the overall working processes are clearly structured and framed, fitting into the overall system of decision-making.

Informal instruments work out fine, if the formal processes of law-making provide the space needed, if they are duly respected and if the political stakeholders are open for such inputs. The benchmarks of the broad participatory process of the first phase were taken up into the formal law-making process by the city's legislative and executive authorities, without legal obligation to do so. However, due to a variety of reasons, the city charter could not be adopted in one legislature as it was planned. The newly elected parliament does not feel as committed to the procedure as the previous parliament, and the momentum could be lost. 'Informal' does not mean 'unstructured' – to the contrary: Informal processes should be prepared and structured carefully. The contribution of a variety of external experts in framing the process and facilitating dialogue between citizens and the authorities was crucial in this case, able to coordinate, facilitate and sequence the various participative instruments according to their specific purposes and limits. Informal and formal participative processes are time and resource intensive but if well sequenced, transparently structured, well designed and managed, they can lead to innovative results and increase credibility, responsiveness and legitimacy of city authorities.

Different participation tools and instruments (such as information hearings, dialogue meetings, on-line discussions, public surveys, social media campaigns etc.) have different aims. It is important to be clear about the purpose, the target groups, the use of the expected results from the beginning, and balance the various tools and instruments accordingly in the working process.

Moreover, we can see that approaching specific groups and stakeholders can be challenging: How to get their views? Who is representing and speaking for them? Who can bring innovative

¹⁰⁸ 'Auszug aus den Verhandlungen des Stadtrates' (Secretariat of the Municipal Council) <https://www.biel-bienne.ch/public/upload/assets/8384/15_16_%2820.u.21.11.19%29_d_def.pdf> accessed 26 March 2020.



ideas? A thorough analysis of the power dynamics at play is important to ensure inclusivity. A combination of different formats and channels are useful to get the views of different groups.

Framing and managing expectations of people involved in the participatory process is vital to avoid frustration, since political participation does not mean ‘my opinion is the only that will count’. The space for local decision-making is often not as broad as citizens may expect. In addition, the final decision on the formal adaptation of the new City Charter is left to the democratically elected City Parliament/municipal council as well as the municipal vote (open to all citizens but not all of the people that were involved in the participation process of the development stage in phase 2).

The informal participation brought new ideas on (formalized) political participation to the political system and materialized in a legal change of formal participatory practices in the City of Biel/Bienne.

Finally, we can see that digital channels can be helpful to tap into new groups that traditionally would not participate in the process. Consulted experts emphasized that on-line instruments and social media are often used by interest groups to quickly build up political pressure, while many authorities are not yet experienced with these phenomena.

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Cantonal Regulation on Municipalities (Gemeindeverordnung (GV)), BSG 170.111

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5.5 Citizen's Participation in Decision-making on Public Investment: Public Pool in Rural Area (Huttwil, Canton Berne)

Erika Schläppi and Kelly Bishop, *Ximpulse GmbH*

Relevance of the Practice

This practice is an example of a participatory process relating to a renovation project of a public pool in a rural town. The process shows the advantages of an informal participatory tool aimed at understanding the public's interest in and create majority support for a renovation project of a public space. It underlines the linkage and interaction between formal and informal participation forms. The citizens' formal competence to decide on the expenditure for the municipal investment (through the municipal assembly and even a possible voting by ballot) influenced the municipal government's openness towards incorporating a variety of public interests at the very beginning and during the project development.

Description of the Practice

Huttwil is a municipality in the Canton of Berne with around 5000 inhabitants and an area of 17.24 km². According to the Swiss statistics Huttwil is classified as intermediary, with urban as well as rural characteristics. 13.74 per cent of the people living in Huttwil are non-citizens. The public swimming pool of Huttwil was built in 1922 and renovated in the Eighties. The old public pool did not fulfill the legal safety requirements anymore and needed renovation. The municipality is the owner of the pool, the Swimming Pool Association its operator.

It was clear from the beginning that the renovation of the pool would be too costly to be decided by the municipal council (the executive organ) or even the municipal assembly (the legislative organ) only. The Organizational Ordinance of the Municipality of Huttwil foresees in Article 4 that the residents of Huttwil (the Swiss citizens domiciled in Huttwil) decide on financial expenditures over CHF 1.5 million by ballot voting (referendum). Article 6 provides that the municipal assembly (an assembly of all citizens, where all Swiss citizens domiciled in Huttwil are invited to participate) decides on expenditures that are over CHF 500,000 to 1.5 million. For expenditures between 100,000 and CHF 500,000 the municipal council's decision is subject to a facultative referendum: If 5 per cent of Huttwil residents are requiring it by their signature, a public ballot is organized. According to Article 16, the municipal council can decide on expenditures that amount to less than CHF 100,000 independently.

In 2015, the municipal government conducted a public survey to find out what Huttwil citizens thought about the renovation needs of the public pool. The questions ranged from general on the state of the public pool, to more detailed ones on the opinion about specific necessary improvements. The public was asked to rate the importance of certain amenities of the pool,



such as a diving tower, water slide or a kids' pool. Each question had set answers listed which could be rated according to one's importance. Every question included the possibility to add one's own idea concerning the question. 586 answers were handed in and showed that there was a broad interest in maintaining and renovating the existing public pool. This confirmed and motivated the municipal council to prepare for the renovation project. Later, in early summer 2018, the idea of building a new public pool in another location of the town ('CAMPUS') together with a private partner was brought up by a local citizen's group. However, the municipal council decided in November 2018 to continue to favor the renovation of the existing pool and proposed to the municipal assembly of Huttwil to approve two financial expenditure decisions, a first one for planning the renovation in detail and a second one on investments for the urgent and provisional reparation of the existing pool.

At the municipal assembly's session on 30 January 2019, the participating citizens discussed the two options (renovation vs. new pool) in terms of size and quality of the infrastructure, the location, security issues and costs in detail. Various stakeholder groups took the floor and stated their opinion. Finally, the municipal assembly voted on the proposals and concluded that the municipal council would be allowed to spend a specific amount for planning the renovation, and another amount for the urgent reparation of the heating system of the existing pool. It was also decided that the private group that initiated the CAMPUS project would develop their own plan regarding the new pool and calculate the public expenditure that would be implied. Lastly, the assembly held that the municipality would decide which option they preferred, based on accurate information on the public expenditure implied, by public ballot on 9 February 2020.

During 2019, the two construction plans were developed, with cost estimations for the municipal budget. The municipal council informed the Huttwil citizens in detail about the possible two projects and the implied expenditures for the municipality at a public meeting on 14 January 2020. In addition, the municipal council published detailed information online in January 2020. The municipal council did not issue a recommendation or preference for either of the projects and respected the decision of the municipal assembly to let the citizens vote on the two options. The public ballot took place on 9 February 2020. The vote turned out in favor of the less expensive renovation option and against the privately initiated option which would have been more expensive and would even have led to a raise in municipal taxes. The overall cost of the renovation of the public pool will be CHF 5 million with additional yearly costs of CHF 350,000 (operating cost incl. depreciation and interest).

Assessment of the Practice

Looking at this practice, we can see that the initial public survey made Huttwil citizens participate in the needs' assessment. This served as an indicator to the municipal government on how important the public pool was in the community. The ideas and concerns of the public could be taken up from the beginning of the project, making it responsive to the expressed needs.

In smaller, rural communities the municipal assembly is an important arena for political deliberations and offers possibilities to discuss and develop jointly options that are innovative,



beyond the narrow space of formal political participation which is focusing on ‘yes’ or ‘no’. Particularly for more urban settings (mostly with municipal parliaments), consulted experts stressed, however, that the authorities must keep the responsibility and task to design concrete projects and doubted whether the design and planning of a concrete investment project should be left to a citizen’s group, taking to account the complexity of the legal and financial framework for such projects.

Moreover, we can see that through the formal rights of participation (in the municipal assembly, or by ballot voting), local authorities are forced to take citizen’s opinions seriously and – formally or informally - open up to new ideas coming from citizen’s groups.

The public debate around a common endeavor – even if the debate is controversial – strengthens the credibility of political processes and lastly the legitimacy and acceptance of municipal authorities. The effective use of participative instruments helps increasing the citizen’s sense of belonging to the municipality.

Letting the resident citizens decide on the two options, being aware of the expenditure involved and the consequences on municipal taxes, helps the municipal government justify and confirm its decision and brings broad legitimacy and acceptance towards the public investment. If the participatory processes are perceived by citizens as appropriate and well done, the final decisions are broadly accepted and it can be expected that they will not be questioned any more during the implementation phase. Thus, investing time and resources in sound participatory processes may result in economies in the implementation phase.

References to Scientific and Non-Scientific Publications

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Cantonal Law on Municipalities (*Gemeindegesezt* (GG)), BSG 170.11

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6. People's Participation in Local Decision-Making in Austria

6.1 The System of Local Government in Austria

Dalilah Pichler, *KDZ Centre for Public Administration Research Austria*

Types of Local Governments

The Austrian Constitution defines Austria as a federal state formed by nine *Länder*. These are further divided into districts (*Bezirke*), administrative units executing tasks for both the *Länder* and the national government, where no statutory city exists. There are, however, 15 statutory cities (*Statutarstädte*) with a special statute, combining the authority and responsibilities of a municipality and a district. Municipalities (*Gemeinden*) are granted the right to self-government as independent administrative bodies in their sphere of competence by Article 116 of the Austrian Constitution. In sum, the three relevant levels of government are the central government, *Länder* and municipal level with some exceptions such as statutory cities which are assigned responsibilities from district level as well as the Capital City of Vienna, which is a municipality and a *Land* at the same time.

Legal Status of Local Governments

The Austrian Constitution of 1920 entrenches and protects municipalities not only as local administrative units but also as institutions of self-government (Article 116(1)). However, Articles 115–20 of the Constitution also extensively predetermine the organization of municipalities, their powers and intergovernmental relations. This tight national constitutional regime reduces the complementary power of the *Länder* under Article 115(2) of the Constitution to autonomously regulate local government through their own laws (*Gemeindeordnungen*) which results in a tendency towards uniformity.

As for their responsibilities, municipalities may only act lawfully on the basis of competences that are expressly conferred upon them and circumscribed by either national or *Land* legislation. However, this legislation *must* make them responsible for 'all matters that exclusively or preponderantly concern the local community' and are 'suited to performance by the community within its local boundaries' (Article 118(2) of the Austrian Constitution). Whether national and *Land* legislators observe this rule is checked by the Constitutional Court.

The own autonomous competences of municipalities on this basis, which exist in addition to the competences delegated from the national or *Land* government, include, in particular, the following areas: traffic and transport; gas, water and electricity supply; waste collection; sewage disposal; kindergarten, parts of education; elderly care; cemeteries; and cultural and sport facilities are all within the competences of municipal administration. For providing these



public services, municipalities manage their own budget independently and can own assets of all kind and operate economic enterprises. A major share of municipal budgets comes from intragovernmental transfers, which is a complex system of re-distribution of revenues across all levels of government.

(A) Symmetry of the Local Government System

The distribution of powers is uniform for all municipalities and therefore fails to take into account differences between bigger urban and smaller rural local governments. The Austrian Constitution adheres to the ‘principle of the abstract uniform municipality’, as enshrined already in 1920. This means that, with the exceptions of the above-mentioned statutory cities and the capital Vienna,¹⁰⁹ all municipalities enjoy, also regarding their competences, equal legal status irrespective of variations in territorial size, population or economic and administrative capacities.

Performing the same tasks as big municipalities can be challenging for Austria’s smaller municipalities. The latter are the majority, as 55 per cent of 2,096 municipalities (in 2018) have less than 2,000 inhabitants and 88 per cent have less than 5,000 residents. Thus, Article 116(a) of the Austrian Constitution lays down the possibility for inter-municipal cooperation in the form of local authority associations (*Gemeindeverband*) to manage certain areas of responsibility such as water supply or waste management (single-purpose associations). Since 2011, the founding of multi-purpose associations (*Mehrzweckverband*) between municipalities is possible in order to go beyond coordination and centralize public service provision such as regional planning, economic development or welfare services. Even though it is legally possible, such multi-purpose associations are not very common.

Another form of cooperation is the possibility of municipalities merging into an institutionalized regional authority, the ‘territorial municipality’ (*Gebietsgemeinde*), as foreseen by Article 120 of the Constitution. The territorial municipality offers the possibility of bundling and/or controlling as many tasks as possible on a regional level, while at the same time maintaining decentralized provision of services by the individual local communities. The preservation of the local identity is guaranteed by own local mayors and municipal councils. However, this form of territorial merger (as opposed to amalgamations) is considered ‘dead law’, as it has never been put into practice.¹¹⁰

Political and Social Context in Austria

¹⁰⁹ Vienna has different competences because it is at the same time a municipality and one of the nine *Länder* (Arts 108-112 of the Constitution).

¹¹⁰ Thomas Prorok and others, ‘Struktur, Steuerung und Finanzierung von kommunalen Aufgaben in Stadtregionen’ (KDZ 2013) <<https://www.kdz.eu/de/content/struktur-steuerung-und-finanzierung-von-kommunalen-aufgaben-stadtregionen>> accessed 31 January 2020.



The two major parties, the conservative Austrian People's Party and the Social Democratic Party of Austria have historically shared the parliamentary majority, with the right-wing Austrian Freedom Party ranging on third place with a significant share of votes since the 1990s. Other smaller parties are the Green Party and the liberal NEOS party. All mentioned parties are currently represented in different levels of government with different majorities. On the local level, apart from local independent candidate lists, the majority of municipalities are still split between the People's Party and the Social Democrats. This is also reflected in the organization of municipal associations, one being the Austrian Association of Municipalities (*Gemeindebund*), which is typically associated with the conservative party and smaller rural municipalities, and the Austrian Association of Cities and Towns (*Städtebund*), being organizationally closer to the Social Democrats and representative of larger cities.¹¹¹ However, this differentiation should be seen in a more historical context, as many municipalities and cities are members of both associations.

As of 2018, 52 per cent of Austria's population lived in municipalities with less than 10,000 inhabitants and 48 per cent in only 86 larger towns and cities, with Vienna alone having 21 per cent of the Austrian population.

As in many countries, urban and rural areas in Austria face different social problems and demographic challenges. Regarding poverty and social exclusion, for example, residents of Austria's urban areas are more at risk than their rural counterparts because of more single parents' households and more households with no or little income.¹¹² On the other hand, rural areas are confronted with out-migration especially of young people, women and highly educated people to cities. This has significant long-term effects on economic development, as well as the provision of health care and elderly care services.¹¹³

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<<https://www.bmlrt.gv.at/service/publikationen/land/masterplan-laendlicher-raum.html>>

¹¹¹ The representation through either one of these associations is constitutionally regulated in Art 115(3) of the Constitution.

¹¹² Österreichischer Städtebund, 'Österreichs Städte in Zahlen' (2017) 42.

¹¹³ Bundesministerium für Land- und Forstwirtschaft, Nachhaltigkeit und Wasserwirtschaft, 'Masterplan ländlicher Raum' (BMLFUW 2017).



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6.2 People's Participation in Local Decision-Making in Austria: An Introduction

Dalilah Pichler, *KDZ Centre for Public Administration Research Austria*

The concept of people's participation in a representative democracy has many different layers. It can range from an informative character, to public consultations, and can go as far as co-decision-making or co-production. In Austria, traditional instruments of direct democracy are of high relevance, as they are embedded in the Austrian Constitution, namely the referendum, the popular initiative and the public consultation. These instruments are primarily set out for the two legislative authorities on federal and *Länder* level.¹¹⁴ However, the Constitution also enables *Länder* legislation to stipulate possibilities of direct participation and involvement on municipal level, but only in matters within the municipality's own sphere of influence and reserved for citizens who are entitled to elect the municipal council. Following this proposal, all *Länder* have in different scopes embedded possibilities of local plebiscites in their legislations, which vary between the *Länder*. The main differences are of procedural nature and of how the requirements are set for the initiation of such instruments. The referendum for example is typically intended for resolutions of the local council, however citizens do not always have the possibility to enforce it. The popular initiative can be initiated in all *Länder* and in statutory cities, however not in all municipalities, depending on the provincial legislation.¹¹⁵

Idealistically, the citizens of a municipality are given the right for self-governance, but the law curtails this right of direct democracy in certain topics on the local level such as questions on budget, personnel, elections, fees and taxes etc.¹¹⁶ Public consultation is the most wide-spread and used instrument of direct democracy in Austrian municipalities.¹¹⁷ Also transparency rules and information processes for the public in municipal governments are embedded in legislation of most of the *Länder*.

Nevertheless, the legislative instruments reach to the rungs of information and consultation in the participation ladder. There is no obligation of councils or other legislative authorities to adhere to the outcome of public consultations or popular initiatives. A change would require a constitutional revision, as representative democracy cannot be overruled by such initiatives. This does not mean that the 'softer forms' of participation are not present. There have been efforts in some *Länder* to install 'citizen councils' of randomly chosen citizens who are representative of the population to enhance deliberation of specific political topics. These

¹¹⁴ Alexander Balthasar, 'Die Europäische Bürgerinitiative und andere Instrumente der direkten Demokratie in Europa' in Peter Bußjäger, Alexander Balthasar and Niklas Sonntag (eds), *Direkte Demokratie im Diskurs* (New Academic Press 2014).

¹¹⁵ Anna Gamper, 'Partizipation und Bürgerbeteiligung in Österreichs Städten' in Österreichischer Städtebund (ed), *Österreichs Städte in Zahlen* (2015).

¹¹⁶ Werner Pleschberger, 'Kommunale direkte Demokratie in Österreich – Strukturelle und prozedurale Probleme und Reformvorschläge' in Theo Öhlinger and Klaus Poier (eds), *Direkte Demokratie und Parlamentarismus* (Böhlau Verlag 2015).

¹¹⁷ Thomas Prorok, 'Beteiligung von BürgerInnen in Zeiten von Open Government' in Thomas Prorok and Bernhard Krabina (eds), *Offene Stadt* (NWV 2012).



‘citizen councils’ formulate a joint statement that serves as a suggestion for further debate and political decision-makers can derive measures from the outcome of these discussions.¹¹⁸ The inclusion of multiple stakeholders in planning and/or decision-making processes can also be found, often in the context of improving quality of life in a municipality. This is particularly reflected in the *Lokale Agenda 21* (LA 21) processes, based on the UN Agenda 21 action plan to which both national and *Länder* governments have committed to. With facilitation of their *Länder*, municipalities can implement different participative formats within the LA 21 process for creating a vision for the local community, the setting of common goals and strengthening cooperation between citizens, administration and politicians.

New and innovative forms of peoples’ participation have yet to come into practice. Major restrictions in the current system of municipal direct democracy are taboo topics for plebiscites and a high threshold for starting a participatory process, politicization and targeted use of such instruments for agenda setting, and the perception of participatory instruments for deliberation rather than decision-making.¹¹⁹ This means that participatory mechanisms are initiated and rather driven by political parties, rather than citizen being able to actively influence public policies. Especially the referendum, where the outcome is legally binding for representatives, is rarely used although there is a general interest of the population to be more involved in direct democratic procedures.¹²⁰ However, the softer and less regulated forms of participation pave the way for more deliberation in the public sphere. Local governments can obtain valuable knowledge and gather ideas for certain topics, if they provide an adequate framework for the participants.

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¹¹⁸ Manfred Hellrigl, ‘Bürgerräte in Vorarlberg’ in Peter Bußjäger, Alexander Balthasar and Niklas Sonntag (eds), *Direkte Demokratie im Diskurs* (New Academic Press 2014).

¹¹⁹ Pleschberger, ‘Kommunale direkte Demokratie in Österreich’, above.

¹²⁰ Max Haller and Gert Feistritzer, ‘Direkte Demokratie in Österreich. Ergebnisse einer repräsentativen Bevölkerungsumfrage’ in Peter Bußjäger, Alexander Balthasar and Niklas Sonntag (eds), *Direkte Demokratie im Diskurs* (New Academic Press 2014).



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6.3 Open Government Initiative Vienna

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Relevance of the Practice

Open government is the comprehensive redesign of politics and administrative activities according to the principles of modern public management and public governance. Open government focuses on data transparency (stage 1), participation (stage 2), and collaboration (stage 3). Open data (stage 1) can provide a basis for political processes in participation (stage 2). In collaboration projects (stage 3), data may result that are published in the data portal, on the one hand (stage 1), but may also be the basis for further participation processes on the other (stage 2).

Open government aims to achieve the ubiquitous engagement of stakeholders (stage 4) to strengthen legitimacy and confidence and generate public value. This is achieved through transparency (stage 1), participation (stage 2), and collaboration (stage 3).

In the era of open government, the involvement of citizens beyond consultation processes is gaining traction. Open government collaboration in particular emphasizes the importance of 'co-production', which can differ in intensity from joint performance of typically public tasks down to task delegation and voluntary activities performed by citizens.

The City of Vienna is on the forefront of open government, with several activities starting in 2011 until the present day.

Description of the Practice

The City of Vienna was the first city to start an open government initiative in the German-speaking countries. It started with the launch of an open data portal in May 2011 and the publication of the 'Open Government Implementation Model'¹²¹ as a strategy document stressing the importance of data, participation and collaboration as phases on the path to a more open and transparent government. Since then, the City of Vienna has developed a track record of a new openness in their approach to the topic. For instance, the initial launch of the open government initiative was accompanied by stakeholder-workshops which were announced in social media and open to everyone interested to participate. Three workshops were held: one for politicians, one for businesses and one for citizens. The workshops were held with the aim to prepare for the first open government data conference in Austria. The publication of new datasets on the open data portal <<https://open.wien.gv.at>> is done in phases that include events where datasets are presented by representatives from the city administration where interested stakeholders can ask questions and propose changes. In

¹²¹ Bernhard Krabina and Brigitte Lutz, 'Open Government Implementation Model' (KDZ, undated) <<https://www.kdz.eu/en/open-government-implementation-model>> accessed 2 August 2019.



March 2020, the 38th phase was presented.¹²² Moreover, the 'Cooperation OGD Austria' was formed, led by the City of Vienna, including further authorities and NGOs to set the basic agreements for the future of open government data in Austria.¹²³ The cooperation was awarded the UN Public Service Award in 2014 in the category 'Improving the delivery of public services'.

In addition to the open data portal, a participation platform was launched at <<https://www.partizipation.wien.at>> where continuously users can suggest new datasets and the city administration is reacting upon these requests. The Austrian participation software 'discuto'¹²⁴ is used. On this participation platform, the City of Vienna is continuously implementing participation project ranging from the discussion of a digital agenda, asking for ideas for artificial intelligence and internet of things to the discussion about district budgets.

A digital agenda for Vienna was initiated with several participatory elements (both online and offline).¹²⁵ The initiative 'DigitalCity.Wien' was further launched in 2014 by stakeholders from businesses and Vienna together with the city administration and is in close collaboration ever since.¹²⁶ Also, the app 'Sag's wien' ('Tell it to Vienna') is an application where citizens can report a concern or malfunctioning to the Vienna City Administration at any time and place in the city¹²⁷. As the current participation platform can be used mainly for generating new ideas or discussing and rating existing ideas, the city administration has launched a 'challenge' to present possible solutions for a more holistic participation platform.¹²⁸

Assessment of the Practice

The open government initiative of the City of Vienna shows a sustainable initiative that does not end by publishing data on a data portal but demonstrates how continuous participation of stakeholders can be achieved through multiple channels: in-person meeting at the OGD phase events, through idea generation on the participation platform, in conferences and workshops and through social media. This way the city administration is in continuous dialogue with external stakeholders on topics of data disclosure (what, why, in what quality, etc.) The initiative transformed the way of delivering public services in Vienna, as shown by subsequent initiatives and projects. The city administration has managed not only to convince 'sceptic' departments over time, but has also put policies in place: in May 2019, the CIO has signed the self-declaration of the Open Data Charter, stating that they will follow the principle 'Open by

¹²² '35. Open Government Plattform Wien – Nachlese' (*Digitales Wien*, 28 June 2019)

<<https://digitales.wien.gv.at/site/35-open-government-plattform-wien/>> accessed 2 August 2019.

¹²³ For more information, see <<https://www.data.gv.at/infos/cooperation-ogd-austria/>>.

¹²⁴ 'Discuto' (*Discuto*, undated) <<https://www.discuto.io>> accessed 2 August 2019.

¹²⁵ For more detail, see <<http://digitaleagenda.wien>>.

¹²⁶ See <<https://digitalcity.wien>>.

¹²⁷ See <<https://smartcity.wien.gv.at/site/en/sags-wien-application/>>.

¹²⁸ See <<https://www.ioeb-innovationsplattform.at/challenges/detail/wien-gemeinsam-gestalten-instrumentenbox-fuer-partizipation/>>.



default'.¹²⁹ The practice shows how larger cities can lead the way also for smaller municipalities. With the publication of the Open Government Implementation Model,¹³⁰ a practical guide for other authorities has been provided. Vienna also leads the Cooperation OGD Austria where other cities and smaller municipalities can benefit from the early experiences of Vienna.

At a first glance it seems that only the large cities in Austria have the power to publish datasets on the Austrian open data portal.¹³¹ The exception is the Municipality of Engerwitzdorf, a small municipality of about 8,000 inhabitants in the vicinity of the City of Linz which publishes more datasets than the cities of Graz, Innsbruck and Salzburg. Of course, according to the size of the municipality, larger cities do not only have more data, they also have more resources to publish them. But also smaller municipalities (like Engerwitzdorf) show that it is possible to provide OGD continuously. Platforms like Open Spending Austria¹³² show that it is important especially for smaller municipalities to provide open data automatically – either by re-using existing data provision mechanisms (like transferring data about municipal spending to the statistics office) or by integrating OGD interfaces in municipal software solutions.

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¹²⁹ Letter from Ulrike Huemer, CIO of the City of Vienna (13 May 2019)
<https://drive.google.com/file/d/1k3wn1ti57J2hP63IoR3eoSNIUHr4_TFp/view> accessed 10 March 2020.

¹³⁰ Krabina and Lutz, 'Open Government Implementation Model', above.

¹³¹ See the list at <<https://www.data.gv.at/veroeffentlichende-stellen/>>.

¹³² For more detail, see the report section 3.2. on Budget Transparency with Open Spending Austria.



6.4 People's Participation in Vorarlberg: Bürgerräte and Gemeindeentwicklungsprojekte Götzis/Langenegg

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Relevance of the Practice

Both participation projects aim at involving both citizens in general and vulnerable groups in a more approachable democratic way. Thereby the gap (parallel worlds) between politics and administration and the reality of citizens' lives should be reduced in the long term and the citizens' personal responsibility and degree of self-organization ('less consumerism/consumer behavior towards politics and administration') should be strengthened. At the same time, new solutions (mainly social innovations) will emerge through the diversity of participants (swarm intelligence and 'thinking outside the box'). These objectives are based on the long-term experiences with participatory processes in the *Land Vorarlberg* and coincide with the impacts that the Office for Voluntary Engagement and Participation of the Land Vorarlberg wants to achieve with local and regional participatory processes. In the case of the *Bürgerräte* (citizens' councils), practice shows no urban-rural divide in application, while the '*Lebenswert leben*' or '*zämma leaba*' (living together) project by Langenegg and Götzis had to be broken down to local districts (quarters or allotments/parcels) for effective implementation.

Problematic realities connected with the urban-rural divide and interplay are targeted in particular where topics are discussed that cannot be resolved within administrative borders like climate adaptation, mobility, settlement development or the preservation of natural resources. In this context for example the *Bürgerräte* on mobility in 2018 and on dealing with land and soil in 2017 contributed to improve the urban-rural interplay.

Description of the Practice

Bürgerräte in Vorarlberg

The *Bürgerrat* is a multi-stage, flexible participation procedure which is usually composed of twelve to fifteen randomly selected citizens. In order to reflect the heterogeneity of society in the citizens' council, attention is paid to an appropriate distribution of different age groups as well as gender and place of living. 'The practice of random selection enables a fact-oriented and uninfluenced formation of opinion', says Prof. Hans J Lietzmann, head of the research center for citizen participation at the University of Wuppertal.¹³³ Due to the random selection

¹³³ Hans J Lietzmann, 'Bürgergutachten Flächennutzung Breitwiesen/Hammelsbrunnen. Weinheimer Bürgerräte 2012' (University of Wuppertal 2012) <<https://www.buergerbeteiligung.uni-wuppertal.de/en/buergerbeteiligung/gutachtenwerkstatt-papiere/2011-2016/buergerbeteiligung-2012-weinheim.html>> accessed 12 July 2020.



and the absence of any special expertise or qualifications, the participants' everyday knowledge is put in the foreground. Furthermore, the special moderation technique 'Dynamic Facilitation' enables breakthroughs in solution finding.



Figure 2: Process flow of a Bürgerrat.¹³⁴

In order to ensure that the discussion outcomes from the *Bürgerräte* are taken up, the results from the *Bürgerräte* are incorporated by the so-called resonance group consisting of representatives from politics and administration (see figure above) into the formal political process and reflects on them. At the *Bürgerrat* on the topic of 'Future Agriculture' for example, which took place in October 2019, the resonance group, consisting of experts from the agricultural sector together with two participants from the *Bürgerrat* met several times reviewing the results of the *Bürgerrat* and connecting links with already existing processes, projects and strategies.¹³⁵

Since 2006, more than 40 local and regional *Bürgerräte* have been held in Vorarlberg and discussed a wide range of topics such as: Living and getting older in Götzis – What is important?; How can the high quality of life in the community be maintained?; What are the most pressing topics in Vorarlberg?; How does a good neighborhood succeed?; How can we implement energy autonomy?; How can we revitalize the city center?; What does a future-oriented education look like?

By anchoring participatory democracy in the *Landesverfassung* (Constitution of Vorarlberg) in January 2013, a pioneering act in Europe, citizen participation and thus the *Bürgerräte* were given additional importance. Citizens' councils following the model of Vorarlberg are primarily also held in Germany (*Zukunftsräte*), Switzerland and in other Austrian *Länder*.

¹³⁴ Kriemhild Büchel-Kapeller, own illustration.

¹³⁵ For further information and concrete results, see <<https://www.buergerrat.net/at/vorarlberg/landesweiter-buergerrat/buergerrat-zukunft-landwirtschaft/>>.



Participation Projects '*Lebenswert leben*' and '*zämma leaba*' (Living Together) Langenegg and Götzis

'*Lebenswert leben*' is a long-term project of citizen participation at local and regional level. The aim is to strengthen cooperation between municipalities and to demonstrate the importance of social capital for successful future development. The project started in 1997 and has now been implemented in over 15 municipalities. Both the Großes Walsertal biosphere park and the Bregenzerwälder local government (LG) of Langenegg that have undergone the '*Lebenswert leben*' or '*zämma leaba*' process are winners of the European Village Renewal Prize.

More than 50 projects have been implemented so far in both municipalities of Götzis and Langenegg. These include: Citizens' offices, voluntary transport services for elderly people, 'Hello neighbor plot parties', strengthening local supply, repair cafés, etc.¹³⁶

The core team of volunteers plays a key role in the process. It is composed in a way that its members reflect a cross-section of the population (women, men, age distribution: young people to senior citizens, various occupational fields and skills). The selection of the core-team members is made in consultation with so-called 'opinion leaders' (usually mayors, municipal clerks, teachers etc., who 'know' the people in the community and their talents for welfare) and the process facilitators, who ensure a balanced distribution or composition in the core team and, if necessary, demand this. The task of the core team is to motivate a wide variety of citizens to work and network with local actors, and to thereby establish new collaborations such as between companies and schools, restaurants and clubs, associations with informal initiatives or between neighboring municipalities.

Since the participants choose topics relevant to their own concerns and self-efficacy, they are highly motivated to work out and implement solutions on their own responsibility. The variety of topics include both isolated topics (e.g. using vacancies, individual help for elderly people etc.) – usually carried out in sub-groups – and longer-term issues (e.g. affordable housing, childcare, climate change, etc.). To keep up the motivation for longer-term commitment teambuilding activities and regular reflection in the team (Where do I stand? What are my success experiences? Where are hurdles? Who could support me? What gives meaning to my commitment? etc.) are crucial. In this context an innovative solution was developed in Langenegg: there, the voluntary engagement is limited to two years. After that, a new person 'automatically' takes over. This time limit makes it easier to find volunteers. In Götzis, the volunteers could take some time off or 'rest' their project if their motivation significantly dropped. Also working on a topic in teams cushions possible motivation loss. To maintain motivation both the recognition and appreciation by the municipality (politics) and – if projects cannot be implemented – clear explanation and justification is essential. However, often it is possible to realize a project only by reorienting the objectives or at least partial steps which also contributes to keep up the commitment.

The project implementation is carried out by involving different groups active on local level such as schools, companies, associations, institutions or engaged individuals or groups. This

¹³⁶For more information on the projects, see <<https://hdg-vorarlberg.at/ehrenamt/zaemma-leaba-zgoetzis/projekte-zaemma-leaba/>; <https://www.langenegg.at/initiativen/>>.



not only results in wide impact, it also signals the openness of the process (non-partisanship) and the importance of the topic (sustainability/*Enkeltauglichkeit*). The link between the volunteers and their projects and politics is the core team. Reporting regularly on the progress of the projects in the meetings of the municipal council is one of the core team's tasks to create linkage with the overall political process.

Wer sind die Akteure auf Gemeindeebene?

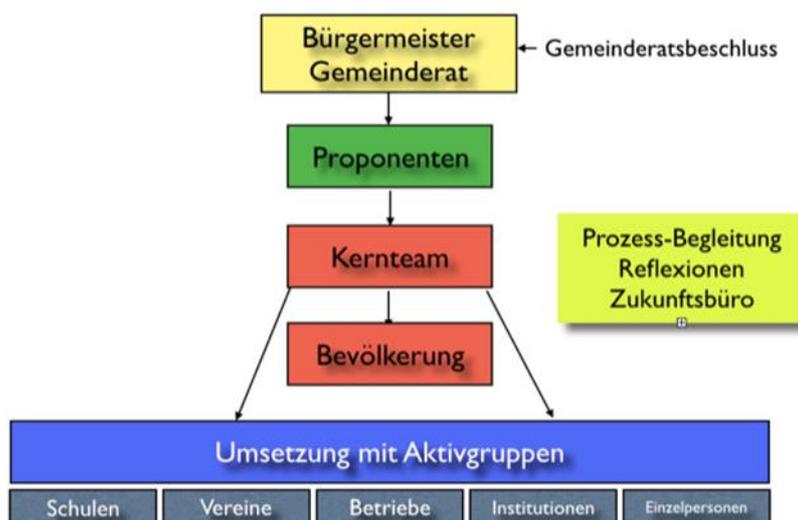


Figure 3: Actors within 'Zamma leaba – Living together'.¹³⁷

To get financial support for the projects, every proposal must include a cost estimation and timeline. If necessary, a request for financial support from the municipality must be submitted by the applicant. Based on the official decision of the municipal council to start the project, municipal budget will be reserved for it in advance. Depending on the topic also funding from the *Land* (e.g. for a cultural project) can be received additionally. Occasionally also sponsoring from companies supports projects.

Beside supporting the process and coaching, an in-depth evaluation is carried out after a year and a half at the latest. In doing so, the achieved impact and planned projects are 'played back' to the municipal council. At the same time, essential learning progress has been generated, both for the core team and the whole municipality.

Assessment of the Practice

Both examples of people's participation in Vorarlberg demonstrate that citizens' participation contributes to more inclusive policies and can give a boost to social innovation, no matter if it is applied in urban local governments (ULGs) or rural local governments (RLGs). However,

¹³⁷ Kriemhild Büchel-Kapeller, 'Zamma leaba – Living together'. (Participation & Sustainable Development in Europe) <<https://www.partizipation.at/living-together.html>> accessed June 19 2020.



challenges of effective participation processes need to be taken into account to successfully meet the goals of involving citizens in local decision-making.

Strengths:

- the perspective of those affected is targeted;
- challenges are faced holistically and, simultaneously an environment for innovative solutions is created;
- both approaches increase the overall understanding and acceptance of projects and political decisions.

Further strengths relate to connection and identification: the regular meetings over a longer period of time strengthen the social capital, which in turn positively affects both the identification with the location and the innovation potential. Both projects are an expression of a new culture of collaboration since they contribute to bringing civil society engagement into the existing processes of decision-making. To manage differing interests within civil society, the 'Dynamic Facilitation' method has proven to be very effective in constructively negotiating controversial issues and points of view with each other.

Balancing the relationship between civil society, politics and administration on the one hand and integrating participatory elements in representative democracy on the other hand are the main objectives. Citizens, politics, administration are 'acting in concert' to improve the quality of life and to contribute to a sustainable future both in ULGs and RLGs. Success in both rural and urban areas depends on whether a cooperation between politics and administration and civil society is based on trust and mutual appreciation. If this is lacking voluntary engagement will not be successful. In rural areas, this basis of trust tends to exist more often due to the small scale of the area and the fact that 'everybody knows everybody'. However, even in rural municipalities deep divides need to be overcome. Therefore, mediation processes are needed beforehand so that people build trust and work towards a common goal.

A final strength relates to the term 'glocal': Municipalities and regions are affected by high financial requirements (increasing costs severely limit freely available financial resources) as well as by far-reaching societal changes: demographic change, migration and integration, economic upheavals, weakening of local supplies etc. To address the challenges of globalization and urbanization, such participation projects are about strengthening local and regional realities, i.e. resource-oriented rather than deficit-oriented. Active coexistence and a lively 'we-feeling' at the local and regional level create positive impact on education, health, local value creation (local supply), increase the ability to innovate and create individual benefits for everyone. This is demonstrated not only by the activities of the '*Lebenswert leben*' municipalities but also by the analysis of the Vorarlberger social capital studies.

Weaknesses:

- the participants need to commit themselves for a relatively long period of time. Hence, it might be difficult to recruit participants or to keep them active in the long-term;
- the process can create a feeling of exclusiveness and thus a 'VIP-effect' on non-participants;
- since only a selection of citizens is involved, the data collected is not statistically significant.



Participatory processes are not useful if the municipal leaders (politicians as well as the administration) are not ready to take up recommendations and suggestions from the citizens. General concerns about the meaning and the value of citizen's participation impede successful processes, regardless of whether they are planned to be carried out in urban or rural areas. For this reason, raising awareness in the committees (politics and administration) about the value of participation processes together with clear framework conditions for the participation process in advance is crucial. Participatory processes are moreover not useful if there is no scope for action, or if the results are already fixed in advance; or if municipal elections are due in near future. Due to the election campaigns, projects and to some extent also the people involved can get crushed in party-political wrangling. A 'neutral' cooperation across party lines is difficult if not impossible in election times. Also, the responsible politicians often do not want to make any decisions until after the election, so that projects are interrupted for a long time.

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6.5 Participatory Budget in the Vienna District of Margareten

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Relevance of the Practice

Participatory budgeting is a practical tool for any governmental level to involve residents in a process of deliberation and decision-making on how public budgets should be spent. The following practice has been chosen due to its first mover role within the districts of the City of Vienna, where the concept has been extended to further districts after the pilot phase. The initiative contributed to a better understanding of the competencies of a local level by the residents, as participants aligned their suggestions to the actual competencies of the district over time. This is particularly important as residents may blame or demand solutions from local level governments in areas which are not in their legally defined competencies. Learning how to voice their ideas and engage more with their district council is a great benefit in a democratic context, as it fosters more dialogue, ownership and understanding. Furthermore, the practice presents an important enabling factor, namely the provision of an ICT infrastructure by a higher level of government. In the case of Margareten an online participatory platform provided by the City of Vienna helped facilitate digital participation and freed resources for civil servants on the district level to focus on engaging the residents, providing feedback to participants and preparing the data for the political decision-making bodies.

Description of the Practice

With over 27,500 citizens per km², the District of Margareten is the most densely populated area of Vienna. The district representative of Margareten Susanne Schaefer-Wiery initiated the pilot project 'Participatory Citizens' Budget' in 2017, inspired by the *Bürgerhaushalt* by the German partner district Berlin-Lichtenberg, enabling residents to have a say in the development of their district. In February 2020, the platform opened for the ideas of the *Margaretners* for the fourth time.

Over the course of the month of February, the residents of Margareten are invited to submit ideas and suggestions for the development and improvement of the district on an online platform¹³⁸ or by mail. The suggestions encompass for example measures for traffic calming, improving the quality of public spaces, providing green spaces, establishing leisure spaces, playgrounds and more, which are within the competencies of the district.

After the users upload their ideas to the online platform, the office of the district representative of Margareten evaluates the individual suggestions, summarizes them in thematic clusters and checks them for their district jurisdiction. The topics which are not within

¹³⁸ Participation platform of the City of Vienna, <<https://www.partizipation.wien.at/>> accessed 24 March 2021.



the area of competence are forwarded to other entities (e.g. the public transport company) and the users informed. The structured proposals are then uploaded back onto the online platform, where any user of the platform can vote and comment on the ideas throughout the month of April. The rated ideas and comments are then submitted to the respective committees and commissions of the district council. The members of the commissions and committees prepare the basis for decision-making and possible resolutions by the district council.

There is no fixed budget amount allocated to the potential project ideas at the beginning of the process. Rather the yearly initiative aims to gather ideas by the residents which are then brought into the council rather independent of project size or possible costs. The further elaboration and evaluation of the presented ideas remains within the district council. The participants who had registered on the platform were updated on the process via e-mails. One reason for the non-binding character of the implementation of the ideas generated is the constitutional framework, which limits the participation of citizens to a consultative role in the formal decision-making processes within the council.¹³⁹

With Margareten being the first mover, the concept of participatory budget has now also been implemented in other Viennese districts, namely in Alsergrund, Simmering and Penzing using the same internet platform provided by the City of Vienna (which is municipal and state government at the same time).

Assessment of the Practice

Margareten's participatory budget can be considered a success in terms of interest by the district residents. While in the first process around 80 ideas were presented, later in 2020 around 150 ideas were submitted and 297 residents contributed.¹⁴⁰ Since there are no access restrictions, everybody who is interested in Margareten can join the project and express their ideas on the online platform, no matter which social group they belong to. The easy access and the possibility to present ideas anonymously as well as feedback to the contributors were considered relevant factors for the motivation of citizens. The only limitation is the necessary affinity to navigate online, therefore sending in ideas via postal service was included in the process but in the end hardly used.¹⁴¹ However, the downside of anonymity should also be mentioned. Residents are able to self-organize to push particular interests especially in the voting process, where a simple 'thumbs-up' or 'thumbs-down' was used to rate a proposal. The commenting was optional. As the access to the platform is open, i.e. no official identification is needed to register, the system is vulnerable to manipulation.

A key factor for the implementation was the provision of the online platform by the City of Vienna. The district was able to tap into existing resources of a larger entity and could therefore

¹³⁹ For more detail, see the Introduction to People's Participation in Local Decision-Making, report section 6.1.

¹⁴⁰ — 'Partizipatives Budget in Margareten' (*City of Vienna*, undated)

<<https://www.wien.gv.at/bezirke/margareten/politik/partizipatives-budget.html>> accessed 24 March 2021.

¹⁴¹ Interview with Astrid Böhme, Head of Office of the District Representative, District Währing (Vienna, 22 March 2021).



focus on the communication and content rather than technical implementation. However, even with this technical support, human resources were still very limited within the district administration, as the workforce each council is entitled to is regulated by law. The implementation of this participatory processes was possible due to the commitment of civil servants with the political backing across all parties of the district council.¹⁴²

Although the initiative was titled ‘participatory budget’, the way it was executed does not align with the broader scientific term. Criteria for participatory budgeting are the discussion of the budgetary dimension, involvement of the city level, a repeating process, public deliberation and some accountability for the output. In Margareten, the main process was the gathering of ideas with a voting process.¹⁴³ In general, participatory budgets are still rare in Austrian municipalities, but the concept has gained importance in recent years. For example, the City of Eisenstadt has introduced participatory budgeting in 2018, and the municipal council of the City of Graz has adopted a respective resolution in February 2020.

However, participatory budgeting appears to be less attractive for municipalities in rural areas. So far, only one rural municipality has introduced such a mechanism. The small Municipality of Vorderstoder in Upper Austria was, in fact, the first Austrian municipality to initiate a participatory budget in 2012. The local government’s primary motive was not the overarching aspiration to encourage and enable participation, but simply the necessity to select the financially feasible projects within the municipality’s limited financial scope and furthermore, support the realization of the projects through voluntary work. Despite active participation, Vorderstoder’s mayor has criticized the lack of support from the *Land*, which reduced its subsidies in response to the achieved savings on the local level.¹⁴⁴

Just like there is not one single form of political participation, there is not a single participatory budgeting method or instrument. Participation methods and instruments vary between urban and rural regions due to the different nature of their structure, especially the proximity between citizens and local government. A tightly knit community and increased face-to-face contact with residents in smaller municipalities might reduce the need for a specific participation tool. To some extent, the individual citizen naturally is more likely to participate in local decision-making in a small municipality, which may be one of the reasons for the lower appeal of specific participatory budgeting instruments for smaller, rural municipalities. However, proximity does not automatically mean participation. Therefore, modern and more inclusive instruments such as online public budgeting platforms could constitute a valuable expansion beyond the ‘usual suspects’. As it was the case in Margareten, the provision of a participatory online platform by higher levels of government could facilitate such processes and enable local level governments with limited resources to focus on content, communication and engagement.

¹⁴² *ibid.*

¹⁴³ Yves Sintomer, Carsten Herzberg and Anja Röcke, ‘Participatory Budgeting in Europe: Potentials and Challenges’ (2008) 32 *International Journal of Urban and Regional Research* 164.

¹⁴⁴ Bernadette Bayrhammer and Johanna Kainz, ‘Wenn der Bürger beim Budget mitredet’, *Die Presse* (Vienna, 27 July 2014).



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7. People's Participation in Local Decision-Making in Poland

7.1 The System of Local Government in Poland

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Types of Local Governments

Poland is a unitary state without any autonomous entities. As a consequence, a uniform system of territorial self-government exists throughout Poland. The traditions of territorial self-government date back to 1918 when, after 123 years of political oblivion, the Polish state was established. After World War II, Poland was an undemocratic and centralized state which led to, among other things, the liquidation of territorial self-government. The reconstruction of territorial self-government began in Poland with the political transformation after 1989. The first stage was the restoration of territorial self-government in communes (*gmina*) in 1990, then in 1999 the self-government in counties (*powiat*) and in voivodeships (*województwo*) was introduced.

The current Constitution of the Republic of Poland of 1997 introduces two types of territorial self-government, namely *local* self-government and *regional* self-government (Article 164). Currently in Poland (since 1999), territorial self-government is three-tier and it is structured as follows:

- self-government in communes as the basic level of local self-government;
- self-government in counties the second level of local self-government;
- self-government in voivodeships as regional self-government.

In addition, large municipalities (over 100,000 residents) may be granted the status and tasks of a counties (city with *powiat* rights/cities with *powiat* status).

Therefore, there are four levels of political representation in Poland: the state and three levels of territorial self-government.

At present (2020), there are 2,477 communes (*gmina*), including 1,555 rural *gminas*, 621 urban-rural *gminas* and 302 urban *gminas*. The population of *gminas* ranges from 1.7 million (the Capital City of Warsaw) to 1,300, and the average population of a Polish *gmina* amounts to 15,000. It means that in the comparison to other European countries, Poland's *gminas* are relatively large. If we take into account only urban *gminas*, the average population is 61,000, whereas in rural *gminas* the average population amounts to approximately 7,000. At the beginning of the political transformation in Poland in 1990, there were 2,383 *gminas*. It means that modifications introduced in the division into *gminas* have been rather minor.

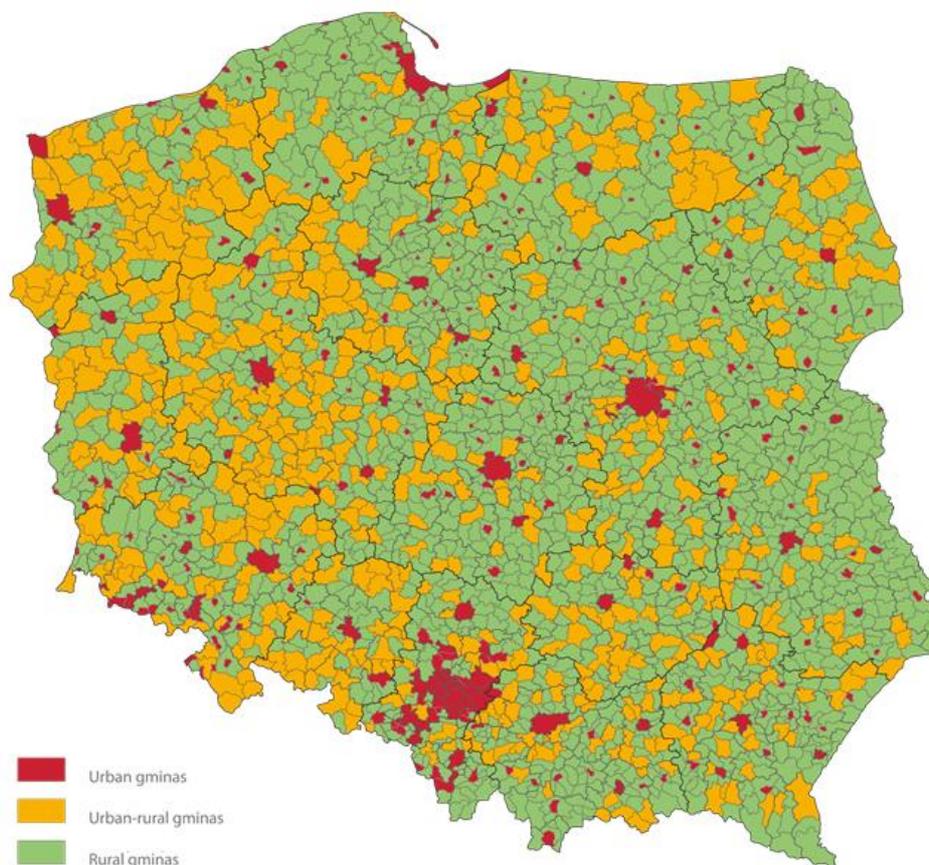


Figure 1: Spatial delimitation of *gminas* in Poland¹⁴⁵

The second tier of the local government, i.e. the level of counties (*powiat*), was established in Poland in 1999. At present, there are 314 *powiats* and 66 cities with *powiat* status. The population of *powiats* range from 21,500 to 373,500. The average population of a Polish *powiat* amounts to 82,000, whereas cities with *powiat* status have on average 191,000 inhabitants. When the territorial reform was being prepared in 1999, it was the establishment of *powiats* (as intermediate units between *gmina* and voivodeship) which gave rise to the greatest controversies. Dissenting voices against the introduction of an additional level of territorial structure (and, in consequence, a local government unit) were not rare. Even now the issue of *powiats* is under public debate, mainly due to the problem of the financing of *powiat* local government as well as functional weakness of smaller *powiats* (Polish *powiats* are small units in comparison to their counterparts in other European countries). The formation of seven new *powiats* in 2002 was the last major modification in the map of *powiats*.

The third level of territorial structure applies to voivodeships (*województwo*). The voivodeships correspond to the NUTS-2 regions (according to the European Nomenclature of Territorial Units for Statistics),¹⁴⁶ which are the basis for regional operational programs co-financed by

¹⁴⁵ 'Types of *gminas* and urban and rural areas' (*Statistics Poland*, 2020) <<https://stat.gov.pl/en/regional-statistics/classification-of-territorial-units/administrative-division-of-poland/types-of-gminas-and-urban-and-rural-areas/>> accessed 2 November 2019.

¹⁴⁶ Eurostat, 'Background' <<https://ec.europa.eu/eurostat/web/nuts/background>> accessed 2 November 2019.



the European Union. The year 1999 marked a crucial point in shaping the territory and political system of voivodeships. After lengthy preparations accompanied by political disputes, it was decided to form 16 voivodeships. It meant a departure from territorial fragmentation on a regional level (in the years 1975-1999 there were as many as 49 voivodeships in Poland). As a result of an enlarged territory, voivodeships as regions gained the right to self-government—thus, another stage of decentralization of Poland was reached. So far, the number of voivodeships has not been changed.¹⁴⁷

Legal Status of Local Governments

The inclusion of the principle of subsidiarity¹⁴⁸ in the preamble to the Constitution of the Republic of Poland of 1997 and the principle of decentralization¹⁴⁹ in the first chapter of the Constitution is of key importance for the legal status of self-government in Poland. Article 16 provides legal guarantees for local authorities: '(i) The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law. (ii) Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility.'

A comprehensive regulation concerning territorial self-government is contained in Chapter VII ('Local government') of the Constitution of the Republic of Poland of 1997.

Territorial self-government is based on democratic legitimacy. At each level, residents elect a representative body (the number of councilors currently ranges from 15 to 51, with the exception of Warsaw with 60 councilors). In addition, the head of the executive body (mayor) has been elected directly by the residents at the *gmina* level since 2002. Moreover, the Constitution of Poland guarantees residents of *gminas*, *powiats* and voivodeships the right to directly settle matters through the institution of a local referendum. A referendum on self-taxation of residents for public purposes is a special type of the local referendum. However, such a referendum can only be held at the *gmina* level.

Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities (Article 163 of the Constitution of the Republic of Poland of 1997). *Gmina* self-government, which has been granted the presumption of competence in matters of territorial self-government, is of fundamental importance. Article 164 establishes the following: '(i) The commune (*gmina*) shall be the basic unit of local government. (ii) Other units of regional and/or local government shall be specified by statute. (iii) The commune shall perform all tasks of local government not reserved to other units of local government.'

¹⁴⁷ Mirska Andželika, 'State policy on the formation and modernisation of Polish territorial structure' in Europäisches Zentrum für Föderalismus-Forschung Tübingen EZFF (ed), *Jahrbuch des Föderalismus 2018: Föderalismus, Subsidiarität und Regionen in Europa* (Nomos 2018).

¹⁴⁸ 'Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities'.

¹⁴⁹ Article 15: 'The territorial system of the Republic of Poland shall ensure the decentralization of public power'.



Territorial self-government units are subject to the Constitution of the Republic of Poland and the Acts of the Polish State. Three system acts are of fundamental importance:

- the Act of 8 March 1990 on *Gmina* Self-Government,
- the Act of 5 June 1998 on *Powiat* Self-Government,
- the Act of 5 June 1998 on Voivodeship Self-Government.

The only criterion of supervision over the activity of self-government is the criterion of legality, supervision is exercised by government administration authorities (the Prime Minister, voivodes¹⁵⁰ and regarding financial matters - regional audit chambers). However, any disputes between the government administration and territorial self-government shall be settled by an administrative court. There are no authoritative interrelations between the tiers of territorial self-government – only voluntary cooperation is possible.

The Constitution divides public tasks performed by self-government into own tasks (financed from the budget of a self-government unit) and commissioned tasks (financed from the state budget).

Gmina self-government performs a wide range of public tasks which include, among others, issues related to local technical infrastructure, social infrastructure, education, health and order protection and safety. In accordance with the principle of subsidiarity, the *powiat* self-government ‘assists’ *gmina* in performing local tasks that exceed the capacity of a *gmina* (‘supra-communal’ local tasks). While the self-government of *gmina* and *powiat* implements a number of public services for local communities on an ongoing basis, the main role of voivodeship self-government is to facilitate economic development of regions. Among other things, the task of the voivodeship self-government is to manage EU structural funds.

(A) Symmetry of the Local Government System

There are three types of *gminas*:

- urban *gminas* (their boundaries correspond with the boundaries of the city forming the municipality);
- urban-rural *gminas*, which include both cities within administrative boundaries and areas outside city boundaries;
- rural *gminas* without cities within their territory.

Cities in Poland are towns and cities with city rights (granted by the central government). However, it is a formal classification based solely on an administrative criterion. The Act on *Gmina* Self-Government does not differentiate the tasks of according to this classification – all *gminas* have the same scope of activity. The exceptions are large urban *gminas* which also have the status of *powiat* (city with *powiat* rights). They carry out the tasks of both *gmina* and *powiat*. Currently, there are 66 of them and the general criterion for their establishment is a

¹⁵⁰ The voivodes (16) shall be the representative of the Council of Ministers in voivodeships. They are appointed by the Prime Minister. *Voivodeships* are the highest-level administrative subdivision of Poland.



population over 100,000. However, some local government politicians claim that this threshold should be reduced to 50,000¹⁵¹.

On the other hand, the need is recognized to merge the cities with the *powiat* rights and *powiats* whose authorities are seated in the said cities due to significant disproportions in the institutional potential of *powiats*. Government analyses indicated a significantly higher potential of cities with *powiat* rights and a particularly low potential of *powiats* without large urban centers. The data show that *powiats* without large cities have significantly scarcer resources allocated to the fulfilment of public tasks of *powiats*¹⁵².

Public tasks may be performed by individual self-government units independently or by way of cooperation with other self-government units (inter-municipal cooperatives). Self-governments of a given level may cooperate with each other (cooperation between *gminas*, between *powiats*, between voivodeships). Moreover, cooperation between the levels is also possible: since 2016, unions of *powiats* and *gminas* may be established. The form of the *powiat-gmina* union is intended for the implementation of tasks that exceed the competence of one tier of self-government. The aim was to enhance the independence and operational flexibility of territorial self-government units. It can also be interpreted as an attempt to address the problems occurring mainly in metropolitan areas.

The legal form of the union of *gminas* (union of *powiats*, union of *gmina* and *powiat*) requires the establishment of a new legal person to perform part of the tasks of the self-government. Unions of *gminas* are a very popular form of performing self-government tasks (currently there are 313 of them in Poland and they include from 2 to 49 *gminas*). There are 7 *powiat* unions and 8 *powiat-gmina* unions. Their tasks involve mainly the organization of common local public transport. The same applies to education as only a uniform system of education from primary schools (which is the responsibility of *gminas*) to secondary schools (which are subject to *powiats*) can resolve demographic problems or fulfil the expectations of the local labor market.

The performed public tasks may also be modified through ‘delegating’ public tasks by a territorial self-government unit to another territorial self-government unit. This is done by way of a voluntary agreement.

‘Commissioning’ tasks to the self-government by the government administration is a different matter – if they are commissioned by virtue of the law, they are imposed on the self-government ‘from the top’ (together, of course, with financial resources from the Polish state budget). Polish self-governments indicate that those funds are often insufficient.

¹⁵¹ ‘Interpelacja nr 5867 do Ministra Spraw Wewnętrznych i Administracji’ (*Sejm Rzeczypospolitej Polskiej*) <<http://orka2.sejm.gov.pl/IZ5.nsf/main/2AE373E5>> accessed 1 July 2019.

¹⁵² ‘Zasadniczy, trójstopniowy podział terytorialny państwa’ (*Ministerstwo Spraw Wewnętrznych i Administracji*, 31 May 2001) <<https://archiwum.mswia.gov.pl/pl/aktualnosci/1644,dok.html>> accessed 1 July 2019.



Political and Social Context in Poland

Compared to other countries, the national political parties are in Poland not very strongly represented at the local government level.¹⁵³ To gain a stronger voice, self-governments attempted to create a nationwide political movement of mayors of large cities. For example, in 2011 Union of Mayors – Citizens to the Senate¹⁵⁴ (*Unia Prezydentów – Obywatele do Senatu*) was established and it put forward its candidates in the elections to the upper house of the Polish Parliament – Senate (majority voting system applies). The Local Government Movement ‘Non-Partisans’ (*Ruch Samorządowy ‘Bezpartyjni’*) was also established, consisting of mayors and councilors. The purpose of the movement is to be an alternative to political parties in local government elections (primarily at the level of the voivodeship self-government).

However, if we analyze the results of local government elections, the influence of national political parties clearly diminishes, the lower the level of government. Starting from the highest level, i.e. the 16 voivodeship self-governments, it is basically political parties that dominate the elections to the voivodeship assemblies. In the local government elections of 2018, candidates of national parties received a total of 89.4 per cent of votes. The Local Government Movement ‘Non-Partisans’ gained 5.28 per cent of the country's vote. Regional groupings received marginal support, except for three voivodeships. In the Opolskie Voivodeship, ‘The German Minority Electoral Committee’ traditionally receives strong support (in 2018 – 14.64 per cent). In two other voivodships, regional movements concentrated around local politicians obtained: 8.29 per cent of votes (the Lower Silesian Voivodeship: Electoral Committee of Voters ‘*With Dutkiewicz for Lower Silesia*’¹⁵⁵) and 5.26 per cent of votes (the Świętokrzyskie Voivodeship: Electoral Committee of Voters ‘*Wenta*’¹⁵⁶s *Świętokrzyskie Project*’).

At the *powiat* level, the presence of parties in the elections is weaker, in the 2018 elections the national parties won about 62 per cent of votes. At the level of *gminas*, the parties have obviously the smallest influence – local election initiatives prevail. In *gminas* with up to 20,000 inhabitants (single-mandate constituencies) national parties won about 27 per cent of votes. In *gminas* with over 20 000 inhabitants the figure was approx. 50 per cent.¹⁵⁷ In rural *gminas*, traditionally, the peasants’ party – the Polish People’s Party (*Polskie Stronnictwo Ludowe*) – has played an important role. In the last elections, the importance of the Law and Justice Party

¹⁵³ Bukowski Michał, Jarosław Flis, Agnieszka Hess and Agnieszka Szymańska, *Rządzący i opozycja, partie sejmowe i lokalne w małopolskich wyborach samorządowych 2014* (Attyka 2016) 24.

¹⁵⁴ The Senate is the upper house of the Polish Parliament, the lower house is the Sejm. The Senate and the Sejm exercises legislative power in Poland. The Members of both houses are elected by direct election. The Senate consists of 100 senators, the Senate - 460 deputies.

¹⁵⁵ Rafał Dudkiewicz was from 2002 to 2018 the Mayor of Wrocław, the capital city of the Lower Silesian Voivodeship.

¹⁵⁶ Bogdan Wenta having run from his own committee and was *elected* as Mayor of *Kielce*, the capital of the Świętokrzyskie Voivodeship. For years related with handball, first as a player of the Polish national team and Germany. 2004 - 2012 was the coach of the Polish national handball team. One of the best handball player in history of Polish handball.

¹⁵⁷ National Electoral Commission, ‘The Results of Local Elections 2018’ (*Local Government Elections 2018*, 30 June 2018) <<https://wybory2018.pkw.gov.pl/pl/dane-w-arkuszach>> accessed 14 December 2019.



(*Prawo i Sprawiedliwość*) has increased, reflecting the situation at the national government level.

The number and share of rural population in the total population of the country is declining. At the end of 2017, the rural population accounted for 39.9 per cent (in 1950 over 63 per cent)¹⁵⁸. The *gminas'* population forecasts of the Polish Central Statistical Office (GUS) for 2017-2030 indicate, above all, a strong development of major urban agglomerations with adjacent areas. They will continue to attract people from more peripheral areas. At the same time, a continuation of the suburbanization process should be expected, which will lead to a significant increase in population in the *gminas* adjacent to big cities.¹⁵⁹ These changes are caused by lower prices of flats or house building costs and reflect the growing economic status which enables inhabitants to move to an area more beneficial in terms of being a 'greener environment'.¹⁶⁰ In 2018, 55 cities with *powiat* rights (there are 66 cities of this type in total) recorded a decrease in population compared to the previous year. These included cities that aspire to play the role of a metropolis (Poznań, Łódź, Bydgoszcz). Warsaw, the capital city of Poland recorded an increase. The number of *gminas* with less than 5,000 inhabitants is steadily growing. There are already approx. 800 of them.

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¹⁵⁸ Stańczak Joanna and Znajewska Agnieszka, 'Population in Poland: Size and Structure by Territorial Division as of June 30, 2017' (Central Statistical Office, 2017)
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¹⁵⁹ 'Prognoza ludności gmin na lata 2017-2030' (*Statistics Poland*, 31 August 2017) <<https://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-gmin-na-lata-2017-2030-opracowanie-eksperymentalne,10,1.html>> accessed 1 December 2019.

¹⁶⁰ Małgorzata Waligórska, Zofia Kostrzewska, Maciej Potyra and Longina Rutkowska, 'Population Projection 2014-2050' (Central Statistical Office 2014) <<https://stat.gov.pl/obszary-tematyczne/ludnosc/prognoza-ludnosci/prognoza-ludnosci-na-lata-2014-2050-opracowana-2014-r-,1,5.html>> accessed 1 December 2019.



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7.2 People's Participation in Local Decision-Making in Poland: An Introduction

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The process of local community empowerment which started in Poland after 1989 was an important element of political transformation. The priority was to return to guarantee the residents the right to participate in exercising the public authority and in deciding on own matters. The adopted model of local government is based on representative democracy. The Polish citizens and EU citizens residing in Poland from the age of 18 years are guaranteed the active voting right. Similarly, it applies to the passive voting right. The election for the mayor in the community is the exception: the passive voting right is only granted to Polish citizens from the age of 25 years old.

Since the beginning of local government an instrument of direct democracy – a local referendum was also introduced. The decisions are binding when certain requirements are met. The local referendum can be conducted at any level of local government, i.e. in the *gmina*, *powiat* and voivodeship. All own tasks of local government, except the matters explicitly excluded by law (a negative catalogue), are the subject of the referendum. A special referendum is the referendum on self-taxation of residents of the *gmina* for public purposes (this is an exception to the general rule that the taxes can be imposed on the citizens only by the Polish Parliament). Furthermore, the residents have the right to recall in the referendum these local government bodies which were elected by them by direct universal suffrage. According to the constitutional principle in Poland all representative bodies are elected by direct universal suffrage. Since 2002 the executive body in the *gmina* is also elected by direct universal suffrage. The executive bodies in the *powiat* and voivodeship are elected and recalled by the representative bodies.

A local referendum is held at the initiative of the representative body or at the request of inhabitants. The initiative to hold a referendum at the request of the local government unit residents may be applied by:

- the minimum 5 citizens (referendum in the *gmina*), minimum 15 citizens (referendum in the *powiat* and voivodeship);
- a political party local branch operating in a given local government unit (*gmina*, *powiat*, voivodeship);
- a social organization with legal personality and operating in a given local government unit (*gmina*, *powiat*, voivodeship).

The period of collecting signatures lasts 60 days. In order to hold a local referendum to be valid, it must be signed by:

- 10 per cent of the *gmina* or *powiat* residents eligible to vote;
- 5 per cent of voivodeship residents eligible to vote.

The criterion for the validity of a referendum in Poland is a voter turnout. It was set at 30 per cent. The result of a referendum is conclusive if more than half of the valid votes were cast in



favor of one of the solutions in a matter put to a referendum (on self-taxation of inhabitants for public purposes – the majority of 2/3 of valid votes).

The 30 per cent turnout threshold has been modified since 2005 in the case of a referendum on the dismissal of a directly¹⁶¹ elected local authority. Currently, the minimum turnout is 3/5 of the participants in the election of the body¹⁶² to be dismissed.

In general, approx. 10 per cent of referendums are successful, the main problem is reaching the required turnout. Average turnout is 17 per cent. Most frequently referendums are held in *gminas*, very rarely in *powiats*, and incidentally in voivodeships. In *gminas*, referendums on the dismissal of the mayor are held most often. The referenda on the recalling of the executive bodies in the large cities elicit the particular interest of the public (negative result: Warsaw 2013, Bytom 2017; positive result: Olsztyn 2008, Elbląg 2013).

Body	Three terms of office 2002-2014		Term of office 2014-2018	
	Number of referendums	Valid referendums	Number of referendums	Valid referendums
The <i>gmina</i> council	67	10	14	1
The mayor	246	32	44	4
The <i>powiat</i> council	8	0	0	0
The voivodeship assembly (council)	1	0	0	0

Table 1: Local referendums on the dismissal of bodies.¹⁶³

The table shows that since 2002 (when the direct election of the mayor was introduced) a total of 380 referendums have been held only 9 per cent of which were valid. Referendums on the dismissal of the mayor are most common and they account for 76 per cent of all referendums on the dismissal of local government bodies.

If we consider the structure of *gminas* in which referendums on the dismissal of the *gmina's* council and/or the mayor were held in the years 2014-2018, the majority of them were either rural *gminas* (26) or urban and rural *gminas* (12), small towns (6), large cities with *powiat* rights (2).

Substantive referendums are carried out much less frequently. The report of the Chancellery of the President of the Republic of Poland of 6 September 2013 on local referendums indicates

¹⁶¹ In *gminas*, inhabitants directly elect both bodies (the *gmina* council and the mayor), in the *powiats* and in the voivodeships, only the representative body (the *powiat* council and the voivodeship assembly).

¹⁶² Act of 15 September 2000 on Local Referendum.

¹⁶³ Own work based on 'Referenda odwoławcze w kadencji 2014 – 2018' (*Referendum lokalne*) <<http://referendumlokalne.pl/referenda-w-kadencji-2014-2018>> accessed 1 December 2019 and Paweł Cieśliński, 'Referendum lokalne w Polsce – ale jakie?' (2016) 3 *Civitas et Lex* 28, 33.



that in the period 2010-2013 there were 111 referendums on the dismissal of local authorities and only 22 substantive referendums.¹⁶⁴

In 2011, a provision was introduced to the Act on *Gmina* Self-Government on the possibility of holding a local referendum at the request of inhabitants on the change in the establishment, merger, division and liquidation of a *gmina* and the establishment of the *gmina's* borders.

The institution of 'citizens' resolution-making initiative' (*obywatelska inicjatywa uchwałodawcza*) was provided for in the rules on law making by the local government at all three levels of local government. The draft resolution presented by the residents becomes the subject of the agenda of the legislative body of local government unit at the next session after the presentation of the draft resolution, however, not later than after expiry of 3 months from the date of the presentation of the draft resolution.

Besides the direct exercise of local government authority (local government elections and local referenda) there is a series of opportunities for the residents to participate in the decision-making processes. The instruments of participation were institutionalized in Poland gradually. Since the beginning the acts on local government guaranteed the residents the right to be consulted – the consultation can be carried out in all matters important for the residents. The public consultation allows the members of local government community to participate in the conduct of public matters. The acts make it obligatory to conduct the consultation, inter alia, with regard to: (i) change to the boundaries, merger, division, liquidation of local government units, (ii) establishment of auxiliary units in municipalities (districts, civil parishes).

The consultation may also take the form of permanent consultation bodies. The Act of 8 March 1990 on *Gmina* Self-Government provides for two such bodies: youth council (since 2011) and council of seniors (since 2013).

Poland also belongs to the states which promote new forms of participation, such as a participatory budget. The first participatory budget came into operation in Sopot in 2011, then, fairly quickly, such initiatives were undertaken by larger or very large cities. Till 2018 the local government authorities based on the general provisions of local government acts on the consultation. In 2018 the acts on *Gmina* Self-Government, on *Powiat* Self-Government and on Voivodeship Self-Government were extended by the regulations on the 'citizens' budget' (*budżet obywatelski*) as a special form of the consultation. It is surprising that the act made it obligatory to establish a participatory budget in the cities with *powiat* rights. Therefore, it is a characteristic element of the system of large cities.

In Poland there is also an instrument of budgetary participation dedicated only to the rural communes – 'The Village fund' (*fundusz sołecki*). Since its inception in 2009 it is anchored in the act, now, it is the Act of 2011 on the Village Fund.

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7.3 Decisions on Expanding the City Territory at the Expanse of the Rural Area: Consultations with Residents or a Local Referendum?

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Relevance of the Practice

Communes (*gminas*) are called ‘little homelands’ or ‘schools of democracy’. The Polish Constitution states that the residents of communes may make decisions considering their community in a local referendum.¹⁶⁵ Polish law also provides for an obligation to consult residents.¹⁶⁶ In addition, various forms of citizens co-decision have proliferated recently, e.g. participatory budgets under the participatory administration model.

The question arises whether the change of the commune (*gmina*) borders belongs to such decisions in which the residents should be authorized to make them. The issue of changing the borders of communes, such as merging, dividing and liquidating communes, has become a very controversial and emotional topic in recent years.

No comprehensive, top-down territorial reform concerning communes, e.g. merging communes to obtain territorially larger units, has been carried out since 1989/1990, since the beginning of the systemic transformation and the restoration of local government in communes. However, the adjustments of communes’ borders are made every year. The incorporation of some areas of rural communes such as individual villages (*sołectwos*)¹⁶⁷ into the neighboring large cities is the specific type of adjustments. Obtaining land for cities development and investments is the aim of such a procedure. It leads to a conflict of interests emerging between rural communes (*rural gminas*) and cities (*urban gminas*).

Rural communes (*rural gminas*) refer to the principle of communes’ identity and territorial stability of communes. The Association of Rural Communes,¹⁶⁸ a national organization representing the rural communes’ interests, has repeatedly expressed its disapproval and an urgent objection to the expansion of urban areas at the expense of rural communes. The Association of Rural Communes indicates the issue of spatial urban sprawl that causes cities to

¹⁶⁵ Art 170 of the Constitution of the Republic of Poland of 1997 and the Act of 15 September 2000 on the local referendum (Dz.U. 2019 poz. 741).

¹⁶⁶ Art 4(a), 5(a) of the Act of 8 March 1990 on *Gmina* Self-Government, Art 3(a), 3(d) of the Act of 5 June 1998 on *Powiat* Self-Government, Art 10(a) of the Act of 5 June 1998 on Voivodeship Self-Government.

¹⁶⁷ A *sołectwo* (*sołectwo*) is an auxiliary unit of the commune (*gmina*) that does not have the status of local government unit and legal personality. The *sołectwo* are established, transformed and liquidated independently by the commune. The *sołectwo* operate in the area of rural communes and rural-urban communes.

¹⁶⁸ For the website of the Association of Rural Communes, see <<http://www.zgwrp.pl/>>.



strive for capturing territories surrounded by communes. It is supposed to be a panacea for the problems of urban depopulation.¹⁶⁹

Rural communes support the decision that residents should always decide about border changes and their opinion should be binding as opposed to consultations which are not binding. Rural local governments do not agree to deprive them of a part of their territory for economic reasons in order to increase the area and the urban's wealth.¹⁷⁰

On the other hand, cities indicate the necessity to expand their area and incorporate suburbs to the cities, as suburban residents work and study in the city, use the urban infrastructure and pay taxes to the commune's budget of the place of residence.

Description of the Practice

The decision to change the borders of individual communes in Poland is made by the central government (Council of Ministers). The Act of 8 March 1990 on *Gmina* Self-Government in Article 4 provides that 'establishing and changing the communes (*gminy*) borders are made in a way that ensures the commune's territory as consistent as possible with regard to the settlement and spatial layout, taking into account social, economic and cultural bonds, and ensuring the ability to perform public tasks'.

The act also states that in the process of border changing, it is *necessary* to consult the residents of both municipalities, and a local referendum may also be held. Such a referendum can only be initiated by residents. Importantly, consultations may be conducted in a part of the commune's territory, e.g. in one village (*sołectwo*). The referendum is held in the entire commune.

Moreover, the European Charter of Local Self-Government states that 'changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute'.¹⁷¹

In the study regarding changes in the communes' borders in Poland, it was calculated that, for instance, in the years 2009-2018 the Polish Government issued a total of 183 decisions to change the borders of local government units, of which 137 concerned the incorporation of the commune territory or its parts, most frequently a village (*sołectwo*) into the neighboring city.¹⁷²

¹⁶⁹ Position of the XVII Congress of Polish Rural Communes of October 20, 2017 on changes to the law regarding the division and changes of the communes borders, <<http://www.zgwrp.pl/attachments/article/1227/ws.%20ochrony%20granic%20gmin.pdf>> accessed 15 March 2021.

¹⁷⁰ Position of the XXXII General Assembly of the Association of Rural Communes of the Polish Republic of June 19, 2018 on changes to the law regarding the division and changes to the borders of communes, <http://www.zgwrp.pl/attachments/article/1354/XXXIIIZO_stanowisko_granice.pdf> accessed 15 March 2021.

¹⁷¹ Article 5 of the European Charter of Local Self-Government, ratified by Poland in full in 1993.

¹⁷² Dagmara Kociuba, 'Zmiany granic administracyjnych miast w Polsce – efekty przestrzenne i społeczno-ekonomiczne [Changes in the Administrative Boundaries of Cities in Poland – Spatial and Socio-Economic Effects]' (2019) 33 *Studia Miejskie* 99 <<https://doi.org/10.25167>>.



The intensive efforts of the City of Rzeszow to expand its territory are a special case. Rzeszow, a city (urban commune) with county (*powiat*) rights, is the capital and central city of one of the 16 voivodeships. It is located in south-eastern Poland. In 1990, the population of residents was 153,000, in 2005 it was 158,000, and in 2020 it was 197,000. It is currently the 17th largest city concerning population in Poland.

Since 2005, the authorities of the City of Rzeszow have been taking very intensive actions to enlarge the city area. An application is submitted every year to the Council of Ministers (central government) to include neighboring communes or their parts (of villages/*solectwos*). For example, in the 2016 request, there were as many as 12 villages (*solectwos*) that Rzeszow wanted to incorporate. In 2011-2016, the government did not agree to any of Rzeszow's requests. Rzeszow has tried repeatedly to incorporate some villages. Such an example is the Matysowka *solectwo* incorporated into Rzeszow in 2019. Rzeszow unsuccessfully applied for the incorporation of this *solectwo* in 2005, 2007, 2011, and 2017.

Table 1: Stages of the incorporation of some areas of rural communes (*solectwos*/villages) into the City of Rzeszow.

	Name of <i>solectwo</i> /village	Consultation results with residents	Area
2006	Slocina (<i>Słocina</i>) - <i>solectwo</i> in the rural Commune of Krasne	80.4% of the residents of <i>solectwo</i> Slocina <i>against</i> the incorporation into Rzeszow ¹⁷³	9.16 km ²
2006	Zaleze (<i>Załęże</i>) - <i>solectwo</i> in the rural Commune of Krasne	78% of the residents of <i>solectwo</i> Zaleze <i>against</i> the incorporation into Rzeszow ¹⁷⁴	5.20 km ²
2007	A part of Przybyszowka (<i>Przybyszówka</i>) - <i>solectwo</i> in the rural Commune of Swilcza (<i>Świlcza</i>)	2004: 81.4% of the residents of <i>solectwo</i> Przybyszowka <i>against</i> the incorporation into Rzeszow ¹⁷⁵ 2005: 75.92% of the residents of <i>solectwo</i> Przybyszowka <i>against</i> the incorporation into Rzeszow ¹⁷⁶	9.25 km ²

¹⁷³ Aleksandra Bilka-Bałchank, 'Kształtowanie granic jednostek zasadniczego podziału terytorialnego państwa na przykładzie miasta Rzeszowa [Shaping the Boundaries of Units of the Basic Territorial Division of the Country on the Example of the City of Rzeszów]' (Student scientific conference no 3, University of Warsaw) <<http://m.wspia.eu/dzialalnosc-naukowa/konferencje-naukowe/studenckie-konferencje-naukowe/5460,studencka-konferencja-naukowa-nr-3.html>> accessed 15 March 2021.

¹⁷⁴ *ibid.*

¹⁷⁵ Quarterly Journal of Commune of Swilcza, *Trzcionka* (no 32, 2004/2005 winter edition) <https://www.swilcza.com.pl/images/trzcionka/Trzcionka_032.pdf> accessed 15 March 2021; Notice by Head of the Swilcza commune from the 8 November 2004 on the official results of consultations on the change of the boundaries of the Swilcza Commune, conducted on 7 November 2004 <http://www.swilcza.i-gmina.pl/files/3255_Obwieszczenia_-_konsultacje.pdf> accessed 15 March 2021.

¹⁷⁶ Notice by Head of the Swilcza commune of 2 February 2005 on the official results of consultations on the change of the boundaries of the Swilcza Commune held from 20 to 31 January 2005 <www.swilcza.i-gmina.pl/files/3602_Obwieszczenia_-_konsultacje2.pdf> accessed 15 March 2021.



2008	The remaining part of Przybyszowka - <i>solectwo</i> in the rural Commune of Swilcza	Approx. 80% of the residents of Przybyszowka <i>in favor</i> of the incorporation into Rzeszow ¹⁷⁷	7 km ²
		No data available on the website of Swilcza commune	
2008	Zwiczycza (<i>Zwiężycza</i>) - <i>solectwo</i> in the urban-rural Commune of Boguchwała (<i>Boguchwała</i>)	2004: 91.49% of the residents of the entire commune <i>against</i> the incorporation into Rzeszow ¹⁷⁸	7.2 km ²
2009	A part of the village Biała (<i>Biała</i>) from the urban-rural Commune of Tyczyn	59.8% of the residents of the entire commune <i>against</i> the incorporation into Rzeszow	6.1 km ²
		61% of the residents of Biała <i>in favor of</i> the incorporation into Rzeszow ¹⁷⁹	
2010	A part of Milocin (<i>Milocin</i>) from the urban-rural Commune of Glogow Malopolski (<i>Głogów Małopolski</i>)	No data	1.24 km ²
2010	Budziwoj (<i>Budziwój</i>) from the urban-rural Commune of Tyczyn	55% of the residents of the entire commune <i>against</i> the incorporation into Rzeszow.	17.5 km ²
		58% of the residents of the village of Budziwoj <i>in favor of</i> the incorporation into Rzeszow ¹⁸⁰	
2017	Bzianka (<i>solectwo</i> in the rural Commune of Swilcza)	65.29% of the <i>solectwo</i> of Bzianka <i>in favor of</i> the incorporation into Rzeszow. (498 people were entitled to vote. 244 people participated in the consultation) ¹⁸¹	4.04 km ²

¹⁷⁷ 'Zmiana granica – zmiana zdania?' (*Super Nowości*, 18 May 2017) <<http://supernowosci24.pl/zmiana-granica-zmiana-zdania/>> accessed 15 March 2021.

¹⁷⁸ Protocol no XXIII/2004 of the Boguchwała Commune Council held on November 4, 2004 <<https://www.bip.boguchwala.pl/183,24706,187/187/art1543.html>> accessed 15 March 2021.

¹⁷⁹ 'Biała i Budziwój chcą do Rzeszowa' (*nowiny 24*, 31 January 2008) <<https://nowiny24.pl/tyczyn-biala-i-budziwoj-chca-do-rzeszowa/ar/5997873>> accessed 15 March 2021.

¹⁸⁰ <<https://bip.tyczyn.pl/?c=mdTresc-cmPokazTresc-11-420>> accessed 15 March 2021.

¹⁸¹ 'Results of the Consultations in the Commune of Tyczyn of 1 February 2009' (*Urząd Miejski w Tyczynie*, 4 February 2009) <<https://rzeszow.wyborcza.pl/rzeszow/1,34962,19861425,powiekszenie-rzeszowa-niedziela-w-bziance-z-tadeuszem-ferencem.html>> accessed 15 March 2021.



2019	Matysowka (<i>Matysówka</i>), a part of the urban-rural Commune of Tyczyn	52.57% of the residents of the entire commune <i>against</i> the incorporation into Rzeszow. 63% of the residents of Matysowka <i>in favor</i> <i>of</i> the incorporation into Rzeszow ¹⁸²	5.3 km ²
2019	The second part of Milocin - from the urban-rural Commune of Glogow Malopolski	68.62% of the residents of the entire commune <i>against</i> the incorporation into Rzeszow The residents of the <i>solectwo</i> of Milocin: voting at a village meeting, 62 out of 80 voting were in favor of the incorporation into Rzeszow ¹⁸³	0.9 km ²
2021	Podgwizdow Nowy (<i>Pogwizdów Nowy</i>) - Glogow Malopolski	2018: 68.62% of the residents of the entire commune <i>against</i> the incorporation into Rzeszow ¹⁸⁴ . 2019: 92.84% of the entire commune <i>against</i> the incorporation into Rzeszow. 82.2% of the residents of the <i>solectwo in favor of</i> the incorporation (402 people) ¹⁸⁵	2.4 km ²

The incorporation of the neighboring areas in 2005–2021 resulted in an increase in the Rzeszów city's area by 75.27 km² (from 53.7 km² to 128.97 km²) and the population by 35,000 (from 158,000 to 197,000).

Rzeszów is still leading up to strengthen its position as a metropolitan center in south-eastern Poland. The goal is intended to be achieved by successive incorporation of other communes neighboring with Rzeszów and increasing its territory and population.

¹⁸² Justification to the Regulation of the Council of Ministers of 25 July 2018 on establishing the borders of some communes and cities and granting the city status to some localities. Opinion of the Podkarpackie Voivode of 27/04/2018 regarding the application for a change in the territorial division regarding the incorporation of some communes to Rzeszów City: Tyczyn, Boguchwała, Głogów Małopolski and Trzebownisko <<https://bip.rzeszow.uw.gov.pl/wp-content/uploads/2018/04/solectwa.pdf>> accessed 20 March 2021.

¹⁸³ *ibid.*

¹⁸⁴ *ibid.*

¹⁸⁵ Ordinance of the Council of Ministers of 31 July 2020 RM-110-109-20 in the case of establishing the borders of some municipalities of cities, granting some localities the status of a city, changing the name of the municipality and the seat of the municipal authorities <<http://urbnews.pl/wp-content/uploads/2020/12/dokument457287.pdf>> accessed 20 March 2021.



Figure 19: Territorial development of the City of Rzeszów¹⁸⁶

The City of Rzeszów is planning further requests for the incorporation of further villages (*solectwos*): a part of the area of the *solectwo* of Raclawowka (*Raclawówka*) from the Boguchwała (*Boguchwała*) commune, the area of the *solectwo* of Zaczernie and Nowa Wies (*Nowa Wieś*) and a part of the area of the *solectwo* of Jasionka from the Trzebownisko commune and the incorporation with the entire Commune of Swilcza (*Świlcza*). In the consultations, the residents of all these areas were against incorporating them into the city.¹⁸⁷ There is an international airport (14 km from the center of Rzeszów) and the Podkarpackie Science and Technology Park Aeropolis in the area of the *solectwo* of Jasionka. In consultations in 2015, 96.41 per cent of the residents of Jasionka were against the incorporation into Rzeszów.

After analyzing the data on the incorporation into Rzeszów of some villages (*solectwos*) in 2005-2021, it can be noticed that:

- in most cases, residents of rural communes were against losing a part of the territory to the City of Rzeszów;

¹⁸⁶ 'How our City Grew' (*City of Rzeszów*, undated) <<https://www.erzeszow.pl/692-rozszerzenie-granic-rzeszowa/13520-jak-roslo-nasze-miasto.html>> accessed 16 March 2021.

¹⁸⁷ 'Zmiana granica – zmiana zdania?' (*Super Nowości*, 18 May 2017) <<http://supernowosci24.pl/zmiana-granica-zmiana-zdania/>> accessed 15 March 2021.



- consultations are non-binding and according to the examples, the borders of rural communes have often changed against the will of the residents.

However, there is a question considering whether the decision should be made by the residents of the entire rural commune or only the residents of a particular area (of a *sołectwo*/village). For example, consultations conducted in the Tyczyn commune in 2016 showed the problem. Tyczyn commune is an urban-rural commune, consisting of the town of Tyczyn and four *sołectwo*s. The consultations were conducted in the entire commune: in total 57.3 per cent of the residents were against the fact that one *sołectwo* (Matysowka) should be taken from the Tyczyn commune and incorporated into Rzeszow. However, in the area of this *sołectwo*, 66.6 per cent of the residents were in favor of being incorporated into Rzeszow.¹⁸⁸

A similar situation was in the Glogow Malopolski commune in 2019. The consultations concerned the loss of the village of Pogwizdow Nowy (*Pogwizdów Nowy*) to Rzeszow. 93 per cent of the residents of the entire commune were against the separation of this village from the commune. Nevertheless, the residents of this village conducted their separate consultations and claimed that 489 residents took part in them which amount to 39 per cent of the village residents. 402 people, representing 82.2 per cent of voters, supported the incorporation of the village into Rzeszow¹⁸⁹.

Provided that consultations are non-binding and may be conducted in a part of the commune area, e.g. in one village (*sołectwo*), a local referendum may be conducted only in the area of the entire commune.

The case of the Krasne commune:

- first, there were consultations;
- then, a local referendum was held in 2016 in the entire commune. High attendance: 56 per cent.¹⁹⁰

The first question concerned the incorporation of the entire Krasne commune into Rzeszow: approximately 62 per cent of the commune's residents were against the incorporation. The second question was about the incorporation of one part of the Krasne commune (Malawa *sołectwo*). However, the residents of the entire commune voted. 1,771 people voted for the incorporation of Malawa into Rzeszow, and 2,810 people against it.¹⁹¹ Malawa was the only

¹⁸⁸ 'Wyniki konsultacji przyłączenia Matysówki do Rzeszowa' (*Gmina Matysówka*, 22 February 2016) <<http://www.matysowka.pl/ogloszenia/wyniki-konsultacji>> accessed 15 March 2021.

¹⁸⁹ <<https://bip.rzeszow.uw.gov.pl/wp-content/uploads/2020/04/opinia.pdf>> accessed 15 March 2021.

¹⁹⁰ Protocol of establishing the result of the local referendum on the voluntary merger of the Krasne commune with the City of Rzeszów and the incorporation of the Malawa commune into Rzeszów of 23 October 2016. <<https://www.gminakrasne.pl/biuletyn-informacji-publicznej/wybory/referendum-gminne-2016/>> accessed 16 March 2021.

¹⁹¹ The inhabitants of the Krasne commune do not want to go to Rzeszów. Full results of the referendum on the 'Rzeszów News - Information portal', <<https://rzeszow-news.pl/mieszkanicy-gminy-krasne-nie-chca-do-rzeszowa-wyniki-referendum/>> accessed 16 March 2021.



solectwo where the majority of residents voted to incorporate into Rzeszów. 515 people were in favor of incorporating into Rzeszów, and 494 people against it.¹⁹²

Considering consultations with the residents of the City of Rzeszów, they are held very often and therefore little interest is aroused: about 1.36 per cent – 5 per cent of the residents participate in the vote. Nevertheless, about 90 per cent of voters support the expansion of the city borders.¹⁹³ Moreover, there are also critical voices claiming that the city is investing mainly in newly acquired areas, building a school, and not in the city center.¹⁹⁴

Assessment of the Practice

Changing the borders of communes is associated with many problems. Rzeszów is not the only example. Other cities are also making efforts to increase their territory at the expense of neighboring communes. In terms of the compulsory consultation with residents, the following problem areas should be identified:

- how to solve the issue of consultations with residents, how and where to conduct them diligently;
- whether a referendum should be obligatory instead of non-binding consultations. Currently, the referendum is not obligatory. Nevertheless, at the residents request, it may be mandatory. The referendum is conducted according to the general procedure under the Act of 15 September 2000 on the local referendum;
- the problem of financing consultations and referendums. Residents do not want to submit a request for a referendum because they have to participate in the costs of holding a referendum;
- changing borders is a way to enlarge cities that want to build their central position in the region. This is how cities can build their positions as metropolis in the region. This is a problem of managing metropolitan regions. There is a question considering the necessity of another top-down way to build metropolitan territorial units.¹⁹⁵ However, the most common model in Poland is based on voluntary cooperation between local government units in the functional areas of cities (including metropolitan areas);

¹⁹² Joanna Pasterczyk, 'Gmina Krasne przeciwko połączeniu Malawy z Rzeszowem. Radni zagłosowali na nadzwyczajnej sesji, mieszkańcy są oburzeni' (*Wyborcza.pl*, 8 February 2019) <<https://rzeszow.wyborcza.pl/rzeszow/7,34962,24440970,gmina-krasne-przeciwko-polaczeniu-malawy-z-rzeszowem-radni.html>> accessed 16 March 2021.

¹⁹³ 'Public Consultations on the Change of the Borders of the City of Rzeszów' (*Bulletin of Public Information of Rzeszów*, undated) <<https://bip.erzeszow.pl/107-wyszukiwarka/2182-wyniki-wyszukiwania.html?srch-term=wyniki+konsultacji&srch-muid=w+ca%C5%82ym+serwisie>> accessed 16 March 2021.

¹⁹⁴ For further information, see <<https://bip.rzeszow.uw.gov.pl/wp-content/uploads/2018/04/solectwa.pdf>> accessed 16 March 2021.

¹⁹⁵ See report section 4 on local government structure and the example of establishing the Upper Silesian and Zagłębie Metropolis [Górnośląsko-Zagłębiowska Metropolia] as the first territorial unit of a metropolitan quality in Poland, report section 4.3.



- rural communes and urban-rural communes complain that they are losing attractive areas, as well as budget revenues. Residents of rural communes are afraid of higher taxes in the city;
- whether the inhabitants of rural communes should be asked for their opinion at all, because it inhibits the development of cities.

References to Scientific and Non-Scientific Publications

Kociuba D, 'Zmiany granic administracyjnych miast w Polsce – efekty przestrzenne i społeczno-ekonomiczne [Changes in the Administrative Boundaries of Cities in Poland – Spatial and Socio-Economic Effects]' (2019) 33 Studia Miejskie 99 <<https://doi.org/10.25167>>

Bilska-Bałchank A, 'Kształtowanie granic jednostek zasadniczego podziału terytorialnego państwa na przykładzie miasta Rzeszowa [Shaping the Boundaries of Units of the Basic Territorial Division of the Country on the Example of the City of Rzeszów]' (Student scientific conference no 3, University of Warsaw) <<http://m.wspia.eu/dzialalnosc-naukowa/konferencje-naukowe/studenckie-konferencje-naukowe/5460,studentcka-konferencja-naukowa-nr-3.html>>



7.4 Youth Commune Council in Poland

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Relevance of the Practice

In 2018 the European Union adopted the European Union Youth Strategy 2019-2027.¹⁹⁶ Supporting the participation of young people in civic and democratic life is one of the main strategy objectives. Building on the Strategy, eleven European Youth Goals have been formulated to address the issue of youth participation in public life. Goal 6 'Moving rural youth forward' indicates that it should be ensured that young people in rural areas are actively participating in decision-making processes. Goal 9 'Space and Participation for all' refers to ensure young people can adequately influence all areas of society and all parts of the decision-making processes, from agenda setting to implementation, monitoring and evaluation through youth-friendly and accessible mechanisms and structures, ensuring that policies respond to the needs of young people.¹⁹⁷

In Poland, the participation of young people in political processes at the local level takes place, for instance, through youth councils established in communes (*gminas*). The involvement in traditional forms of participation (i.e. in local elections and referenda) is possible from the age of 18. So far, there is no attainable discussion in Poland about lowering the age of people involved in traditional participation (in many countries the age of active electoral participation has been lowered to 16, e.g. in Germany, Austria).

The first youth council was established in Poland in 1990, in the City of Częstochowa (the number of inhabitants of Częstochowa is 257,000). It was an initiative of the Mayor of Częstochowa, who was inspired by the example of youth councils in France. In general, the first youth councils were established in large cities. The local law was the legal basis.

As the good governance-model in the public administration was popularized in Poland and the importance of public consultations in local government had grown, the position of youth councils was strengthened. Since 2001, youth councils have obtained a uniform legal basis as they were incorporated into the Act of March 8, 1990 on the *Gmina* Self-Government.¹⁹⁸ However, the commune is not obliged to establish a youth council.

Youth councils are bodies of consultative nature. Incidentally, it should be mentioned that in 2013, regulations concerning the appointment of senior councils in communes were added to the Act of March 8, 1990 on the *Gmina* Self-Government. Article 5(c) of the Act of March 8, 1990 on the *Gmina* Self-Government provides that '[t]he commune promotes

¹⁹⁶ Resolution of the Council of the European Union and the Representatives of the Governments of the Member States Meeting within the Council on a Framework for European Cooperation in the Youth Field, 'The European Union Youth Strategy 2019-2027' (2018/C 456/01).

¹⁹⁷ More information on the European Youth Goals is available at <<https://youth-goals.eu/yg6>> and <https://europa.eu/youth/strategy/european-youth-goals_en>.

¹⁹⁸ Amendment to the Act of April 11, 2001.



intergenerational solidarity and creates conditions for stimulating civic activity of older people in the local community. The commune council, on its own initiative or at the request of the concerned groups, may establish a commune senior council. The commune senior council is of consultative, advisory and initiative nature.’ Thus, senior councils were granted broader powers than youth councils. Therefore, there is ongoing work on expanding the competences of youth councils (more information below).

Description of the Practice

In 2017, there were 378 youth councils in communes (*gminas*) in Poland (2,478 was the total number of communes in 2017). According to estimates from 2020, there are about 500 youth councils.¹⁹⁹

Most youth councils were established in urban communes. In 2017, a youth council functioned in 32 per cent of cities in Poland. The smaller the town is, the smaller the probability for a youth council to be established. Small rural communes have fewer resources and there are no post-primary schools where members of youth councils are recruited from. Only about 8 per cent of rural communes have established a youth council. There is simply a lack of young people in rural communes who would like to get involved in the activities of youth councils.

Table 2: Number of youth councils in Poland in 2017

Type of commune	Number of communes ²⁰⁰	Number of communes where a youth council has been established ²⁰¹	Percentage
Urban communes (cities)	302	117	32%
Urban-rural communes	621	146	23.5%
Rural communes	1555	124	8%
Total	2478	378	15.3%

The number of the youth councils’ members varies from 5 to 60 (it is related to the population size). It is usually 15 youth council members (this is also the number of commune council

¹⁹⁹ Mateusz Morawiecki, ‘Justification for the Draft act on the Amendment of the Act on the Gmina Self-Government, the Act on the County (*powiat*) Self-Government and the Act on the Voivodship Self-Government’ (print no 1014, 9th March 2021)

<<https://orka.sejm.gov.pl/Druki9ka.nsf/0/FE48CF5A81CD652EC125869A003CB322/%24File/1014.pdf>> accessed 1 May 2021.

²⁰⁰ Joanna Stańczak and Agnieszka Znajewska, ‘Population. Size and Structure and Vital Statistics in Poland by Territorial Division in 2017’ (Statistics Poland 2018) <<https://stat.gov.pl/obszary-tematyczne/ludnosc/ludnosc/ludnosc-stan-i-struktura-oraz-ruch-naturalny-w-przekroju-terytorialnym-w-2017-r-stan-w-dniu-31-xii-6,23.html>> accessed 1 May 2021.

²⁰¹ Piotr Wasilewski and others, ‘Analysis of Youth Councils in Poland’ (The Council of Children and Youth of the Republic of Poland at the Ministry of National Education 2018)

<<https://wschowa.info/storehouse/2018/07/Publikacja-O-m%c5%82odzie%c5%bcowych-radach-.pdf>> accessed 1 May 2021.



members in communes with less than 20,000 inhabitants). It is often also 21 youth council members, which is the number in communes with up to 50,000 inhabitants. The average age of the youth council members is 17.4.²⁰²

The procedure for selecting members of youth councils is not specified in any central act. Each commune, i.e. its representative authority which decides to establish a youth council in its area, adopts the statute of the youth council. Thus, these regulations differ from one commune to another. Predominantly, the status stipulates that the members of the youth councils are elected in elections that are organized in individual schools in the commune. The elections are ordered by the mayor of the commune. Students nominate candidates. The statutes also specify the age of the candidates (e.g. 13-18 years,²⁰³ 10-20 years,²⁰⁴ 12-19 years²⁰⁵). The term of a youth council is usually 2 years, but there are also examples that it was set for 3 years.²⁰⁶

The small number of communes with youth councils, especially in a rural setting, remains a concern. It may be an indicator that we are dealing with a progressive aging of the population in rural areas. On the other hand, if a youth council was possible in a rural commune (even small in number), it would become an impulse to activate the local community. However, one of the most positive examples is a youth council which was established not even in the entire rural commune but in a smaller unit - in the *sołectwo*²⁰⁷. The conditions of the Dankowice *sołectwo* were not conducive to the development of youth activity. The lack of public transport and the school shutdown caused problems in building a culture of involvement in public issues. However, on the initiative of the leader of the *sołectwo*, a youth council was established. Despite limited financial resources, young people led to the implementation of several important projects, such as construction of a playground, renovation of the field and construction of a beach volleyball field²⁰⁸.

²⁰² *ibid* 16.

²⁰³ The Youth Council Statute of Wolomin Town, <https://wolomin.org/wpcontent/uploads/2018/09/statut_mlodziejowa_rada_miasta_.pdf> accessed 20 September 2021.

²⁰⁴ The Youth Council Statute of Chmielnik Commune, <https://www.chmielnik.com/asp/pl_start.asp?typ=14&menu=353&strona=1&sub=315&subsub=323> accessed 1 May 2021.

²⁰⁵ The Youth Council Statute of Kolbaskowo Commune, <<https://www.kolbaskowo.pl/index.php/gmina/60-mlodziejowa-rada-gminy/informacje-o-zasadach-funkcjonowania-i-celach-dzialania/785-statut-modzieowej-rady-gminy>> accessed 1 May 2021.

²⁰⁶ The Youth Council Statute of Bolesławiec Commune, <https://edzienniki.duw.pl/WDU_D/2020/3414/akt.pdf> accessed 1 May 2021.

²⁰⁷ A *sołectwo* is an auxiliary unit of the rural *gmina* that does not have the status of local government unit and legal personality.

²⁰⁸ Przemysław Chrzanowski, 'Młodzieżowa Rada Sołecka! I wszystko jasne!' (*witryna wiejska*, 8 February 2019) <<https://witrynowiejska.org.pl/strona-glowna/projekty/item/50376-mlodziejowa-rada-solecka-i-wszystko-jasne>> accessed 1 May 2021.



Assessment of the Practice

Youth groups have indicated for a long time that it is necessary to strengthen the legal position of youth councils. Before June 2021,²⁰⁹ Article 5(b) of the Act of 8 March 1990 on Gmina Self-Government only provided that:

- the commune council may have consented to the youth commune council establishment at the request of the concerned groups;
- the youth council was of consultative nature;
- the commune council, while appointing the youth commune council, gave it a statute specifying the procedure for electing its members and the rules of operation.

Youth organizations indicated that competences should have been extended and the issues of financing youth councils should have been regulated. From 9 March 2021, the process of preparing and adopting an amendment to this act continued in order to regulate the legal position of youth councils in Poland in more detail – uniformly for all local government units in Poland. This was a response not only to the appeals of the youth community in Poland, but also the pursuit of the goals of the European Union Youth Strategy in 2019-2027.

On 15 June 2021, the Act of 20 April 2021 amending the Act on Gmina Self-Government, the Act on Powiat Self-Government, on Voivodeship Self-Government and the Act on Public Benefit and Volunteer Work came into force. The act strengthened the legal position of youth councils in Poland and provided additional powers for them:

- the issuing of opinions on draft resolutions concerning youth;
- participation in the development of commune's strategic documents for youth;
- monitoring the implementation of the commune's strategic documents for youth;
- Initiating activities for the benefit of young people, particularly in the field of civic education, on the terms specified by the commune council.

It is very essential to regulate financial matters: Namely, the new law provides that 'a member of the youth council who takes part in meetings of the youth council or in an organized event at which he or she represents the commune youth council, and in the case of a minor member of the commune youth council, also his or her parent, travel costs within the country are reimbursed'.²¹⁰ It is a particularly vital regulation for rural communes, as it was a barrier for young people from rural areas. It will enable members of the youth councils greater mobility and easier access to a variety of events organized away from home.

Moreover, the new law stipulates that 'the administrative and office services of the commune youth council are provided by the commune office. The costs of servicing the commune youth council are covered by the commune office'.²¹¹

²⁰⁹ On 15 June, a new act came into force, amending the existing provisions on youth councils: The Act of 20 April 2021 amending the Act on Gmina Self-Government, the Act on Powiat Self-Government, on Voivodeship Self-Government and the Act on Public Benefit and Volunteer Work (Dz.U. 2021 poz. 1038), <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=1014>.

²¹⁰ Article 11 of this Act.

²¹¹ Article 15 of this Act.



Strengthening the position of youth councils is especially important for youth from rural areas, often not having equal opportunities for development compared to youth from cities. Through youth councils, it is possible to obtain a higher level of knowledge and social skills, increasing the useful soft skills of young people, their activity and involvement in public affairs.

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7.5 Participatory Fund in Cities

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Relevance of the Practice

Urban Activisms

Contemporary social urban life has many dimensions. The space of urban activities is wide. There are forms of activity that have become a permanent part of urban life. They are, to some extent, structured, or sometimes institutionalized. Striving to create structures is a form of defense against ephemerality. A large part of urban activism is short-lived, active and temporary. Its activities focus on various topics. Activisms that aim at improving the quality of life get wider social resonance. Residents mobilize activity in order to articulate their interests related to the place of residence. The subjectivity of citizens in the local community is necessary. For a lasting revival of social life, it is important to institutionalize initiatives and activisms and to include them, somehow, in public management. It is important that social mobilization is articulated in the public-social dialogue. In the search for an ideal model of relations between the public authority and the inhabitants, forms of participatory democracy take their place. Its essence is the participation of residents in the city management. The co-deciding and co-management of the city is supposed to build a relationship between residents and local authorities, but also to foster the building of social capital and be a path to the subjectivity of citizens. In municipal self-governments, such forms of participatory democracy as e.g. public consultations (in situations of a severe conflict) or local initiatives (when introducing new legislative solutions) work well. In Poland, urban participation is different from rural participation. Urban participation in terms of organizational and legal forms is much less stable. Therefore, civic activity in cities is more ephemeral. Rural participation is based on tradition more than urban participation. For rural participation, the pillars are such organizations as, for example, Rural Women Circles (with over 150 years of tradition), Volunteer Fire Brigades (also operating for over 150 years). These organizations have well-developed and well-established structures, and they are well-embedded in the society. Volunteer Fire Brigades have more than 15,000 organizational units. Rural Women Circles have more than 10,000 organizational units. These are organizations with hundreds of thousands of members.²¹² Both Rural Women Circles and Volunteer Fire Brigades have a well-regulated legal basis. Volunteer Fire Brigades operate on the basis of *Prawo o stowarzyszeniach* (the Law on Associations) of 1989.²¹³ The functioning of Rural Women Circles was regulated by a new law in 2018²¹⁴. These organizations have a stable material basis for their activities. In Poland, a relatively new tool of participatory democracy in local government is the participatory budget.

²¹² Current reliable data on the numbers of members is not available.

²¹³ The Law of 7 April 1989, *Prawo o stowarzyszeniach* (the Law on Associations), uniform text: Journal of Laws 2019, item 713.

²¹⁴ The Act of 9 November 2018 on rural women circles, Journal of Laws 2018, item 2212.



Participatory democracy looks attractive in theoretical reflection. As the empirical research shows, 'in social practice, participation is often illusory, and the opinions of citizens are only to legitimize the decisions that have already been made'.²¹⁵ The conclusions of the empirical research boil down to the statement that 'the local government faces an important task consisting, on the one hand, in stimulating the social activity of residents, and, on the other hand, in further improvement and development of various forms of participatory democracy'.²¹⁶

Description of the Practice

The development of civic activity entails an evolution in the conceptual grid. In Poland, the well-established term social worker begins to be replaced in urban areas by the one of urban activist. The term participatory budget is relatively new and it can be said to be still taking its shape. The term participatory budget is used interchangeably with the one of civic budget. There is an ongoing discussion on the semantic scope of the category of participatory budget. In practice, the term civic budget is more recognizable and more frequently used in social life. And in the scientific reflection, the category of participatory budget gains greater recognition. Since January 2018, the civic budget has been a statutory category. In legal and official transactions, the dominant concept is civic budget. In the light of the definition by *Leksykon budżetowy* (Budget lexicon), the civic budget is 'an informal term describing a part of the local government budget (most often the city budget), within which the predetermined amount of expenditure is allocated to investment initiatives and projects directly submitted by the local society (individually or by organizations)'.²¹⁷ At the same time, it is emphasized that the idea of a civic budget is a component of the vision of civil society and is part of public governance, where public control and co-management are an important aspect. Sopot, where such a budget was created in 2011, is considered to be the precursor of the participatory budget in Poland. Since 2013, this way of spending public money in local governments has been gaining more and more supporters.

Legal Basis of Participatory / Civic Budget

31 January 2018 is an important time cut-off for participatory budgeting in Poland. Prior to that date, there was no direct statutory legal basis to define and regulate this type of budget. As a result of the lack of generally applicable regulations, cities determined the goals, conditions and the amount of funds allocated to projects implemented within the participatory budget on their own. Civic budgets operated mostly on the basis of the resolutions of the city councils adopted on the basis of the provisions on public consultations (the Local Government Act, Article 5(a)(1) and (2)). The draft resolutions specifying the principles and procedure for conducting public consultations with regard to these budgets were submitted for adoption by mayors and presidents of cities. Less frequently, civic budgets were created based on the

²¹⁵ Jarosław Załęski, 'Demokracja partycypacyjna (na przykładzie Gdańska)' [Participatory Democracy (on the Example of Gdańsk)] (2018) 19 *Miscellanea Anthropologica et Sociologica* 178, 178.

²¹⁶ *ibid* 191.

²¹⁷ Bureau of Research, 'Leksykon budżetowy' [Budget Lexicon] (*Sejm*, undated) <<https://www.sejm.gov.pl/Sejm8.nsf/BASLeksykon.xsp>> accessed 1 June 2021.



mayor's or president's orders (based on the provisions concerning the preparation and execution of the city budget by the mayor). Generally speaking, civic budgets were most often created on the initiative of the mayors of cities themselves. It is interesting what mayors and presidents of cities were guided by in initiating civic budgets in this initial period. So far, these motives have not been subject to any in-depth research. It can be assumed that it was about winning voters. Sometimes councilors were active in this area. The exceptions included situations where the structures of the social sector, such as the Commune Council for Public Benefit Activities, initiated the creation of a civic budget.

Since 11 January 2018, the civic budget has been regulated by an act.²¹⁸ This act uses the term civic budget. In the light of the act, the civic budget is 'a special form of public consultation. Every year, within the scope of the civic budget, residents decide by direct vote on a part of the commune's budget expenditure. The tasks selected as part of the civic budget are included in the commune's budget resolution. The commune's council, in the course of the works on the draft budget resolution, may not remove or significantly change the tasks selected within the civic budget'.²¹⁹ The legislator entrusted the commune's council with the establishment of the requirements to be met by the draft civic budget. The commune council determines the following by way of a resolution:

- the formal requirements for submitted projects (in terms of content, you can submit any projects);
- the number of signatures of residents supporting the project, where the limit is indicated (the number of inhabitants may not exceed 0.1 per cent of the inhabitants of the area covered by the civic budget pool where the project is submitted);
- the rules for the evaluation of submitted projects (it is obligatory to take into account the criteria of legal compliance, technical feasibility and formal requirements);
- the procedure for appealing against a decision not to allow a bill to be voted on;
- the rules of voting, determining the results and making them public (however, in voting, it is mandatory by law to ensure equality and directness).

Equality of voting means that everyone entitled to vote has the same number of votes (for example, a voter can cast only one vote for the submitted projects; or, for example, there are 10 projects and each voter has 5 votes that they can cast for any selected projects). Directness is understood traditionally, that is, for example, a parent cannot vote instead of their underage children.

The municipal council determines in a resolution who has the right to vote to select participatory budget projects. Until now, the resolutions assumed that only residents of a local government unit who were at least 13, 16 or 18 years old, had at least limited legal capacity or were registered or entered in the permanent register of voters, can vote. It is assumed that all residents should have the right to participate in the vote, regardless of their age, provided that the voter has an understanding of his actions and is fully aware of them. This had been a practice before the entry into force of the Act of 2018. However, municipal councils enjoy a lot

²¹⁸ The Act of 11 January 2018 Amending Certain Acts in order to Increase the Participation of Citizens in the Process of Selecting, Functioning and Controlling Certain Public Bodies.

²¹⁹ Article 1 clause 1.point b3, b4 of the Act of 11 January 2018 Amending Certain Acts in order to Increase the Participation of Citizens in the Process of Selecting, Functioning and Controlling Certain Public Bodies.



of discretion. Therefore, in the initial period of the operation of the Act of 2018, enhanced supervision over the activities of the local government unit in the implementation of participatory budgets is needed. This supervision is the competence of the regional audit chambers. Before the entry into force of the Act of 2018, the supervision in the field of participatory budgets had been the competence of the voivode.

In the light of the act, in 'communes that are cities with *powiat* rights, establishing a civic budget is obligatory'.²²⁰ Moreover, an indicator of the minimum financial resources that should be allocated for this purpose has been defined. The amount of the civic budget must be 'at least 0.5 per cent of the commune's expenditure included in the last submitted budget implementation report'.²²¹ The new statutory solution shows that the state is a supporter of the institution of deliberative democracy. The legislator clearly provides instruments to popularize the participatory budget. The amendment to the Local Government Act, which introduced the civic budget, entered into force on 31 January 2018. In this way, the participatory budget became stabilized.

Participatory Budget as an Innovative Form of Democracy in Local Government

The participatory budget is an institution of democracy that has been developing quite dynamically in Poland for over a decade. It allows for partial socialization of the budget policy of local government units. On the one hand, it provides the opportunity to build the social capital in local governments and shows the role of residents in the local development. On the other hand, it is a form of education of citizens and an important tool of deliberative democracy aimed at improving the quality and comfort of life in the city. A participatory budget can be created not only in cities, but also in other communes. However, so far in practice it has functioned in communes with the status of cities or communes and cities. This is due to the fact that in Poland there is a large fragmentation of local government units at the primary level. This is reflected in their finances. Rural municipalities, which are usually smaller entities, have poorer annual budgets. For these municipalities, any depletion of the annual budget is difficult.

The participatory budget has a specific procedure (taking into account the provisions of the Act of 2018 (Article 1(1)(7)) and formed as a result of the practice) which includes the following stages:

- determination of the procedure and rules for conducting the public consultation on the participatory budget;
- promotion of the participatory budget;
- submission and acceptance of applications with citizens' projects (submitted by citizens individually or by non-profit entities);
- initial assessment and verification of submitted projects;
- rejection of applications that do not meet the specified requirements;
- appeals against the decisions rejecting the non-compliant applications;
- voting on the selection of citizens' projects;
- implementation of civic projects selected in a vote;

²²⁰ Art 1(1)(b5) of the Act of 11 January 2018 Amending Certain Acts in order to Increase the Participation of Citizens in the Process of Selecting, Functioning and Controlling Certain Public Bodies.

²²¹ *ibid.*



- evaluation of a participatory budget.

Participatory budgets in Polish cities are assessed both by the state and the social factor. I understand the concept of the social factor as all citizens participating in public life both individually (for example, by participating in local elections) and in organized forms (for example, in associations, foundations, housing communities, or housing cooperatives). The social factor also includes the local press or groups created in social media (such as, for example, the Facebook group *Przyjaciele Dolinki* (Friends of the Valley)).²²² The social factor evaluates participatory budgets in the form of voting for specific projects, in the process of evaluating citizens' budgets, and in discussions in the media. Evaluation is carried out by local governments, usually in the electronic form through electronic tools created for this purpose on websites (for example, in Gdańsk there was an evaluation survey shared at the city's website; in Koszalin, an online evaluation survey and focus survey were used).²²³ A good opportunity to articulate the assessments of civic budgets are local elections, election campaigns before local elections, and meetings of local government officials with residents. In this respect, in Poland, this practice is just being formed, with the society learning how to use participatory budgets. The state factor is understood as the Office of the President of the Republic of Poland, the Prime Minister, the Council of Ministers, ministers of individual ministries, central state offices, courts, and state control institutions (the Supreme Audit Office). This does not mean that all these entities are interested in assessing participatory budgets. So far, the Minister of the Interior and Administration has taken a position on the results of the state control of civic budgets.²²⁴ In this short period of existence of participatory budgets in Poland, their functioning was assessed by the state factor once (in 2019). Audits of participatory budgets were carried out on the basis of the Act on the Supreme Audit Office (Article 2(2)) in terms of legality, economy and reliability (Article 5(2)).²²⁵ They were analyzed by the Supreme Audit Office, or NIK.²²⁶ NIK examined whether the projects were implemented 'correctly and effectively' within the civic budget in the period 2016-2018. The survey was conducted in 262 municipal offices (cities). It is a certain test on the basis of which one can conclude about the development of the civic budget on a national scale. In particular, it was important:

- whether the resolutions of the commune council and orders of the head of the commune (mayor, city president) regarding the functioning of the civic budget were correct;
- whether the selection of the civic projects was carried out in accordance with the communes' internal law;
- whether the implementation of tasks was correct and consistent with the assumptions.

²²² <<https://www.facebook.com/PrzyjacieleDolinki/>> accessed 1 June 2021.

²²³ Supreme Audit Office, 'Funkcjonowanie budżetów partycypacyjnych (obywatelskich). Informacja o wynikach kontroli' [Operation of Participatory (Civic) Budgets. Information on the Audit Results] (reg no 20/2019/P/18/064/LGD, NIK 2019) 58.

²²⁴ The Minister's position on the information on the audit results, in Supreme Audit Office, 'Funkcjonowanie budżetów partycypacyjnych (obywatelskich)', above, 102-105.

²²⁵ The Act of 23 December on the Supreme Audit Office, Journal of Laws 2019, item 489.

²²⁶ Supreme Audit Office, 'Funkcjonowanie budżetów partycypacyjnych (obywatelskich)', above.



The subject of NIK's analysis was the variety of legal solutions in communes (cities). It assessed the regulations concerning the civic budget in the years 2016-2018, i.e. in the period when some relevant experience had already been acquired and, at the same time, when there were no specific legal bases in this matter. NIK concluded that 'the regulations concerning the civic budgets that were in force in cities, were not correct, as they were issued in breach of Article 5a paragraph 1 and 2 of the Local Government Act'. The violations of the act occurred in all resolutions of city councils or ordinances of mayors and city presidents. They involved:

- restricting residents' right to participate in public consultations (the act does not define the group of people entitled to participate in this procedure);
- imposing the obligation to provide the PESEL (Universal Electronic System for Registration of the Population) number during consultations;
- expanding the group of entities authorized to submit applications, e.g. by including communities, housing cooperatives and non-governmental organizations;
- defining the rules and procedure for conducting consultations in the ordinances of mayors and presidents, instead of the resolutions of municipal councils (this is the exclusive competence of municipal councils).

While NIK's assessment of the functioning of the civic fund was unsatisfactory in legal terms, in general it is considered that 'the results achieved by the cities in implementing the projects under civic budgets in the years 2016-2018 prove the effectiveness of this form of cooperation between residents and the authorities of local government units, even though their implementation was not always correct'.²²⁷ According to the assessment by the state, about 85 per cent of the projects funded out of the civic budget are implemented correctly and in accordance with the assumptions. The projects were implemented by municipal offices or local government organizational units as well as external entities such as foundations and associations. These entities were awarded grants for the implementation of tasks. The civic budget covers the cost of the construction of facilities that meet the needs of residents, mainly in the field of road, recreational and sports infrastructure. A large part of them are projects in the field of municipal economy and environmental protection, culture and national heritage protection as well as education and upbringing. Typical investments within the civic budget include the construction and renovation of roads, pavements, parking lots, lighting of municipal facilities, installation of video monitoring systems, construction of sports, recreation and relaxation facilities (such as playgrounds, outdoor gyms, parks, sports fields), construction of the cycling infrastructure (e.g. bicycle paths, parking lots). Frequently, residents also choose projects that are aimed at improving the aesthetics and making the urban space more attractive. A novelty are investments such as the installation of air sensors. NIK's report emphasizes civic budgets' benefits in the social dimension as well. It says that 'the existence of civic budgets allows city dwellers to directly participate in the decision-making process regarding the use of part of the budget funds of the local government units. Thanks to this social participation in the exercise of power by the municipal authorities, the civil society and the trust of the commune's residents in the local government and its representatives, are strengthened.'

²²⁷ Supreme Audit Office, 'Funkcjonowanie budżetów partycypacyjnych (obywatelskich)', above, 9.



The operation of participatory budgets is, in practice, most accurately assessed by the residents themselves. In the broad sense, participatory budgets are assessed during elections of the local government bodies. The assessment is also made in a narrower sense, somehow ad hoc, and it directly concerns specific investments within the participatory budget. The projects are evaluated by the relevant units of local government bodies (in approximately 80 per cent of the cities that were audited by NIK). The evaluations are carried out with the use of tools such as evaluation questionnaires available at cities' websites or focus research. The evaluation primarily analyzed the established procedures and the operation of civic budgets. The evaluation results were 'taken into account' when creating regulations for subsequent editions of the civic budget. In the practice so far, the evaluation of civic budgets carried out by local governments themselves can only be recognized as an auxiliary tool for assessing the satisfaction of residents with the operation of this new form of participatory democracy. There are social levels in the functioning of civic budgets that completely escape this method of research and evaluation. So far, no assessment has been developed that would include aspects such as the quality, efficiency and sustainability of the investment. The maintenance of the infrastructure created out of the participatory fund is not subject to project evaluation. It is assumed that these facilities are maintained by a given local government unit. Due to the fact that participatory fund investments are a new phenomenon in Poland, so far many practical aspects of their functioning have not been defined.

The civic budget finances investments that cause great conflicts between residents and the local government. A well-known Polish example of a civic budget investment that has been controversial is the project implemented in the Służewiecka Valley (in the Warsaw district of Mokotów). Despite being a local investment, thanks to the media it is well-known throughout the country and is becoming a flagship example of a bad participatory budget project. It may even be assumed – if the situation develops as dynamically and argumentatively as it has so far – that it will seriously contribute to the weakening (or perhaps even discrediting) of this new institution of participatory democracy, which is the civic budget. The project implemented in the Służewiecka Valley seems to be quite correct from the point of view of the procedures carried out. It does not raise any objections in the local government units responsible for the implementation of civic projects. However, residents do not want this investment. They clearly articulate their position towards the authorities of the City of Warsaw and the Mokotów district. It is a well-organized community that communicates excellently both in social media and in direct relations. Judging by the course of the case so far, it can be claimed that the subjectivity of the residents has been completely disregarded. It is interesting how the conflict between the residents and the local government originated and why the residents do not want this investment. The project in the Służewiecka Valley was voted for by all Warsaw residents, not only those of the Mokotów area, in which the Służewiecka Valley is located. This city-wide project received 10,751 votes and was qualified for implementation. The residents of the *Służew nad Dolinką* Housing Cooperative do not want this investment because it destroys a beautiful park with well-preserved nature (beautiful trees, natural small lakes). The Mokotów area council recognized their arguments. However, the City of Warsaw does not want to abandon the implementation of this investment. It claims that the project was selected in accordance with the applicable procedures and must be implemented. It refers to a legal opinion in the light of which the failure to carry out this investment will result in the Regional Chamber of Accounts not accepting the budget of the City of Warsaw. Based on the example



of this investment in the Służewiecka Valley, it can be seen that in practice the participatory fund is a difficult form of democracy. There have already been articles in the press depreciating the participatory fund.²²⁸

Assessment of the Practice

Prospects for the Development of the Civic Budget in Poland

Will the participatory budget enrich and improve the functioning of local government, will it, in the long run, become an important tool for creating social bonds and the subjectivity of residents; or will it be a short-lived experiment?

Sceptics and open opponents of the participatory budget claim that this is an ephemeral experiment. They emphasize that in Poland, local governments need other instruments that will increase the effectiveness of local government governance and improve the quality of life of inhabitants. It is emphasized that the new direction of changes in local government should be the creation of strong local government units capable of providing high-quality services for residents, and not the atomization of its financial resources.

Participatory budgeting does not arouse such interest among municipal activists anymore. It is said to have lost its freshness effect. The enthusiasm of city dwellers is also moderate, as it has not had time to take root for good yet. It seems that the need to promote the civic budget has been underestimated so far. It seems advisable to popularize participatory budgeting in educational institutions. Establishing school budgets could, in practice, shape the civic attitudes in young people and teach them how to function in the local community.

The state factor provided an important support tool for the popularization and development of the civic budget. The new statutory solution from 2018 introduced the obligation to create a civic budget in communes that are cities with county rights and the minimum amount of funds for this purpose was indicated. Although the statutory provisions concerning the civic budget in corpore are assessed as moderately successful, this amendment to the Local Government Act stabilizes this institution of participatory democracy. However, in the long run, the legal bases of the citizens' budget should be much more balanced. Legal solutions must be adapted to the capabilities of local governments (including small municipalities) and, on the other hand, protect the interests of local communities against abuse. The experience of using the participatory fund in the years to come will result in many new cases requiring legal regulation.

References to Scientific and Non-Scientific Publications

Legal Documents:

The Law of 7 April 1989 on Associations

²²⁸ The residents protest against the construction of a playground in the Służewiecka Valley. The civic budgeting has become pathology, the *Gazeta Wyborcza* newspaper of 5 May 2021.



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8. People's Participation in Local Decision-Making in Croatia

8.1 The System of Local Government in Croatia

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Types of Local Governments

Croatia has 21 units of regional self-government (*zupanija*), 20 counties and the Croatian Capital City of Zagreb. Each county is divided into a number of local government units. Also, each county has its own representative and executive body elected by popular vote for a term of four years. The City of Zagreb is a special territorial and administrative unit whose responsibilities are regulated by a separate Act on the City of Zagreb. The City of Zagreb has a dual status as a unit of local and regional government unit and thus performs activities within the scope of the city and as a county. It also carries out responsibilities of the state administration. In doing so administrative bodies of the City of Zagreb have the powers and obligations of state administration bodies.

There are 556 units of local government, that is 128 towns (*grad*) and 428 municipalities (*općina*). Towns are local government units typically of urban character with more than 10,000 inhabitants. Exceptions apply in case of historical, economic or geospatial reasons. Municipalities are local government units of rural character with less than 10,000 inhabitants. Each town and municipality has its own representative and executive body elected by popular vote for a term of four years. Each local government unit is further divided into one or more settlements regardless urban or rural. One or more settlements are represented by sub-local government entities called neighborhood councils with elected representatives which serve on non-professional terms. Some towns and some municipalities have only one neighborhood council. Towns and municipalities have basically the same responsibilities, except for towns in which counties have their administrative seat and towns with a population above 30,000 inhabitants. The latter are referred to as 'large towns' and have additional responsibilities. Seats of county are generally the largest towns within a county. There are only four large towns which are not the seat of a county.

Legal Status of Local Governments

The right to local and regional self-government is guaranteed by Article 128 of the Croatian Constitution, according to which '[c]itizens shall be guaranteed the right to local and regional self-government' and this right 'shall be exercised through local and/or regional representative bodies', as well as citizens' direct participation in the administration of local affairs.



The rights specified in this Article shall be exercised by Croatian and European Union nationals in compliance with law and EU *acquis communautaire*.

The right to local government is further prescribed in national legislation such as the general Local Government Act, Local Government Financing Act, etc. The Croatian system of local self-government is based on the principle of autonomy of government and the principle of subsidiarity. The European Charter of Local Self-Government has been fully ratified by the Croatian Parliament. Croatian local governments have a judicially enforceable right to local self-government before the Constitutional Court and other judiciary bodies.

(A) Symmetry of the Local Government System

Local authorities have comprehensive responsibilities which are enumerated in the Constitution and further prescribed by the general Local Government Act. Local government units perform tasks of local importance which directly affect needs of the citizens and which are not assigned to state bodies by the Constitution or other laws, and especially the tasks referring to organization of settlement and housing; spatial and urban planning; utility services; child-care; primary health protection; social welfare; elementary education; culture, physical culture and sports; consumer protection; environment protection; fire and civil protection; maintenance of municipal roads and traffic management. In addition to these competences, large towns also have responsibilities related to maintenance of local public roads and construction permits.

Regional government units carry out affairs of regional importance which are not assigned to central bodies by the Constitution or other laws. The scope of counties' responsibilities can be self-managing and entrusted (government affairs). Counties are tasked with performing the following tasks: general public administration services; primary and secondary education; healthcare; regional and urban planning; economic development; environmental protection; transport and traffic infrastructure; management of the network of educational, medical, social welfare, and cultural institutions; administration pertaining to agriculture, forestry, mining, and industry; management of road transport infrastructure; construction permitting, excluding the area of big cities and a county seat city.

Re-assignment of responsibilities between individual local and regional governments is allowed pending approval of the representative bodies of both government units. Out of 556 local government units some 8-10 local governments have taken over such responsibilities. Certain restrictions apply such as the ability to fund a specific responsibility (in case of most of responsibilities) and a minimum number of inhabitants (8,000 inhabitants for management of elementary education).

Political and Social Context in Croatia

The Croatian population of 4.2 million is predominantly urban with 71 per cent of the total population living in towns which cover 39 per cent of total territory. The remaining 29 per cent of the total population are scattered through municipalities which cover 61 per cent of



Croatian territory. According to the 2011 Census, 19 per cent of the population lives in Zagreb, the capital city of Croatia. Population density is 76 inhabitants per square kilometer (139 inhabitants per square kilometer in towns, 36 in municipalities).

National parties dominate local level of government. In 2009, direct elections of a mayor were used for the first time, replacing the former system in which a representative body elected a mayor. But this did not significantly change the political landscape at the local level. The share of incumbents who lost in the 2017 elections was 40 per cent in towns and 30 per cent in municipalities, but national parties still dominate local level of government. In the 2017 elections a group of non-aligned mayors raised, making them the second largest 'political' group at the local level with a share of 15 per cent of the total number of town/municipal mayors.

References to Scientific and Non-Scientific Publications

Legal Documents:

Constitution of the Republic of Croatia, 2014

Law no 110/2015 on Territories of Counties, Cities and Municipalities

Law no 98/2019 on Local and Regional Self-Government

Scientific and Non-Scientific Publications:

Ministry of Administration of the Republic of Croatia, 'Local and territorial (regional) Self-Government' <<https://uprava.gov.hr/o-ministarstvu/ustrojstvo/5-uprava-za-politicki-sustav-i-organizaciju-uprave-1075/lokalna-i-podrucna-regionalna-samouprava/842>>



8.2 People's Participation in Local Decision-Making in Croatia: An Introduction

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

The Croatian governance system is rather centralized with limited scope of competencies and decision-making decentralized to local level. In recent years, the national legislative process became more open to general public input through an e-participation platform, open data portals launched and public participation in decision-making became formally obligatory.

The Constitution guarantees freedom of expression and access to the information, right to referenda, right to local governance and right to directly participate in decision-making at the local level for Croatian and EU citizens.

The right of access to the information is further prescribed in the national Law on Access to the Information which applies to all levels of government. The law defines the procedure of the access and reuse of the information, obligation of proactive publishing of the information, mandatory consultations with the public and open data. Public authorities are required by the law to disclose requested information to the citizens proactively by publishing key legislation, general acts, reports, etc. via their web site in electronic and machine readable formats. They are also required to respond within 15 days to any citizen requests for information using the most viable method of information delivery and citizens can use the obtained information freely.

All public authorities are required to consult the public during the legislative process or preparing general acts, strategic or planning acts which affect rights and interests of citizens and legal persons. The authorities are obligated to publish draft acts on the national e-consultation platform or their web pages for a period of 30 days with a request for public input. Failure to do so may result in courts rendering such acts null and void.

The right to referenda is defined in a national Law on Referenda and Other Means of Personal Participation in State and Local Affairs. Parliament can, at its own decision or at the request of 10 per cent of the voters, start national referenda on changes and amendments to the Constitution and legislation, including new legislation. The President, at the request of the government or jointly with the Prime Minister, can start referenda on changes of the Constitution or other issue of importance for independence and preserving of the Republic. The national referenda must be held in case of the Republic joining the unions with other states. Decision at the referenda is passed by the majority vote under condition majority of voters voted at the referenda.

Local referenda can be started on local legislative issues, termination of a mayor's mandate or other issues within the scope of local government. Local referenda can be initiated by 1/3 of the members of the representative body, the majority of town quarters/neighborhood councils, the mayor or 20 per cent of voters. In all cases, except in the case of 20 per cent of voters, the representative body must discuss the proposal and may call a referendum by absolute majority vote within 30 days. In case 20 per cent of voters initiated the referendum, within 60 days the Ministry of Administration will verify whether the initiative complies with regulation and the local representative body will call a referendum within 30 days.



Advisory referenda can be called by the government to obtain opinion of the residents of one or several local or regional government units about the territorial-administrative structure of that area. Local governments can call an advisory referendum for issues within its competencies. Decision is passed by the majority vote unconditionally.

Citizens' meetings can be organized by the neighborhood council to collect input on issues of local (neighborhood) relevance, discussion on needs and interest of the citizens or for resolving local issues. The process and voting process is defined by local statutes and bylaws. Voting is public unless participants decide differently. The decision of a citizens meeting is obligatory for neighborhood council or town quarter, but it is not obligatory for the representative body of the local government. Hence, the latter could overturn decisions adopted by the citizens meeting.

In general, the legislative framework is generally permissive for public participation in decision-making in Croatia at all government levels. A permissive legislative framework does not necessarily translate into an enabling or encouraging framework. Administrative fragmentation, three layers of government and overlapping competencies of different levels of government do not provide for broad coverage, individual responsibility, innovation and significant impact in governance which may be an additional reason why a limited number of citizens engage in decision-making process. Other reasons may be of historical nature – a significant number of the voters lived in a central government top-bottom authoritative or semi-authoritative era with limited incentives for participation in the decision-making process, which gradually changed over the last quarter of the century. Government entities, likewise, were used to operate without soliciting input of the public or plainly limiting public availability of drafts. The change of both governance procedures and public interest is supported by recent report findings. The Freedom of Information Commissioner 2018 Report notes that a number of inputs submitted via the national e-consultation platform nearly doubled compared to 2017 and the number of inputs that were accepted and shaped the new legislation or acts increased from 25.2 per cent in 2017 to 33 per cent in 2018. Although the exact number of individual participants is not disclosed, a total number of 11,739 inputs suggest the number of participants is still rather low. The increase in number of inputs is related to an increased acceptance and use of e-consultation platform by the state bodies. There were approx. 640 laws and regulations published at national e-consultation platform in 2017 and 980 laws and regulations in 2018. The increase of accepted inputs (inputs which were incorporated in draft legislation) is probably related to more proficient input offered by professional individuals or organizations who followed suit and joined the platform.

The non-encouraging legislative framework, slow and formal instruments of participation yielding limited results are nowadays being challenged by social media, digital platforms, on-line petitioning, virtual interest groups, instant think-thanks, etc.

Local governments are required by law to carry out public consultations in relation to local regulation and general acts using their web pages or national electronic system. At this point, access to a national electronic system is not available although it is being discussed between the state and national local government associations. Therefore, urban and rural local governments are using their web pages to enable public consultations, often by publishing an act and an offline form that can be submitted to the local government. There does not appear to be much difference in urban and rural practice. City of Rijeka seems to be attracting more



substantial input and broader participation in its legislative and planning activities. The City of Rijeka launched an e-consultation platform in 2011, two years before consultations became a legal requirement and they seem to be the only one (or one of the few) to offer on-line submission of citizens' inputs. Early start coupled with on-line form suggests long-term effort and frictionless participation may be the key to increased citizen participation. A growing number of mayors is present at social media platforms, personally manages their accounts and participates in on-line discussions. New models of public participation are being implemented at local level – be it e-consultation platforms, gamification of the planning process, crowdfunding platforms and campaigns for community projects or participatory budgeting at municipal and neighborhood levels and schools or sectoral discussion on spending priorities.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 85/2015 on Access to the Information

Law no 73/2017 on Referenda and Other Means of Personal Participation in State and Local Affairs

Law no 98/2019 on Local and Regional Self-Government

Scientific and Non-Scientific Publications:

Bajok I and others, 'Principles, Guidelines and Protocols for Citizens' Participation in Decision Making' (MDP Inicijative 2012)

City of Rijeka, 'Savjetovanje s javnoscu' (*Grad Rijeka*) <<https://ekonzultacije.rijeka.hr/>> accessed 2 April 2020

Krzysztof Chmura and others, 'Citizen Participation Manual' (The Urban Institute 2005)

Malatestinic I, 'Lokalni proračun i uključivanje javnosti u proces njegovog donošenja' (Croatian Association of Cities 2011)

Runtic D and Zulicek M, 'Participatory Budgeting: Practical Guide' (Croatian Association of Cities 2020)



8.3 Participatory Budgeting in the City of Pazin: Pazi(n)! Proracun (Watch out! Budget)

Dario Runtic, *NALAS Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

This practice is an example of a contemporary participatory budgeting process that directly involves citizens in the decision-making process, improves communication and builds trust between policy actors and citizens, eliminates sectoral disparities and encourages citizens to take an active role in decision-making processes in society. The process involves local decision-makers, town services and citizens in a transparent, open process aimed at effective management of limited resources, increased accountability and transparency of local governments.

The main goals of the practice are to institutionalize harmonized development of urban and rural settlements, improve quality of life of inhabitants and reduce perceived disparities between urban and rural settlements.

The City of Pazin is located at the heart of the peninsula of Istria. The County of Istria covers the whole peninsula and the seat of the county is in Pazin. The City of Pazin has a total of 8,638 inhabitants equally divided between an urban settlement of 4,386 inhabitants and 17 rural settlements of 4,252 inhabitants dispersed among 135km² of total area.

Due to its status of the seat of the county, the City of Pazin has broader competencies than other towns with a larger number of inhabitants which do not have such status or status of a large city (e.g. construction permitting, management of all public roads, etc.). These additional competencies were decentralized from higher level government onto select local and regional governments. Temporary funding was provided for construction permitting and limited funding is allocated for road management. These competencies therefore put additional strain on the town's resources, which in turn caused frustration and mistrust when the small municipal budget couldn't meet all expectations.

Description of the Practice

The Process

The City of Pazin therefore decided to directly involve citizens in the 2014 budgeting process and carried on with the practice ever since. Citizens participate in a structured process to submit investments proposals to the city administration which should be carried out the following year. Citizens also participate in sectoral discussions to address any sectoral disparities or issues in sectoral policies in the area of social welfare and health, economy and tourism, culture and tourism, education and sport. This is done through a participatory budgeting process, a democratic deliberative and decision-making process, which enables



citizens to directly propose, discuss and prioritize budgetary spending. Most importantly, the process empowers the citizens by conducting an open forum in each rural settlement and providing them the right to vote which citizens' investment proposals will become part of the towns budget and executed during the following fiscal year. The process further motivates citizens to closely monitor the actual implementation of the city budget and broader policies in the long run.

The process contributes to the targeted and efficient spending of available financial resources, by investing in the real pressing needs of the citizens, decided by the citizens. Each neighborhood was allocated a lump-sum funding for investment priorities depending on the size of a neighborhood. Additionally, sectoral discussions were used to present draft sectoral policies to the citizens and collect their feedback on the policies and priority spending within the sector. The implementation of citizens' investment proposals raises the quality of life and work in local communities, which indirectly results in economic development, employment increase and reduction of poverty.

Kick Off

Each year the city administration kicks-off the process by announcing the commencement of the participatory budgeting process through local media and other information outlets. Following the announcement, a citizens' public meeting is held at which the city administration lays out more details about the implementation of previous year's investment proposals and details of current participatory budgeting. In addition, city representatives present citizens the most important determinants of the city budget and the budget process by which citizens are well informed, familiar with the limits of the city budget and have more realistic expectations.

Following the public meeting, citizens submit their investment proposals to the city administration for the eligibility and costing review. The eligibility review process makes sure that (i) the proposal is within total budgetary allocation for citizens' investments (1 per cent of the overall city budget), (ii) the proposal deals with public property owned by the town, and (iii) the city has the authority to act on the proposal.

Cost and Eligibility

The costing review calls for the city administration to review each proposal and estimate the costs of implementation based on similar prior spending and market prices for goods and services needed. Should the proposal require funding greater than allocated for participatory spending, but meets the other criteria, the city administration will take it under review for the traditional budgeting process. Proposals complying with funding limits are passed forward for participatory budgeting process.

Sometimes citizens propose projects which call for action on private property, public property owned by other levels of government or public operators or require actions which are under competencies of other levels of government, public agencies or companies. In such cases the city administration forwards the proposal to the competent authority with request for action. It also notifies the citizens about this and provides them with contact information of competent authority should the citizens decide to follow up on the proposal.

Deliberation and Decision-Making



Following the eligibility and costing review, local public hearings are organized in 12 neighborhood councils. During a local public hearing the city administration will present received proposals, results of eligibility and cost review, actions taken regarding ineligible projects and list of projects eligible for funding pending citizens' vote. Within the public debates in local boards, there is a time scheduled to open discussion, questions and dialogue between the representatives of the City of Pazin and its citizens. In this way, citizens get firsthand information and answers, and the city administration has an opportunity to identify problems and offer clarifications. That increases citizens' satisfaction and confidence in the work of the city administration.

During the local public hearing citizens cast a vote for investment proposals of their choice. Voting is limited to investment proposals within the neighborhood council area. Budgetary allocation for each neighborhood council is limited and may be insufficient for all investment proposals, much like the city budgets. Citizens knew up front budgetary limitations and had to vote for projects within the given limitations. Budgets were decided up front in equal terms for each neighborhood so that available funds are equally distributed among rural/urban neighborhoods. Therefore, citizens are encouraged to discuss their spending priorities in order to maximize the use of available funds for their community. Finally, top voted proposals adding up to the amount of the allocated budget are included in the city budget proposal. Although the final decision for approval of the city budget, which includes the neighborhood council spending proposal, lies with the city council, the council had not amended neighborhood spending proposals since inception of the process. The city council was involved in the process from the very inception and briefed on every step and overarching plan of participatory budgeting. Council members were invited to participate in public events and citizen voting sessions.

Sectoral Discussion and Priority Setting

During the first year of the project sectoral discussions were held parallel to project submission in order to address any sectoral disparities or issues in sectoral policies in the area of social welfare and health, economy and tourism, culture and tourism, education and sport. One of the issues that came up during these discussions was inadequate street lighting, a rather surprising find according to the mayor who expected that a priority might be related to inequalities in broadband access or similar. The city developed the Street Lighting Master Plan and resorted towards public-private partnership to address an issue.

In 2016 a priority setting discussion took place along participatory budgeting. Four major capital investments were presented (bus station, elderly home, elementary school and river protection project) and discussed with citizens in order to determine priority investments due to the scarcity of funding available.

Reinventing the Practice

From 2014 to 2018 a number of small investments were implemented at the request of citizens and, seemingly, having minor issues resolved citizens begun requesting the resolution of financially more intensive issues. In 2018 the practice was 'reinvented' to address citizens' demands and further develop dialogue with citizens. Since 2018 citizens can propose projects directly at the public hearing and elaborate it in detail to representatives of the city administration. The city administration and the citizens are also given an opportunity to



address how to efficiently use available funds to implement proposed projects. The neighborhood budget for 2018 doubled compared to 2014. The budgetary cycle was extended into two years, meaning that 6 neighborhood councils can propose and decide on projects in the first budgetary year while the remaining 6 neighborhood councils take their turn in the second year. This allows detailed discussion with a smaller group of citizens about financially more demanding projects which may not be completed within one budgetary year framework.

Results

Since the beginning of the project in 2014 until 2019, 1,411 citizens have proposed 666 projects and selected 178 projects for implementation total worth EUR 420,000.

Year	Participants ²²⁹	Budget (EUR)	Projects proposed	Projects selected
2014	182	40.500	100	19
2015	208	40.500	140	21
2016	158	67.500	130	40
2017	189	82.000	128	44
2018*	167	81.000	66	23
2019*	237	108.000	102	31

Assessment of the Practice

Like the City of Pazin, other cities probably face similar problems. The limited budgetary resources, the large number of requests for infrastructure interventions and the impossibility of implementation of all necessary communal actions cause frustration and dissatisfaction amongst the citizens. In addition, some citizens believe that the budget is a purely political procedure which they can't influence.

Regardless of their social and political status, this process was extensively publicly communicated via traditional and electronic means and a kick-off event and allowed all interested citizens to send in their proposals, participate in public debates and vote for the most important investments. Furthermore, it allows the citizens to ask questions, express their opinion, provide suggestions to the city administration and obtain instant direct feedback which in turn increase trust in institutions and governance. An opportunity to draft and submit budgetary proposals, discuss priority spending and vote to maximize effects of public spending provides a very important educational component to the citizens and the administration. Citizens were educated on the budgetary process, sources of revenues, spending levels and limiting factors for the implementation of some of the citizens' demanded projects (ownership

²²⁹ Participants include all citizens present in the public events, which were extensively communicated via traditional outlets (kick off event, radio, posters, flyers etc) and via electronic means, creating an opportunity for all interested parties to be present.



issues, managing authorities, planning and approval procedures, budgetary constraints, etc). On the other hand, the city administration benefitted from unique insight into citizens' priorities and expectations.

Finally, the multiple benefits of including citizens can be summarized as follows - involvement in decision-making and active participation in the political process leads to an improved relationship between the city and its citizens, promotes transparency and responsibility, strengthens the public trust in the institutions and their representatives and increases the level of political culture.

References to Scientific and Non-Scientific Publications

— 'Pazi(n) proračun! project brochure', (GONG) <<http://proracun.pazin.hr/wp-content/uploads/2015/07/pazin-BROSURA-A5-web.pdf>>

Zulicek M, 'Kako je Pazin uključivanjem građana u donošenje proračuna razvio uzajamno povjerenje' (*URBACT*, March 7 2019) <<https://urbact.eu/kako-je-pazin-uklju%C4%8Divanjem-gra%C4%91ana-u-dono%C5%A1enje-prora%C4%8Duna-razvio-uzajamno-povjerenje>>



9. People's Participation in Local Decision-Making in Albania

9.1 The System of Local Government in Albania

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

With the 2014 Territorial and Administrative Reform (TAR)²³⁰, in Albania there are two types of local self-governments, i.e. the basic level of local self-government consisting in 61 municipalities (*Bashkia*), and the second tier of local self-government made up of 12 regions (*Qarku*).

Municipalities comprise also administrative units, which can be towns and/or villages. In most cases, the administrative units are the former rural communes that were amalgamated with the TAR with their closest and cultural and historical urban centers. The Municipality of Tirana, for example, is subdivided in 24 administrative units, i.e. 11 subdivisions of the former (urban) municipality and 13 (rural) communes that were amalgamated to Tirana with the TAR. The administration of these units is part of the municipal administration and is directed by an administrator who is appointed and dismissed by the mayor. Towns may be divided into smaller units called quarters (*lagje*). As a rule, a quarter can be established in territories with over 20,000 residents. A town's division into quarters and its territory shall be approved upon a decision of the municipal council.

The regions, the second-tier local self-governments in Albania, were and continue to be entrusted with only few general responsibilities for 'coordination and harmonization' of regional policies with national policies and they may also perform any function that is mandated to them by one or more municipalities within the region or the central government. In practice, the regions do not perform any significant responsibility, other than some administrative tasks delegated by the national government.

Legal Status of Local Governments

The right of local governments to self-government is enshrined in Article 13 of the Constitution of Albania and the Law on Local Self-Government. The constitution prescribes that local government in Albania is based on the principle of decentralization of powers and is exercised according to the principle of local autonomy. The constitutional standing of the second-tier of

²³⁰ Law no 115/2014 on the Administrative-Territorial Division of Local Government Units in the Republic of Albania.



local self-government, the regional council (*Këshilli i Qarkut*), is the same as for municipalities, regardless of the fact that they have only a few 'coordination' own responsibilities. Only the municipal council (*Këshilli Bashkiak*) is directly elected. The regional council is composed of members from the elected bodies of the municipalities that make up the region, i.e. mayors and other members that are elected from among municipal councilors of the municipalities that compose the region.

The Law on Local Self-Government prescribes the right and the ability of local governments in Albania to regulate and manage public affairs under their own responsibility, within the limits of the law. The exercise of the right of self-government is guaranteed by additional rights of local governments as juridical persons, the right to own and dispose of property, to raise revenues and make expenditures, to perform economic activity, to cooperate with other local governments, etc. The Law on Local Self-Government prescribes also the basic principles of local government finances, according to which, local governments 'shall be entitled, within national financial policies, to adequate financial resources, commensurate with the responsibilities provided for by the Law' (Article 34).²³¹

(A) Symmetry of the Local Government System

All municipalities are entrusted with general competences to carry out all responsibilities relevant to the local community (as prescribed by law), and any other responsibility that is not specifically assigned (by law) to another level of government. Local governments are entrusted with own and delegated functions and responsibilities. Local self-governments have own responsibilities in the core public services and public infrastructure, in the field of education, social protection, culture, recreation and sports, environmental protection, agriculture, rural development, forests and pastures and protection of nature and biodiversity, local economic development and public order and safety including fire protection. Although these are all 'own' local matters, the degree of political and administrative and fiscal powers decentralized to local governments varies significantly from function to function and in any case, in performing these functions, local governments should also respect regional and national policies and standards for service delivery.

The spirit of the new Law on Local Self-Government entails symmetric decentralization of exclusive functions to all new 61 municipalities, regardless of size, capacity or any other condition that may affect service delivery for particular functions. However, the law introduces also the possibility of asymmetrical decentralization to specific municipalities. However, the transfer of specific responsibilities to specific local governments shall be regulated through a separate law.²³² In practice there are a number of cases of asymmetries through transfers of competences to specific local governments for specific purposes, either through a specific law, government decree or a more simple Memorandum of Cooperation between different central and local governments. Examples include the transfer of responsibilities for operating and

²³¹ Law no 139/2015 on Local Self-Government, Art 34.

²³² Law no 139/2015, dated 17 December 2015, on Local Self-Government, Official Gazette No 249, p16963, Art 21.



maintaining pre-university students' dormitories, the operation of certain social service centers that were previously operated by a specific line ministry and public order, as the municipal police in Tirana may impose fines for the irregular parking within the territory of the municipality, which is a national police competence.

Political and Social Context in Albania

Albania has a relatively young history of democratic local self-government. While an independent country since 1912, for about half a century (1944-1990), Albania suffered a severe totalitarian regime, during which local government meant simply 'local structures of the (central) government'. Albania began the journey of political and administrative decentralization in 1992 with the first local democratic elections. As in many other ex-communist countries, the early reform processes simply focused on laying down the basic concepts and legal framework for decentralization and local self-government to counter a half century legacy of repressive and non-democratic institutions.²³³ In the early 2000s Albania adopted decentralization reforms that saw the consolidation of local responsibilities and the introduction of basic instruments for the financing of local responsibilities. The reforms enacted between 2014 and 2017, have been even more impactful. In 2014, the Government of Albania (GoA) consolidated 373 urban and rural local governments into 61 municipalities. In 2015, Parliament passed a new Law on Local Self-Government (LSGL)²³⁴ and a new Law on Local Self-Government Finance (LSGFL).²³⁵ These laws were considered as critical components of a larger strategic plan to expand the role of democratically-elected local governments in Albania by creating larger municipalities and giving them more responsibilities and resources.²³⁶

Following the collapse of the communist regime, the political landscape is dominated by two major parties, the Democratic Party (DP) and the Social Party (SP). The third largest political party is the Socialist Movement for Integration (SMI). The 2013 general elections were won by a coalition between the SP and the SMI that governed together until the general elections of 2017, since when the SP is governing alone. Local politics is controlled by these three major parties. There have been only a few cases of an independent candidate running a local government as a mayor. The latest case when independent mayors run and took office is the local elections of 2007. Between 2007 and 2011 there have been 12 independent mayors out of 373. After 2011, there have been no cases of independent mayors taking office in Albania.

Regarding the social context of local government, it is important to note the massive number of Albanians that have left the country (but that still have Albanian citizenship) since the early 1990s. Only between 2014 and 2018, about 200,000 Albanians have emigrated while about

²³³ Stafa Elton and Xhumari Merita, 'Albania: Aligning Territorial and Fiscal Decentralisation' in William Bartlett, Sanja Kmezić and Katarina Đulić (eds), *Fiscal Decentralisation, Local Government and Policy Reversals in Southeastern Europe* (Palgrave Macmillan 2018).

²³⁴ Law no 139/2015 on Local Self-Government (LSGL).

²³⁵ Law no 68/2017 on Local Self-Government Finance (LSGFL).

²³⁶ Government of Albania, 'National Crosscutting Strategy for Decentralization and Local Government' (adopted by Decision of the Council of Ministers no 691 of 29 July 2015).



100,000 have immigrated.²³⁷ As for internal population movements, the 2011 census ascertained that the population living in urban areas for the first time exceeded the population living in rural areas. The resident population in urban areas was 53.5 per cent, while 46.5 per cent lived in rural areas.

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 115/2014 on the Administrative-Territorial Division of Local Government Units in the Republic of Albania

Law no 139/2015 on Local Self-Government

Government of Albania, 'National Crosscutting Strategy for Decentralization and Local Government' (adopted by Decision of the Council of Ministers no 691 of 29 July 2015)

Law no 68/2017 on Local Self-Government Finance

Scientific and Non-Scientific Publications:

Stafa E and Xhumari M, 'Albania: Aligning Territorial and Fiscal Decentralisation' in William Bartlett, Sanja Kmezić and Katarina Đulić (eds), *Fiscal Decentralisation, Local Government and Policy Reversals in Southeastern Europe* (Palgrave Macmillan 2018)

²³⁷ Instat, 'Migration and Migrant Integration' (Instat Institute of Statistics)

<<http://www.instat.gov.al/al/temat/treguesit-demografik%C3%AB-dhe-social%C3%AB/migracioni-dhe-integrimi-i-migrant%C3%ABve/#tab2>>.



9.2 People's Participation in Local Decision-Making in Albania: An Introduction

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

While an independent country since 1912, nearly half a century (1944-1990) of dictatorship and highly centralized government left a legacy of repressive and non-democratic institutions in Albania, with major implications on citizens' trust in institutions and participation in decision-making. In recent years, however, the general framework for people's participation in policy-making became more open to the general public, via an improved legal framework, the creation of new institutions and platforms which facilitate public participation in policy-making. In some cases, citizens' participation in decision-making became formally obligatory.

The 1998 Constitution guarantees the right of all citizens to access to information on all national and local government activities and follow up meetings of collectively elected organs (Article 24); the right to submit requests, complaints and observations to public institutions, and the latter are obliged to respond within timelines and conditions set by law (Article 48). From this perspective, there are no constitutional provisions requiring all public authorities, including therefore local governments, to facilitate the participation of people in political, economic, social and cultural life, as a fundamental right. Nevertheless, the Constitution guarantees the right to access information which, along with the right to interact with public authorities, create the first steps to empowering citizens to participation in decision-making.

In general terms, the right to information is further elaborated by the Law on the Right to Information,²³⁸ the rulings of which are designated to ensure public access to information. The law also aims at encouraging integrity, transparency and accountability of the public sector bodies. However, it was the 2014 Law on Notification and Public Consultation²³⁹ that provides the framework for citizen participation in policy-making in Albania. This law regulates the process of notification and public consultation of the draft laws, national and local strategic draft documents, and policies of high interest to the public. It stipulates the procedural rules which shall be applied in order to ensure public transparency and participation in the policy-making and decision-making processes of public entities.

Specifically, citizens' right to participate in local government decision-making is strongly embedded in the organic law regulating local governance in Albania,²⁴⁰ as a form of real decentralization of power from higher levels of government to local communities. This law devotes an entire chapter to rules on transparency, consultation and civic participation. It prescribes that promoting an all-inclusive participation of the community in local governance is one of the fundamental missions of local self-government units in Albania. According to the law, local self-governments shall guarantee transparency of their activity to the public and are obliged to guarantee public participation in the process of decision-making. The municipal council meetings are open to the public and every citizen shall be allowed to attend them as

²³⁸ Law no 119/2014 on the Right to Information.

²³⁹ Law no 146/2014 on Notification and Public Consultation.

²⁴⁰ Law no 139/2015 on Local Self-Government.



stipulated in the statutes of the municipal council. This law specifically provides that before considering and approving acts, municipal or regional councils shall hold consultation sessions with the community, and in the case of municipal budgets, municipal fiscal policy and a few other major local government rights and responsibilities, such as the adoption of local development strategies, rulings on territorial management, rulings affecting the entire community etc., the consultation sessions with the community are mandatory. Furthermore, each community has the right to present citizens' initiatives on matters within the jurisdiction of the local self-government unit to the municipal council for decision.

The Albanian Constitution foresees also local referenda as one of the main forms of local democracy and direct exercise of people's sovereignty and as a key form of local self-government (Article 108). The initiative for a local referendum on a local government issue can be exercised by: (i) 10 per cent of the voters registered in the electoral registers of the respective local unit or 20,000 of them, whichever is smaller; (ii) a number of municipal councils, representing not less than one third of the population of a county, which have the right to request the holding of a referendum on a local government issue at the county level. However, a legal framework to allow the implementation of local referenda has been missing since the adoption of the Constitution in 1998, and in fact, there are no cases of local referenda in Albania. It is difficult to explain the reasons why Albanian policymakers have not adopted the implementing framework for local referenda over the past two decades. The strong legacy of centralistic institutions and political divisions at national and local level certainly plays an important role, along with the interplay of other social and political factors, such as trust in government and institutions, including on local referenda.

Albania enjoys a sound legal framework that would ensure local government transparency and facilitate citizens participation in local decision-making. However, there is a substantial gap between the provisions of the laws and their actual implementation. While the practice of inviting citizens to participate in consultations, discussions, presentations and roundtables to inform citizens on local government plans and strategies has been increasing, still implementation of real participation in decision making remains challenging.²⁴¹ Citizens are not fully aware of the existence of mechanisms ensuring their participation and there is a lot of skepticism about the concrete impact of their involvement in decision-making.²⁴² This skepticism is rooted also in the fact that in most cases, citizens are presented a completed or almost completed proposal before its final approval. This setting does not allow citizens to be involved in the early stages of decision-making, which would contribute to building trust in their government and participating in the development of their own community. Monitoring of local government activity with a view to holding them accountable is mostly driven on a project basis by NGOs. Some municipalities have adopted open government initiatives to facilitate both monitoring and accountability. However, actions by individuals or organizations on such open data portals are rather rare, except for investigative journalists.

Overall, the majority of Albanian citizens perceives the central and local government as not transparent or accountable and between 2016 and 2019, the perceived decline in

²⁴¹ Congress of Local and Regional Authorities and Partners Albania for Change and Development, 'Handbook on Transparency and Citizen Participation in Albania' (Council of Europe 2020).

²⁴² IDRA Research, 'Citizen Participation in Decision-Making in Albania' (IDRA 2017).



transparency is six percentage points for the central government and seven percentage points for local government.²⁴³ According to the 2019 assessment of the Institute for Democracy and Mediation, at the local level 24.6 per cent of respondents participated in a public consultation meeting, with the main reason for this low turnout being the lack of trust in such processes. The report finds out also that at least six in ten respondents believe that local public hearings are formal events with limited influence on municipal decisions and that suggestions coming from civil society and interest groups on draft laws are not taken into consideration. Another survey found out that between 2016 and 2019 there is an improvement regarding the institutional framework for participation and citizen engagement, but there is a decrease in the involvement of all stakeholders in decision-making.²⁴⁴ Additionally, 70.6 per cent of respondents reported that they do not have sufficient opportunities to participate in decision-making at the central level. At the local level, respondents were slightly more optimistic about opportunities to participate. 58.6 per cent reported that they do not have sufficient opportunity, meaning that according to 41.4 per cent of the respondents there is sufficient opportunity to participate in local decision-making processes.²⁴⁵ The assessment surveys show no major differences with regard to citizens' interest or perception of opportunities to participate in decision-making at the central and local level according to urban or rural residency.²⁴⁶

In short, despite significant progress, in particular in the institutional framework and mechanisms, Albanian civil society is still struggling to increase influence on governance at both national and local level and to ensure sustainable impact. However, it must be acknowledged that there are many local governments who take a proactive approach in involving citizens in their decision-making processes, both in urban and rural areas.²⁴⁷

References to Scientific and Non-Scientific Publications

Legal Documents:

Law no 119/2014 on the Right to Information

Law no 146/2014 on Notification and Public Consultation

Law no 139/2015 on Local Self-Government

Scientific and Non-Scientific Publications

Congress of Local and Regional Authorities and Partners Albania for Change and Development, 'Handbook on Transparency and Citizen Participation in Albania' (Council of Europe 2020)

²⁴³ IDM – Institute for Democracy and Mediation, 'Survey Report: Opinion Poll – Trust in Governance in Albania' (IDM 2019).

²⁴⁴ IDRA Research and Human Development Promotion Center, 'Local Governance Mapping in Albania' (2020).

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

²⁴⁷ See, for example, report section 6.1.on Civic Engagement towards Urban-Rural Linkages in Albania.



IDM Institute for Democracy and Mediation, 'Survey Report: Opinion Poll – Trust in Governance in Albania' (2019)

IDRA Research, 'Citizen Participation in Decision-Making in Albania' (2017)

— and Human Development Promotion Center, 'Local Governance Mapping in Albania' (2020)



9.3 Atelier Kanina - 100 Albanian Villages: Civic Engagement Towards Urban-Rural Linkages

Elton Stafa, *NALAS – Network of Associations of Local Authorities of South-East Europe*

Relevance of the Practice

Citizen engagement plays a fundamental role in strengthening good governance, promoting local democracy and facilitating community empowerment by enabling citizens to participate in decision-making and increase government accountability. While Albania has developed a sustainable legal and institutional framework to facilitate people's participation in local decision-making, still citizens' participation remains very low, hindered by endemic lack of trust in government in general and in consultation processes in particular. The genuine commitment of institutions to involve and not just consult their communities in local decision-making is the main factor that determines whether citizens will participate and engage in the policy process in a proactive manner.

The practice we analyze focuses on the elaboration of a Development Strategy for the Village of Kanina through a series of participatory urban planning workshops engaging the local community in the development of their own community. The practice is developed within the '100 villages program' also called the 'rural renaissance program', which is a national rural development program launched by the Government of Albania to promote a sustainable, integrated and multi-stakeholder approach to rural development in Albania. The program aims to develop a new rural development model for 100 villages based on three main criteria: (i) public infrastructure development and revitalization; (ii) local economic development through the diversification of economic activities (in particular different forms of tourism for/in rural areas; and (iii) the development of the human and social capital, aiming at fostering the creation of rural networks, local action groups and civil society in rural areas.²⁴⁸

The practice involved participatory urban planning and the development of a guide for small towns on how to develop urban strategies with place-based solutions. This methodology was tested in the Village of Kanina and then replicated in other towns and villages through this methodology guide. The practice focuses on a civic engagement model for a key local government function (urban planning), while having direct implications on the structures of local governments, and builds on successful intergovernmental dialogue and consultation.

Description of the Practice

The Village of Kanina (part of the Municipality of Vlora), was selected by the Albanian government, based on a project proposal by the municipality, as one of the beneficiaries of the

²⁴⁸ Government of Albania decision no 21/2018 on the Integrated Plan for Rural Development – the 100 Villages Program 2018-2020.



‘100 villages program’ which is a national program aiming to support the development of rural areas in Albania. Kanina is a village with a significant development potential, based on a strong culture and historical background and its proximity with the City of Vlora, one of the major economic hubs in Albania. To make sure the new development strategy of Kanina could build on the local community and its development potential and priorities, the National Territorial Planning Agency in Albania (NTPA), partnered with the Municipality of Vlora and the community of the Village of Kanina. A series of participatory urban planning workshops were organized with the local community, with the technical support of superwien urbanism²⁴⁹ and the support of the BACID fund – Building Administrative Capacities in the Danube Region.²⁵⁰

In two days of workshops targeting Kanina’s different interest groups, different tools were used, based on the concept of place-making and techniques of civic engagement in urban planning, in order to activate the local economic and cultural actors including local businesses, citizens, activists and representatives of national and local cultural institutions, in the development of the village and create common strategies to trigger economic development and foster sustainable tourism. Place-making is a multi-faceted approach to the planning, design, and management of public spaces. It capitalizes on a local community's assets, inspiration, and potential, with the intention of creating public spaces that promote people's health, happiness, and well-being.

The participatory urban planning workshops, organized by the NTPA, included several activities to get to know the roles and expectations of the influential stakeholders and specific interest groups, to identify intervention areas based on citizens’ perspectives, to identify challenges and opportunities and map goals; to learn about the past history so that it can inform the future development; to get feedback from citizens and mapping activities. The key emerging topics included the utilization of the cultural heritage, revitalization of the central square, tourism development, water infrastructure/supply, road infrastructure, youth migration, natural landscapes and local products.

The results of the workshops and focus interviews led to the definition of Emerging Topics and Development Goals that were included in a concrete action plan, prepared by superwien urbanism and the NTPA, and endorsed by the local community stakeholders and the City of Vlora. The action plan included five main clusters of development goals, including fostering the cultural heritage as an economic asset, the creation of attractive public spaces for locals and visitors, boosting tourism development, protection of the ecology and natural landscape as well as improving quality of life through improving basic local infrastructure.

Assessment of the Practice

On a more general note, while there have been improvements in the policy framework and enabling environment for citizen participation in decision-making, the strong legacy of repressive institutions continues to have major implications on citizens’ trust in institutions and

²⁴⁹ Superwien is a studio for urban development and sustainable architecture based in Vienna, Austria.

²⁵⁰ Financed by the Austrian Development Agency (ADA) and managed by the Austrian Association of Cities and Towns (AACT) and KDZ (Centre for Public Administration Research).



participation in decision-making. There is a significant gap between the provisions of the laws for participation and their actual implementation and citizens are very skeptical about the concrete impact of their involvement in decision-making. On the other hand, there are successful practices of citizens participating in decision-making at both urban and rural levels as demonstrated by the practice on Kanina.

The key objectives of the practice were to engage the local community in the co-creation of their own development strategy, based on their needs, priorities, and potential. This involved the implementation of participatory and co-creative approaches and at the same time provided an opportunity to get as much information as possible from the local community on their challenges and opportunities. Engaged citizens representing the local community as well as representatives of local businesses clearly delineated that the central square of the village, including historical buildings and the Castle of Kanina, although currently abandoned and left over as a result of three decades of transition, have a strong development potential and provided their own ideas about the future of the central square. Ultimately, the results of the workshops included the development of a clear strategy, developed by superwien urbanism and the NTPA, focusing on the re-design of the main square, including the introduction of commercial and non-commercial zones, and the renovation of the historical stone buildings, with the goal to activate the square and make it more attractive for tourists as well as residents.

The participatory urban planning workshops piloted in Kanina were replicated throughout the country by the National Territorial Planning Agency within the 100 villages program, creating a new practice of citizens' consultation in rural areas. Ultimately, the practice we analyze addresses one of the core challenges to people's participation in Albania – trust in participatory processes and the impact of their contribution in the early stages of development of policy documents – as opposed to only being presented the draft prepared by national/local authorities on their own. The practice shows that when institutions are really committed to participatory development, citizens are committed too and participate in the process, as they clearly understand the importance of the process.

References to Scientific and Non-Scientific Publications

Legal Documents:

Government of Albania decision no 21/2018 on the Integrated Plan for Rural Development – the 100 Villages Program 2018-2020

Scientific and Non-Scientific Publications:

BACID – Building Administrative Capacities in the Danube Region, '100 Albanian Villages: Civic Engagement towards Urban-Rural Linkages' (*BACID.eu*, 24 March 2020)

<[https://www.bacid.eu/100 Albanian Villages: Civic engagement towards urban-rural linkages](https://www.bacid.eu/100%20Albanian%20Villages%20Civic%20engagement%20towards%20urban-rural%20linkages)>

Berisha E, 'Albania declares 100 Villages for The Integrated Rural Development Program' (*World Architecture*, 17 February 2018) <<https://worldarchitecture.org/articles->



[links/cmhpz/albania declares 100 villages for the integrated rural development program.html](#)>

Government of Albania, “‘100 Villages” program, a Rural Renaissance Model’ (*Prime Minister’s Office*, 2018) <<https://kryeministria.al/en/newsroom/programi-100-fshatrat-nje-model-i-rilindjes-rurale/>>

Superwien, ‘Atelier Kanina’ (*Superwien*, 2019) <<https://superwien.com/portfolio/atelier-kanina/>>



10. People's Participation in Local Decision-Making in Moldova

10.1 The System of Local Government in Moldova

Viorel Girbu, *Congress of Local Authorities from Moldova, NALAS - Network of Associations of Local Authorities of South-East Europe*

Types of Local Governments

The Republic of Moldova is organized in *rayons*, cities, villages and the Autonomous Region of Gagauzia. The administrative and territorial organization of the country is based on two levels: villages (communes), sectors (of the Chisinau municipality) and cities (municipalities) constitute the first level; *rayons*, Chisinau municipality and Balti municipality constitute the second level. Chisinau municipality is the capital city of the country and its status is regulated by the organic law. Urban localities are classified on four ranks according to a list of indicators that describe their level of social and economic development. Cities that meet specific requirements established by law could be assigned with the status of a municipality.

A total number of 32 *rayons* and 1495 localities (from which 32 are part of the Autonomous Region of Gagauzia) exist in Moldova (excluding the breakaway Transnistrian Region of Moldova). From the total list of localities, 66 are urban localities, including 53 cities and 13 municipalities and 832 are rural localities. 597 localities do not have own administration as they are part of a bigger administrative entity.

Legal Status of Local Governments

In fulfilling their competences, the local public administration authorities have autonomy, enshrined and guaranteed by the Constitution of the Republic of Moldova, the European Charter of Local Self-Government and by other treaties to which the Republic of Moldova is a party. According to Article 109 of the Constitution of the Republic of Moldova, 'public administration in the administrative-territorial units is based on the principles of local autonomy, decentralization of public services, eligibility of the local public administration authorities and consultation of citizens in the local issues of special interest.'

The public administration authorities, through whom local autonomy is exercised in villages and cities, are the elected local councils and the elected mayors. Local councils and mayors act, under the conditions of the law, as autonomous administrative authorities and manage public affairs of villages and cities. The *rayon* council coordinates the activity of the village and city councils in order to realize the public services of district interest. The *rayon* council is elected and functions according to the law.



The relations between the local public authorities are based on the principles of autonomy, legality and collaboration in solving common problems. In order to ensure local autonomy, the local public administration authorities elaborate, approve and manage autonomously their budgets and have the right to implement local taxes and to establish their amount according to the law.

(A) Symmetry of the Local Government System

For the first-level local authorities, the following own fields of activity are established:

- urban planning and management of green areas of local interest;
- collection and management of household waste, including the cleaning and maintenance of land for their storage;
- distribution of drinking water, construction and maintenance of sewage and wastewater treatment systems;
- construction, maintenance and lighting of local public streets and roads, local public transport;
- arrangement and maintenance of cemeteries;
- administration of goods from local public and private domains;
- construction, management, maintenance and equipping of pre-school and out-of-school institutions (nurseries, kindergartens, art schools, music);
- development and management of urban gas and heat distribution networks;
- cultural, sporting, recreational and youth activities, as well as the planning, development and management of the infrastructures necessary for these types of activities;
- arranging agricultural markets, commercial spaces;
- carrying out any other measures necessary for the economic development of the administrative-territorial unit;
- establishment and management of municipal enterprises and organization of any other activity necessary for the economic development of the administrative-territorial unit;
- the construction of houses and the granting of other types of facilities for the socially vulnerable population, as well as for other categories of the population;
- organization of territorial services (stations) of rescuers and firefighters, contributing, in accordance with the law, to the protection of the cultural heritage and monuments in the administered territory.

For the second-level local public authorities, the following own fields of activity are established:

- administration of assets in the public and private areas of the district;
- planning and administering the construction, maintenance and management works of some public objectives of *rayon* interest;
- construction, administration and repair of the roads of district interest, as well as of the road infrastructure;
- organization of passenger car transport, administration of buses and car stations of *rayon* interest;



- establishing a general framework for the development of the territory at *rayon* level and the protection of the forests of *rayon* interest;
- supporting and stimulating the initiatives regarding the economic development of the administrative-territorial unit;
- elaboration and implementation of the projects of construction of the interurban gas pipelines (including the medium pressure gas pipelines), of other thermo-energetic objectives with local destination;
- maintenance of primary schools, kindergartens and high schools, vocational secondary education institutions, boarding schools and boarding schools with special regime, other institutions in the field of education that serve the population of the respective district, as well as other methodical activities from the field;
- administration of cultural, tourism and sports institutions of *rayon* interest, other cultural and sporting activities of *rayon* interest;
- administration of municipal enterprises of district interest;
- administration of social assistance units of district interest;
- development and management of community social services for socially vulnerable categories, monitoring the quality of social services;
- contribution, under the conditions of the law, to the protection of the cultural heritage and monuments in the administered territory.

Local public authorities of the first and second levels, within the limits of the law, have full freedom of action in the regulation and management of any matter of local interest which is not assigned to another authority. Other competences specific to the local public authorities can only be assigned to them by law.

The competences pertaining to the central public authorities can be delegated to the local public authorities by the first and second levels, respecting the criteria of efficiency and economic rationality. The delegation of powers may be performed by the parliament. The delegation of powers may concern all local public authorities of the first and second levels (general delegation) or only some local public authorities. The delegation of powers shall be accompanied by the provision of the necessary and sufficient financial resources for their realization.

Political and Social Context in Moldova

The resident population of the Republic of Moldova at the beginning of 2019 was 2.68 million, decreasing by 1.8 per cent compared to the same period of 2018. The main reason for the decrease in the number of the resident population is negative net migration that increased from –24,600 people in 2014 to –48,600 people in 2018. As far as internal population movements are concerned, about 57 per cent of the population lives in rural areas. According to the 2014 census, about 17 per cent of the population lives in the capital city of the country, Chisinau municipality.

The general local elections, the 7th electoral exercise since the proclamation of the independence of the Republic of Moldova, took place in 2019 throughout the territory of the



country, including in the localities of Gagauzia, except for the settlements under the control of the unrecognized administration in Transnistria. The highest number of mayors come from the social-democratic Democratic Party of Moldova (261), the former ruling party of Moldova, followed by the Party of Socialists of the Republic of Moldova (206) that are currently governing the country and representatives of the opposition electoral block ACUM (172) and SOR party (43). A total number of 112 city halls are led by independent candidates and a remaining 99 city halls are led by extra-parliamentary political parties.

References to Scientific and Non-Scientific Publications

Constitution of the Republic of Moldova, 1994

Law no 764/2001 on Administrative-Territorial Organization of the Republic of Moldova

Law no 435/2006 on Administrative Decentralization

Law no 436/2006 on Local Public Administration



10.2 People's Participation in Local Decision-Making in Moldova: An Introduction

Viorel Girbu, *Congress of Local Authorities from Moldova, NALAS - Network of Associations of Local Authorities of South-East Europe*

The Constitution of the Republic of Moldova states the right of citizens to participate in the administration of public affairs directly, as well as through their representatives. The legal provision on citizens' participation in decision-making is provided by Law 239/2008 on Transparency in the Decision-Making Process. According to Article 6 of the law, citizens, associations established in accordance with the law, other stakeholders have the right to: to participate, under the conditions of this law, in any stage of the decision-making process; to request and obtain information regarding the decision-making process, including to receive the draft decisions accompanied by the related materials, under the conditions of the Law on Access to Information; to propose to the public authorities the initiation of the elaboration and adoption of decisions; to present to the public authorities recommendations regarding the draft decisions under discussion. The public authorities are obliged to take the necessary measures to ensure the possibilities of participation of citizens, of the associations established in accordance with the law, or of other interested parties in the decision-making process.

The National Council for Participation (hereinafter - Council) was created at the initiative of the Government of the Republic of Moldova as an advisory body, without legal status, to ensure the participation of civil society and the private sector in elaboration, implementation, monitoring, evaluation and revision of strategic policy documents. The Council aims to develop and promote a strategic partnership between public authorities, civil society and the private sector in order to strengthen participatory democracy in the Republic of Moldova, by facilitating communication and stakeholder participation in identifying and achieving strategic development priorities at all stages, creating the institutional framework and capacities to ensure the full involvement of stakeholders in the decision-making process. The Council is formed with broad participation of the members of the civil society organizations, 25 in total, representing different domains of interest.

A public consultation mechanism is regulated by Government Decree no 967/2016 and according to internal procedures of public authorities. Information on the decision-making process is provided through general information, for an indefinite general public, and through targeted information, for defined stakeholders. General information implies the obligatory publication of the information on the official web page of the public authority, on the portal www.particip.gov.md, in a space accessible to the public, as well as by dissemination of a press release in central or local media. Public authorities initiate a public consultation to inform and receive recommendations from stakeholders. These consultations could be organized in different forms that may be in form of soliciting the opinions of civil society, experts, professional associates, academia; setting up permanent or ad hoc working groups; organizing public debates; conducting public hearings; conducting public surveys etc.

Despite the legal framework in Moldova provides for an extensive set of opportunities, yet, implementation is far from satisfactory. Many citizens show indifference to political



participation while others lack the knowledge needed to set democratic processes in motion. Given the poor economic situation in the country, specifically in the rural areas, the level of economic development is very limited. A significant part of the active members of the local community left for a better life abroad, which further hindered popular participation in local decision-making. Additionally, the strong legacy of repressive institutions continues to discourage citizen activism and open consultation.

Moldova's State Chancellery Report²⁵¹ on transparency in the decision-making process finds that the legislative framework lacks a methodology on the consultation process, the web portal <www.particip.gov.md> is not well structured, and that additional legal instruments are needed to help contesting the actions of public authorities in case of non-compliance with the law, while the format of the National Council for Participation could be reviewed to ensure greater transparency and representativeness of the associative sector in cooperation with the central public administration. At the local level the situation is even more challenging. While there is a register of the acts of local public authorities (LPAs), the platform <www.actelocale.md> publishes the final and approved decisions only, not the drafts or other accompanying documents which could facilitate the participation of civil society organizations and their constituents in the decision-making process. At the same time, not all LPAs publish their decisions on the mentioned web page.

A recent study on the involvement of citizens in the life of their communities²⁵² revealed the following reality: '85% of the population did not participate at all in any meeting of local councils in the locality (although, according to the law, local council meetings are public); It should be noted that the vast majority of the population (91%) did not write a complaint about a local problem; 79% stated that they had not contacted any local, district, deputy or minister elected in the last twelve months; therefore, we can emphasize the absence of any communication with the elected representatives of the people/state representatives. Only 7% of respondents contacted at least one media institution to report a local issue to. Survey participants do not frequently use social media networks as a tool to discuss a community problem. In the last year, 91% of respondents did not make any posts about any issue to them in the community.'

From these findings one may argue that citizens have limited confidence that local authorities will be able to solve community problems. At the same time, the data indicates also a state of indifference of the population or ignorance of civic involvement tools. It could be also concluded that existing civil involvement institutional framework is still burdensome for an ordinary citizen and may require further improvement.

The real total number of active civil society organizations (CSOs) in the Republic of Moldova is not known. Most registered CSOs (about 65 per cent) are located in Chisinau, although this territorial-administrative unit represents only about 25 per cent of the total population of the country. According to some studies, only about 25 per cent of the total number of CSOs are sufficiently active and develop various projects and initiatives, and among the causes is both

²⁵¹ State Chancellery of Moldova, 'Privind asigurarea transparenței în procesul decizional de către autoritățile administrației publice centrale' (Report, 2019).

²⁵² Doru Petruți, Viorelia Zaharco and Alexandru Crivițchi, 'implicarea cetățenilor în viața comunităților' (imas 2018) <<http://imas.md/pic/archives/12/implicarea%20cetatenilor%20in%20viata%20comunitatilor.pdf>>.



the inadequacy of funding within the country and the lack of revenue generation mechanisms through services.

Civil society development is one of the concerns of the political class in Moldova. For the period 2018-2020 Parliament has approved a strategy with a goal to contribute to the development of the civil society that substitutes a similar strategy approved for the period 2012-2015.

References to Scientific and Non-Scientific Publications

Legal Documents:

Constitution of the Republic of Moldova, 1994

Law no 239/2008 on Transparency in Decision-Making

Law no 51/2018 on the Approval of the Development Strategy of Civil Society for the Period 2018–2020 <https://www.legis.md/cautare/getResults?doc_id=105436&lang=ro>

Government Decree no 11/2010 on the Creation of the National Council for Participation

Government Decree no 967/2016 on the Mechanism of Public Consultation with Civil Society in the Decision-Making Process

Scientific and Non-Scientific Publications:

pbp – Good Practice Programme of Local Public Authorities of Moldova, ‘Împreună pentru performanțe în guvernarea locală 2017–2018’ (pbp Moldova, undated)
<http://viitorul.org/files/bune%20practici/Programul%20Bunelor%20practici_2019%20site.pdf>

State Chancellery of Moldova, ‘Privind asigurarea transparenței în procesul decizional de către autoritățile administrației publice centrale’ (report, 2019)



10.3 Participatory Budgeting Process in Chisinau

Viorel Girbu, Congress of Local Authorities from Moldova, NALAS - Network of Associations of Local Authorities of South-East Europe

Relevance of the Practice

Participatory budgeting is a relatively new experience for Moldova. This tool that provides ground for a greater involvement of the citizens in the administration of the local public affairs was introduced in Chisinau municipality in 2016 with the participation of activists from the Urban Civic Network, the Information Center for Local Authorities, the Polish Solidarity Fund, the European Endowment for Democracy and the representatives of the European People's Party of Moldova. About the same time this experience was implemented in the Balti municipality. Fast enough this experience was taken over by many other municipalities and rural localities in Moldova and equally represented an area for involvement as a result of communication and capacity building campaigns of the nationwide relevant civil society organizations.

In this sense participatory budgeting is an example of urban/rural differences, specifically among big municipalities, the capital City of Chisinau and Balti municipality that dispose of the highest human and economic potential in the country, and the rest of the country, that brought improvements in the consultation processes and direct popular participation in local decision-making in many smaller communities. In this respect participatory budgeting improved implementation of the core principles of good governance (accountability, rule of law, transparency, equality and non-discrimination, responsiveness) in both urban and rural local governments in Moldova.

The participatory budgeting practice in Moldova is therefore a new dimension that holds the promise to decrease discrepancies among local communities in Moldova, specifically between Chisinau municipality and rest of the country, in part related to civil society involvement in decision-making, being a tool with the potential to improve in many ways civil society involvement in the management of local public affairs.

Description of the Practice

Legal norms on Public Finances and Budgetary-Fiscal Responsibility require public budgets to be transparent, meaning that the drafts of normative acts in the field of public finances are subject to public consultation; the budgets shall be elaborated, approved and administered in a transparent manner; and the approved budgets and the reports on their execution shall be made public. Participatory budgeting is implemented as an initiative that is often promoted by civil society organizations and that is supported by the local authorities. Participatory budgeting is not yet a common practice in local public authorities (LPAs) in Moldova.



The rules and principles of participatory budgeting, although similar, differ from city to city as these rules are approved by the local regulations. It is generally valid that the participatory budgeting model is co-created by the municipal public authority together with the citizens who are mainly represented by well informed and highly motivated citizens, in a formal framework created by a dedicated project. Citizens that participate in the process are the ones who approve the final form of participatory budget and all the changes that have occurred along the way.

The participatory budgeting practice in Chisinau municipality was designed to follow few major steps:²⁵³

- the municipality is divided into regions to facilitate meetings with the community and the distribution of resources;
- meetings sponsored by the municipal authority are held regularly throughout the year to cover various aspects of the project development cycle: distribution of information, proposed projects, debates of proposals, selection of projects, supervision of implementation of selected projects;
- an index of quality of life is developed by the authority to serve as a basis for the distribution of resources. Regions with a higher poverty rate, a denser population, lacking the necessary infrastructure or services benefit from a higher proportion of resources than more prosperous neighborhoods. Each municipality creates its own model for the equitable distribution of resources;²⁵⁴
- citizens who are willing to participate in the process map the neighborhood and the community in the neighborhood, identify the problems it faces and propose solutions to apply in the participatory budgeting program;
- public discussions and debates are organized about projects and resources both between participants who are interested to participate in the process and between these participants and authorities;
- projects are exposed to (informal) community voting. Residents of the region in which the project is to be implemented are eligible to vote;
- from each region two councilors are delegated who will form the municipal council of participatory budgeting. They analyze the final projects and intervene with recommendations regarding the budget;
- projects voted as important by the community are carried out by the municipal authority, even though the authority is not bound by the list of selected projects;
- participatory budgeting participants monitor the implementation of the project;
- an annual report is published in which the stages of project implementation are presented.

A large group of stakeholders is involved in the participatory budgeting process, including local administration, citizens, civil society and entrepreneurs. Local administration informs citizens on the process, organizes public meetings and ensures inclusion of the proposed projects in

²⁵³ 'Procesul de bugetare participativă în Chișinău' (RCU, undated) <<https://urbana.md/bugetare-participativa/>>.

²⁵⁴ This approach relates exclusively to problem formulation and aims at allowing LPAs to potentially improve budget allocation and systemic planning. The participatory budget is in fact covering a small amount of available resources.



the budgetary process. Citizens choose projects for the implementation by the LPAs and participate in their implementation.

The process of participatory budgeting is more or less similar across the country in the localities where it is present. Active citizens come up with ideas and projects, and, within their budget constraints, LPAs come up with the money. Yet, the level of resources provided by local authorities, available technical requirements to facilitate the process – for instance the web page of the local administration for a smaller community, but also the level of professional preparedness of the local authorities and awareness of citizens in the part related to budgetary issues differ, especially among small and rural localities and municipalities.

According to the opinions of those who were involved from the beginning in the participatory budgeting in Chisinau municipality, not everything is so favorable. Currently this practice implementation is hindered in the municipality for several reasons:

- absence of additional financial resources to promote the project (information, development of explanatory guides and training);
- lack of a dedicated online platform (a participation site) to present, in an accessible form, the projects and to allow their discussion;
- participatory budgeting is almost entirely devoid of an offline infrastructure. In other words, activities related to the participatory budgeting process take place in an online format, using a suitable platform, with participation of a limited number but well informed and motivated citizens of the locality.

For better development, participatory budgeting would have needed a special law or adjustments to the legal framework in the field of budgetary planning. Most of the time, completing the whole process in one year is difficult or impossible with the available human and financial resources. Information and voting campaigns must last long enough (at least a few months) so that citizens can participate fully. At their conclusion, the projects are assigned to municipal departments that must implement them. Some projects require new acquisitions which, as it is public money, must be made through tenders. These can last from a few weeks to several months.

Assessment of the Practice

The participatory budgeting practice aims at securing a better usage of public funds in order to fulfil urgent needs and priorities of citizens according to their own perception. Although the expected results of the practice are simple, achieving the anticipated impact is not so straightforward. As a rule, this instrument proves to be functional when democratic processes, from both authorities and citizens are maintained at a high level. As the practice shows, willingness of a large part of the population to get involved in a deeper way into the management of public affairs at the local level is limited. This is also influenced by the fact that quite often local administrations show a lack of interest to increase the degree of involvement of citizens in the administrative processes at the local level. Positive involvement of other stakeholders such as members of the local council, political parties or civil society organizations is important to enforce the practice.



Willingness, but also capacity of local authorities to provide a meaningful amount of funds are important success factors. For many authorities, the level of funding is very limited. It is also important to have active participation of the local decision-makers in the implementation of the participatory budgeting process from its onset, as at the end of the process, the approved proposals need formal approval by the local constituency, which often is a political issue.

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Legal Documents:

Law no 181/2014 on Public Finances and Budgetary-Fiscal Responsibility

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— — ‘Procesul de bugetare participativă în Chișinău’ (*RCU*, undated)

<<https://urbana.md/bugetare-participativa/>>

Vitalie Sprînceană, ‘When the Mayor's Office does not Want and Therefore Cannot: About Participatory Budgeting in Chisinau’ (*Platzforma*, 20 February 2020)

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11. People's Participation in Local Decision-Making in South Africa

11.1 The System of Local Government in South Africa

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Types of Local Governments

South Africa has a multilevel system of government organised at national, provincial and local level. There are nine provincial governments while the local sphere of government is constituted by 257 municipalities. The 1996 Constitution of South Africa recognises three categories of municipalities – Category A, B and C.²⁵⁵ Metropolitan municipalities (Category A) have exclusive municipal executive and legislative authority in their respective areas of jurisdiction. Local municipalities (Category B), which currently total 205, share their municipal executive and legislative authority with district municipalities (Category C) within the relevant area they fall. District municipalities exercise their municipal executive and legislative authority in an area that covers more than one local municipality. These umbrella municipalities (currently 44) were established, among other reasons, to provide support and maximise on economies of scale in areas where there are low capacity municipalities. At policy level, the three broad categories of municipalities (A, B and C) are further broken down into seven sub-categories namely:

- A - metropolitan municipalities;
- B1 - secondary cities, local municipalities with the largest budgets;
- B2 - local municipalities with a large town as core;
- B3 - local municipalities with small towns, with relatively small population and significant proportion of urban population but with no large town as core;
- B4 - local municipalities which are mainly rural with communal tenure and with, at most, one or two small towns in their area;
- C1 - district municipalities which are not water services authorities; and
- C2 - district municipalities which are water services authorities.

National departments often make use of this sub-classification when dealing with municipalities.

The Constitution assigns to local government service delivery responsibilities and a development mandate. It equips local government with a variety of powers – legislative (the power to adopt by-laws), executive, fiscal, budget and administrative powers - to enable the delivery of these responsibilities and obligations. The functional areas of local government are enumerated in Schedule 4 (part B) and Schedule 5 (part B) of the Constitution. These schedules

²⁵⁵ See Sec 155(1) of the Constitution.



list matters, such as water supply, and electricity reticulation, land use planning, municipal health, local roads, and refuse removal. The principles of subsidiarity and assignment recognised in the Constitution provide opportunities for municipalities to exercise additional functions.

Legal Status of Local Governments

Unlike in many countries, local government is recognised in the Constitution of South Africa as a sphere of government.²⁵⁶ Thus, the existence of the institution of local government is not dependent on the goodwill of the national and provincial governments. This security of existence is extended to individual municipalities which may not be arbitrarily abolished or merged. Such abolishment or merger can only take place in terms of law and subject to oversight procedures that include the role of an independent body, the Municipal Demarcation Board.

The autonomy of municipalities is constitutionally recognised and can be enforced through the courts. Municipalities have a right to govern their respective areas and this right is only limited by the Constitution. The national and provincial governments may, however, regulate the exercise of this right but subject to limitations imposed by the Constitution. For instance, such regulation mainly takes the form of framework legislation that may not go to the 'core' of municipal functions as that is reserved for the legislative authority of municipal councils. National and provincial governments are further prohibited from impeding or compromising a municipality's ability to exercise this right whether by legislative or other means (Section 151(4) of the Constitution). Thus, it can be observed that unlike in many other countries, the Constitution of South Africa entrenches the existence and autonomy of local government that is jealously guarded by the courts in practice.

(A) Symmetry of the Local Government System

As explained above, there are three categories of municipalities in South Africa – metropolitan, local and district. The Constitution allocates to all metropolitan municipalities equal powers and functions. As opposed to metropolitan municipalities that have exclusive executive and legislative authority in their areas of jurisdiction, legislation and policy defines the division of responsibilities between district and local municipalities. As stated above, within the category of district municipalities there are those that have been designated as water services authorities and those that are not.

The Constitution entrenches the principles of subsidiarity and assignment which if implemented can also result in municipalities within and across categories exercising varying powers. Section 156(4) of the Constitution requires the national and provincial governments to assign to a municipality any of their functions if the function can 'most effectively be administered locally and the municipality has the capacity to administer it'. This provision is

²⁵⁶ See Sec 40(1) of the Constitution.



being implemented with respect to some functional areas of the national and provincial governments. For example, metropolitan municipalities, which tend to have significant capacity, are already involved in the delivery of housing even though it is a national and provincial competence. Thus, there is a fair degree of asymmetry in the South African system of local government.

However, the Constitution does not explicitly state that the asymmetry at local level is strictly there to respond to the urban-rural distinction. In practice, nonetheless, district municipalities generally operate in rural and semi-rural areas while metropolitan municipalities and secondary cities (B1) govern in mostly urban areas. Thus, it can be concluded that the local government system is designed in such a way that enables it to respond or adjust to the urban-rural interplay, among other differences present at the local level.

Political and Social Context in South Africa

The ushering of a democratic era in 1994 brought hope to a country that had been ravaged by years of apartheid. Under apartheid, the state, economy and society were organised strictly on the basis of race.²⁵⁷ The system benefited whites while the majority black population, as well as the minority Indian/Asian and coloured minority groups, were marginalised, deprived of equal economic opportunities and political representation to a different degree, and the former relegated to third class citizens. Since coming to power in 1994, under the leadership of Nelson Mandela, the majority led government of the African National Congress (ANC) has been confronted with a major challenge of undoing or redressing the injustices and legacy of apartheid. A variety of transformation interventions have been adopted in line with the demands of one of the most transformative constitutions in the world, the 1996 Constitution.

These interventions have recorded successes in some areas while failures are common in a number of areas, such as spatial transformation, with apartheid spatial landscape largely remaining intact 27 years after the end of apartheid.²⁵⁸ Corruption and skills deficit, among other problems, continue to undermine the capability of the state to meet its obligation and development priorities at all levels of government.²⁵⁹ The slow growth of one of Africa's largest economies has not made the situation any better. South Africa's GDP is estimated to grow by merely 1.5, 1.7 and 2.1 per cent in 2019, 2020 and 2021, respectively.²⁶⁰ The unemployment rate, which in the second quarter of 2019 stood at 29 per cent, is another indicator of an economy in trouble.²⁶¹ It is thus without doubt that the economy is failing to generate sufficient resources, at a faster rate, for the state to cater for the needs of its estimated 58,78

²⁵⁷ See Nico Steytler and Jaap de Visser, *Local Government Law of South Africa* (LexisNexis 2009) 1-3 to 1-9.

²⁵⁸ Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood, 'Introduction' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019) 1.

²⁵⁹ See Patricia Ntliziywana, 'Professionalisation of Local Government in South Africa' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019) 59.

²⁶⁰ National Treasury, 'Municipal Budget Circular for the 2019/20 MTREF' (MFMA Circular no 94, Municipal Finance Management Act No 56 of 2003, May 2019) 2.

²⁶¹ Statistics South Africa (2019) <<http://www.statssa.gov.za/>> accessed 30 July 2019.



million population (mid 2019 estimate).²⁶² This partially explains why poverty remains widespread, inequalities continue to deepen and universal access to basic services remains a dream for many South Africans.

The citizens have been impatient with the ANC government's performance in the last few years.²⁶³ The political dominance of the ANC, reflected by, among other things, its two-thirds majority in the National Assembly in the early years of the democratic era, has slowly been eroded. In the 2019 elections, the ruling party won by 56 per cent of the national vote and narrowly won Gauteng province while the opposition, Democratic Alliance, kept its majority in the Western Cape province. At local government level, after the 2016 local government elections, the ruling party is no longer in control of four key metropolitan municipalities. Of the four, one is the legislative capital (City of Cape Town), the other is the administrative capital (Tshwane) while the City of Johannesburg is the economic hub of the country. Some form of coalition governments were formed in Johannesburg, Tshwane and Nelson Mandela Bay following the failure by any of the political parties to acquire a majority in these municipalities.

The metropolitan regions and cities remain key attraction points for people from rural areas in search for better economic opportunities. By 2017, over 67 per cent of the total population of South Africa was already residing in urban areas, including cities.²⁶⁴ Consequently, rural areas have been left with a thin base to tap resources such as skilled manpower, a development which undermines their capacity to deliver. On the other hand, the infrastructure in these metropolitan areas is overwhelmed by the large-scale inward emigration and is failing to cope, as a result. For instance, a significant number of the population in these metropolitan regions still resides in informal settlements with no or limited access to basic public services. Even if such services were to be provided, a large portion of people in these areas are not able to pay due to incapacity. Thus, local government, which is positioned at the heart of state public service delivery in South Africa,²⁶⁵ continues to face a variety of challenges, which are both within and outside of its control.

References to Scientific and Non-Scientific Publications

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Constitution of South Africa, 1996

National Treasury, 'Municipal Budget Circular for the 2019/20 MTREF' (MFMA Circular no 94, Municipal Finance Management Act No 56 of 2003, May 2019)

Scientific and Non-Scientific Publications:

²⁶² *ibid.*

²⁶³ See Ntliziywana, 'Professionalisation of Local Government in South Africa', above, 59, 61, 63.

²⁶⁴ See Statista, 'South Africa: Urbanization from 2009 to 2019' (*Statista*, 2020)

<<https://www.statista.com/statistics/455931/urbanization-in-south-africa/>> accessed 9 December 2019.

²⁶⁵ See Steytler and De Visser, *Local Government Law of South Africa*, above, 1-3.



Chigwata TC, De Visser J and Kaywood L, 'Introduction' in Tinashe C Chigwata, Jaap de Visser and Lungelwa Kaywood (eds), *The Journey to Transform Local Government* (Juta 2019)

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Statistics South Africa (2019) <<http://www.statssa.gov.za/>> accessed 30 July 2019

Steytler N and De Visser J, *Local Government Law of South Africa* (LexisNexis 2009)

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11.2 People's Participation in Local Decision-Making in South Africa: An Introduction

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In South Africa, both representative and participatory forms of democracy are protected at all levels of government. With respect to representative democracy at the local level, local communities have a constitutional right to elect members of municipal councils.²⁶⁶ Participatory democracy is emphasized in South Africa's system of local governance and is aimed at ensuring accountability, responsiveness and openness.²⁶⁷ One of the core constitutional objectives for the establishment of local government is to encourage the involvement of communities and community organisations in matters of local governance (Section 152(1)(e) of the Constitution). Municipal governments are therefore required to develop a governance culture that accommodates both representative and participatory democracy.²⁶⁸

With respect to participatory democracy, municipalities have a duty to consult and are required to create conditions for and encourage the involvement of the local community²⁶⁹ in decision-making regarding the level, quality, range and impact of municipal services as well as the available options for service delivery.²⁷⁰ To further this, local communities are allowed to take part in: the preparation, implementation and review of municipal integrated development plans (IDPs); strategic decisions relating to the provision of municipal services; the preparation of municipal budgets; the establishment, implementation and review of municipal performance management systems as well as in monitoring and reviewing municipal performance, including the outcomes and impact of such performance.²⁷¹

Additionally, municipal administrations are under an obligation to provide full and accurate information to the local community regarding the level and standard of municipal services they are entitled to receive, the costs involved, their rights and duties as well as the available mechanisms of community participation.²⁷² Moreover, members of the local community have the right to be informed of decisions taken by the political structures at the local level, which may affect their rights, property and reasonable expectations.²⁷³

²⁶⁶ Sec 157 of the Constitution of the Republic of South Africa, 1996 (Constitution) as read with Secs 22 and 23 of the Local Government Municipal Structures Act, 1998.

²⁶⁷ See the concurring judgment of Sachs J in *Doctors for Life International v Speaker of the National Assembly and Others* (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) 120 [230].

²⁶⁸ Sec 16, Local Government Municipal Systems Act (Systems Act).

²⁶⁹ The Municipal Systems Act (Sec 1) defines a local community as comprising: the residents of the municipality; the ratepayers of the municipality; any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality; as well as visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality. The act lays special emphasis on the poor and other disadvantaged sections of this body of persons.

²⁷⁰ Sec 4(2) as read with Sec 16 of the Systems Act.

²⁷¹ Sec 16(1)(a), Systems Act.

²⁷² Sec 6(2)(e) and (f) as read with secs 18 and 95 of the Systems Act.

²⁷³ Sec 5(1), Systems Act.



To discharge the above obligation, municipalities are required to establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality.²⁷⁴ In this respect, municipalities are allowed to establish subcouncils²⁷⁵ and ward committees²⁷⁶ which serve as the main participatory structures at the local level.²⁷⁷ Also, communications done by municipalities to the local community are required to be done through local or regional newspapers or radio broadcast covering the area of the municipality.²⁷⁸ Additionally, municipalities are required to establish their own official websites (if affordable) or otherwise provide information for display on an organised local government website sponsored or facilitated by the National Treasury.²⁷⁹

In facilitating participation, municipalities are required to take into account the special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups.²⁸⁰ When communicating to the local community, municipalities are obligated to take into account language preferences and usage in the municipality as well as other special needs of people who cannot read or write. The Guidelines for Implementing Multilingualism in Local Government issued by the Department of Provincial and Local Government (now called the Department for Cooperative Government and Traditional Affairs) encourage municipal councils, through ward committees to consult local communities in the preparation of a municipal language policy that is then used for purposes of ensuring community participation.²⁸¹ This is key in facilitating participation in both rural and urban local governments.

To participate, members of the local community have the right to submit written or oral recommendations, representations and complaints to the political structures at the local government level and to receive prompt responses to them.²⁸² Municipalities are in return required to provide for: the receipt, processing and consideration of petitions and complaints; notification and public comment procedures; public meetings and hearings by municipal councils and other local political structures; consultative processes with locally recognised community organisations as well as traditional authorities and to also make provision for forums to report back to the local communities.²⁸³ Additionally, the meetings of a municipal

²⁷⁴ Sec 17(2), Systems Act.

²⁷⁵ Subcouncils are made up of those elected councillors representing the wards that constitute the designated area of the municipality as well as an additional number of councillors elected to the municipal council by way of party lists. The latter are appointed by political parties according to their representation in the municipal council. See Sec 63 as read with Schedule 4 of the Municipal Structures Act.

²⁷⁶ A ward committee is made up of the councillor representing the specific ward and an additional number of not more than ten persons. The latter are elected in accordance with rules laid down by the municipal council and which are aimed at ensuring gender equity as well as the representation of the ward's diverse interests. See Sec 73 of the Municipal Structures Act.

²⁷⁷ Sec 7 (d) and (e), Structures Act; Nico Steytler and Jaap De Visser, *Local Government Law of South Africa* (LexisNexis 2016) 6-12(3) – 6-13.

²⁷⁸ Sec 21 (1), Systems Act.

²⁷⁹ Sec 21B, Systems Act.

²⁸⁰ Sec 17(3), Systems Act.

²⁸¹ Leah Cohen, 'Guidelines of Multilingualism in Local Government: Ambitious Rhetoric or a Realisable Goal?' (2008) 10 Local Government Bulletin.

²⁸² Sec 5(1), Systems Act.

²⁸³ Sec 17(2), Systems Act.



council on the municipality's annual report are required to be open to the public and reasonable time allowed for members of the local community to address the council and for the discussion of any written submissions received from the local community.²⁸⁴

To ensure local participatory processes are undertaken, municipalities are required, when submitting a copy of their adopted IDP to the provincial government, to provide a summary of the process followed and a statement that the required process, which includes community participation, has been complied with (also see WP4 on IDP).²⁸⁵ Where this has not been done, the provincial government is mandated to request the relevant municipal council to comply with the required process and make consequential adjustments to the IDP.²⁸⁶ However, in practice, this constitutes a weak form of oversight given that the provincial government mainly focuses on alignment with intergovernmental relations issues and less on public participation.

This has given room for a more robust role by the courts in ensuring reasonable public participation through judicial review. In instances where there are allegations of a failure of public involvement, the Constitutional Court in *Doctors for Life International v Speaker of the National Assembly and Others*²⁸⁷ developed a reasonableness test to be applied in determining whether the degree of involvement met the Constitutional requirement for participation.²⁸⁸ The test outlines a set of general factors for consideration which include: the nature and importance of the decision; efficiency of decision-making in terms of time and expense; intensity of the decision's impact on the public and whether there was any urgency that informed the decision. Whereas this standard was developed in light of involvement with Parliament and provincial legislatures, Steytler and De Visser argue that 'a municipality's efforts at involving the local community must meet the same standard of reasonableness.'²⁸⁹ Subsequent court decisions such as the case of *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality*²⁹⁰ have actually held that the standard is even higher for municipalities.

Additionally, the courts have been liberal with the question of standing such as to allow community members and community organisations the right to initiate proceedings against local governments on questions of public participation.²⁹¹ This was the approach adopted by the court in *Stellenbosch Ratepayers' Association v Stellenbosch Municipality*²⁹² as well as in *Mnquma Local Municipality and Another v The Premier of the Eastern Cape and Others*.²⁹³ The courts in both cases adopted a broad approach to standing to allow a ratepayers' association and members of the community respectively to bring cases contesting subnational decisions on the basis of want of public participation.²⁹⁴

²⁸⁴ Sec 130, Local Government Municipal Finance Management Act (MFMA).

²⁸⁵ Sec 32(1)(a) and (b), Systems Act.

²⁸⁶ Sec 32(2), Systems Act.

²⁸⁷ (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) 120.

²⁸⁸ Steytler and De Visser, *Local Government Law of South Africa*, above, 6-16.

²⁸⁹ *ibid.*

²⁹⁰ (3751/2011) [2014] ZAECPEHC 35; 2014 (5) SA 256 (ECP) (The Borbet Case).

²⁹¹ Steytler and De Visser, *Local Government Law of South Africa*, above, 6-7.

²⁹² [2009] JOL 24616 (WCC) [17].

²⁹³ (231/2009) [2009] ZAECBHC 14 (5 August 2009).

²⁹⁴ Steytler and De Visser, *Local Government Law of South Africa*, above, 6-7.



To facilitate participatory democracy at the local government level, municipalities are allowed to use their resources and to annually allocate funds in their budgets for purposes of ensuring community participation.²⁹⁵

When making regulations or issuing guidelines regarding community participation at the local government level, the minister for local government is required to differentiate between different kinds of municipalities according to their respective capacities to comply with the statutory provisions for public participation²⁹⁶ including making provision for phased application of public participation requirements that have a financial or administrative burden.²⁹⁷ While this was key in ensuring the accommodation of both urban and rural municipalities by allowing them to undertake participatory processes with due regard to their respective capacities, the provisions are currently equally applicable to all municipalities.²⁹⁸

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Steytler N and De Visser J, *Local Government Law of South Africa* (LexisNexis 2016)

²⁹⁵ Sec 16, Systems Act.

²⁹⁶ Sec 22(2)(a), Systems Act.

²⁹⁷ Sec 22, Systems Act.

²⁹⁸ Steytler and De Visser, *Local Government Law of South Africa*, above, 6-20.



11.3 Participatory Budgeting

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Relevance of the Practice

The 'community of the municipality' is recognized under the Municipal Systems Act as one of the constituent components of the municipality thus speaking to the question of the structure of local government under report section 4 and the integral position occupied by the community in this regard.²⁹⁹ Budgeting on the other hand touches on the expenditure responsibilities and responsibility for the delivery of public services by local governments under report section 2 as well as municipal financial arrangements, especially own source revenues intended to incentivise local participation, under report section 3. Participatory budgeting also touches on report section 5 on intergovernmental relations in the sense that provincial governments and the national treasury play a role in monitoring the compliance of municipalities participating in compulsory consultative processes. Participatory budgeting is therefore critical for the LoGov-project in the sense that it speaks to all five report sections.

Additionally, participatory budgeting by definition brings out the plurality of actors involved, ranging from ordinary citizens to community groups and interest groups mainly drawn from the private sector and civil society given the implication of the budget process on local taxes, levies and charges. The diversity of these actors and the attendant level of skills required to facilitate meaningful participation brings out how differently participatory budgeting is experienced in rural as compared to urban local governments.

One of the objects of local government under the South African Constitution is to 'encourage the involvement of communities and community organisations in the matters of local government' (Section 152(1)(e)). The aim is to ensure that the subnational developmental agenda is set by the people at the local levels. The budgeting process allows municipalities to set their expenditure priorities that drive subnational development. In this respect, municipalities are required to structure and manage their budgeting processes to give priority to the basic needs of the community (Section 153(a) of the Constitution). Participatory budgeting is, therefore, key in ensuring this is achieved.

Description of the Practice

Participatory budgeting requires the involvement of local communities in budgetary decision-making that informs the implementation of plans contained in local government IDPs as well as in monitoring public spending.³⁰⁰ The budget cycle consists of four phases: budget

²⁹⁹ Sec 2(b), Systems Act.

³⁰⁰ Noluthando S Matsiliza 'Participatory Budgeting for Sustainable Local Governance in South Africa' (2012) 47 *Journal of Public Administration* 223.



formulation, budget approval, budget implementation and audit.³⁰¹ While each of these phases involves key decision-making that would require public participation, this section shall focus on the first two phases which are key in giving communities a chance to set local expenditure priorities. The Constitution, the Local Government Municipal Finance Management Act (MFMA) as well as the Local Government Municipal Systems Act (Systems Act) regulate participatory budgeting by local governments. Section 215(1) of the Constitution requires municipal budgets and budget processes to promote transparency, accountability and effective financial management. This is achieved in practice through participatory processes. It is important to note that the Municipal Systems Act which sets out the requirements for public participation does not distinguish between urban and rural municipalities, such that the same provisions equally apply to rural and urban municipalities.

The mayor (and in the case of a municipality which does not have a mayor, the 'designated councillor')³⁰² and the municipal manager are the main players in the process of budget formation.³⁰³ The mayor is required to provide general political guidance over the process and the priorities that guide budget preparation.³⁰⁴ The municipal manager is required to offer necessary administrative support to the mayor in carrying out this function.³⁰⁵

A municipal manager is required, once an annual budget is tabled (introduced for debate and adoption) in a municipal council, to make the budget and any supporting documentation available to the public and to invite the local community to submit representations in connection with the budget.³⁰⁶ The mayor of a municipality is required to coordinate the annual budget preparation process and is in this regard required to undertake all vertical and horizontal consultative processes involving the national, provincial, and district municipalities as well as other local municipalities.³⁰⁷ Once the annual budget is tabled before the municipal council, the council is required to consider the views of the local community and give the mayor an opportunity to respond to the views and, if necessary, to revise the budget and table amendments for consideration by the council.³⁰⁸ This forms the main entry point for public participation with respect to the formulation of municipal budgets.

The courts have been insistent on the need for and the quality of participation in the budget process at the local level. For instance, the High Court, in the *Borbet* case, emphasized that municipalities have a special obligation to ensure the participation of the public when it comes to the budget. The Court stated that this obligation extends beyond the formalities of availing information and hosting public meetings, and requires municipalities to ensure and demonstrate that the processes of public participation result in meaningful engagement with local communities. In this regard, municipalities are required to 'put in place mechanisms that

³⁰¹ Dullah Omar Institute (DOI) and International Budget Partnership (IPB) South Africa, 'Measuring Transparency, Public Participation and Oversight in the Budget Processes of South Africa's Metropolitan Municipalities: Findings from the 2019 Metro Open Budget Survey' (2019) 5.

³⁰² Sec 57, Local Government Municipal Finance Management Act (MFMA).

³⁰³ Sec 16(2), MFMA.

³⁰⁴ Sec 53(1)(a), MFMA.

³⁰⁵ Sec 68, MFMA.

³⁰⁶ Sec 22, MFMA.

³⁰⁷ Sec 21(2), MFMA.

³⁰⁸ Sec 23, MFMA.



create conditions for public participation and that build the capacity of communities to participate'.³⁰⁹ They are also required to 'allocate resources to the task and to ensure that the political and other structures established by legislation are employed to meet the objectives of effective public participation'.³¹⁰ However, as to what degree or what methodologies of participation constitute effective and meaningful engagement, the Constitutional Court subjects this to the discretion of the respective legislative body based on the context of each case as long as it can be demonstrated that whatever measures were undertaken were objectively reasonable in the circumstances.³¹¹ The reasonableness test established in the *Doctors for Life* case above is applied in such an instance.

However, where a specific budgetary proposal affects a target community or group of persons, courts have required that municipalities make an extra effort to ensure that this affected group is specifically consulted on the proposals. This is the position adopted by the Supreme Court of Appeal in *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others*.³¹² In this case, the City of Johannesburg proposed increases in property rates on business premises as a last minute inclusion to fill up gaps noted in the budget without following the required consultation process under the Municipal Property Rates Act and the Systems Act.³¹³ The Court, in holding that the process was unlawful, stated that the Property Owners Association who stood to be affected the most by the proposed levy ought to have been involved.

The Municipal Finance Management Act gives the National Treasury with the assistance of provincial treasuries general oversight over municipal budgets to monitor, provide support and ensure compliance with provisions of the act, key among them being the requirement for public participation in the budget process.³¹⁴ Municipalities, however, retain their constitutional mandate of adopting their own budgets. In carrying out their oversight role, national and provincial treasuries therefore rely on municipal declarations that public participation was undertaken and the detailing of the specific processes in municipal reports but have no control over the quality of participation as this falls in the exclusive arena of municipalities.

Assessment of the Practice

A budget serves as a local government's primary economic policy tool and feeds two critical goals that are of central interest to the community: that of translating policy objectives contained in IDPs into real life projects based on existing revenue and the other of structuring

³⁰⁹ *Borbet South Africa (Pty) Ltd and Others v Nelson Mandela Bay Municipality* (3751/2011) [2014] ZACPEHC 35; 2014 (5) SA 256 (ECP) (The Borbet Case) [80].

³¹⁰ *ibid.*

³¹¹ The Borbet Case [68]-[82].

³¹² 2013 (1) BCLR 87 (SCA) paras 35-37; See also Nico Steytler and Jaap De Visser, *Local Government Law of South Africa* (LexisNexis 2016) 6-12(2).

³¹³ Steytler and De Visser, *Local Government Law of South Africa*, above, 6-12(2).

³¹⁴ Sec 5(2)(a) as read with Secs 5(3)(c); 5(4)(a) and 27(1).



and re-structuring income sources to raise additional revenue.³¹⁵ In this respect, the community has an interest in shaping the local government's priority areas while at the same time playing a role in determining how such prioritisation will affect them in terms of revenue sourcing. Participatory budgeting also aims to ensure transparency and inclusiveness in the allocation of public resources in a bid to foster social justice through their equitable distribution.³¹⁶ The scope of those involved in the process is covered in the definition of who constitutes the 'local community'. Section 1 of the Municipal Systems Act defines a local community as comprising of:

'the residents of the municipality; the ratepayers of the municipality; any civic organisations and non-governmental, private sector or labour organisations or bodies which are involved in local affairs within the municipality; as well as visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality.'³¹⁷

The Preamble and various sections in the Municipal Systems Act place special emphasis on the poor and other disadvantaged sections of this body of persons.³¹⁸ Moreover, there is no specific differentiation or exclusion from participation in practice. Where a particular group is affected, there is a duty on local government to facilitate their involvement. For example, where a specific budgetary proposal affects a specific community or group of persons, local governments have a duty to make an extra effort to ensure that this affected group is specifically consulted on the proposals as per the *South African Property Owners Association v Council of the City of Johannesburg Metropolitan Municipality and Others* case discussed above.³¹⁹ Moreover, to ensure inclusivity, municipalities have a responsibility to take into account the special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups, as well as language.³²⁰

Whereas participatory budgeting gives room for community involvement, it is not enough to require that the municipal manager makes the budget and documentation 'available to the public'.³²¹ There is need to specifically require that a notice be published in a newspaper of general circulation informing the public of the availability of the budget for scrutiny; inviting comments and specifying dates for receipt of comments as well as for public hearings for feedback and contributions on the draft budget.³²² While this may be key in ensuring that the information reaches most people, it is more appropriate for urban municipalities where a majority have access to newspapers. Alternative arrangements should be made by rural municipalities to ensure that the community can actually access the necessary documentation

³¹⁵ Marcel Reutener and David Fourie, 'The Role of Civic Participation in the South African Budgeting Process' (2015) 4 Public and Municipal Finance 7.

³¹⁶ Matsiliza 'Participatory Budgeting for Sustainable Local Governance in South Africa', above, 443 and 445.

³¹⁷ Act 32 of 2000.

³¹⁸ Act 32 of 2000.

³¹⁹ 2013 (1) BCLR 87 (SCA) paras 35-37; See also Steytler and De Visser, *Local Government Law of South Africa*, above, 6-12(2); also see the Introduction to People's Participation in Local Decision-Making, report section 6.2.

³²⁰ Sec 17(3), Systems Act.

³²¹ Sec 22, MFMA.

³²² Itumeleng J Motale, 'Public Participation Strategy for Budgeting in Local Government: The Case of Tlokwe Local Municipality' (Masters Dissertation, North-West University 2012) 54.



whenever this is made available to the public. And even then, rural communities would still have access challenges due to the long distances that exist between individual villages and local government offices as a result of the interplay between rural settlement patterns and ward population quotas.³²³ This is less of a challenge in urban municipalities which meet the ward population quotas within smaller areas hence facilitating ease in physical access to municipal offices.³²⁴

Additionally, the timing of participation comes too late in the process given it is required at the budget-adoption/tabling stage rather than at the budget-preparation stage.³²⁵ This perhaps explains findings from an Open Budgets Survey conducted across metropolitan municipalities that indicated stronger performance in public participation at the budget approval phase as compared to the budget preparation phase.³²⁶ Further, revision of the budget by the mayor at this stage is conditional on its being 'necessary'³²⁷ which thereby constricts the chance that public comments will have much effect on the final form of the budget. Community participation hence needs to be required at the level of preparation to give the public more latitude to make contributions that will set the objectives and propose alternatives that will generally shape the budget rather than seek to amend an already formulated budget. This way, the goal of public participation as a tool to inform rather than comment on decision-making will be achieved.

However, it is worth noting that the Systems Act gives municipalities a free hand to design levels and processes of participation.³²⁸ In this respect, different municipalities undertake participation at different stages in the budget formation process. Notwithstanding, as highlighted above, participation at the budget formulation stage in metropolitan municipalities is still weak.³²⁹

The following challenges stand in the way of effective public participation with respect of budget formulation in municipalities. First, budget literacy levels, i.e. the capacity of members of the local community to meaningfully engage with technical budgetary language and analyse budget portfolios varies with education levels. This is worsened by the highly technical and complicated nature of budget templates that the National Treasury requires municipalities to use in their budgeting.³³⁰ This thus stifles the process of community engagement in the sense that very few people develop interest to take part in the public fora where budgetary discussions and prioritisation take place.³³¹ The few that have the capacity are usually elites who may not always represent the interests of the local community especially the poor and marginalised with respect to budgetary priorities thus hampering effective participation. This

³²³ Interview with Nontando Ngamlana, Executive Role, Civil Society Organisation (1 April 2021).

³²⁴ Interview with Nontando Ngamlana, above.

³²⁵ Motale, 'Public Participation Strategy for Budgeting in Local Government', above, 55; Sec 23 (1), MFMA.

³²⁶ DOI and IBP South Africa, 'Measuring Transparency, Public Participation and Oversight in the Budget Processes of South Africa's Metropolitan Municipalities', above, 3 and 14.

³²⁷ Sec 23(2)(b), MFMA.

³²⁸ Sec 17, Systems Act.

³²⁹ DOI and IBP South Africa, 'Measuring Transparency, Public Participation and Oversight in the Budget Processes of South Africa's Metropolitan Municipalities', above, 3 and 14.

³³⁰ Interview with Nontando Ngamlana, above.

³³¹ Matsiliza 'Participatory Budgeting for Sustainable Local Governance in South Africa', above, 450.



difference is more pronounced in rural municipalities compared to urban municipalities. This problem therefore requires that municipalities present simple and realistic budget choices to communities rather than the usual complex budget documents so that communities can effectively take part in budgetary decision-making, especially in areas where there are low literacy levels.

Second, revenue fluctuations and volatile financial bases among municipalities,³³² i.e. the amount of revenue collected fluctuates across municipalities depending on the size and level of urbanisation. Some rural communities are unable to provide sufficient revenue to administer municipal affairs.³³³ There is furthermore little or no interest by donors to develop such municipalities. The result is municipalities that lack in a revenue base sufficient to cater for the various needs of the local communities. Community participation in such contexts is highly hampered by the fear of municipalities promising more than they can deliver. This then furnishes pretext for participation being undertaken as a formality to meet the minimum legal requirements.³³⁴

Third, inflexibility in capital spending. Most capital spending at the municipal level (which is the most important for public participation) is usually planned years ahead thus leaving little room for making changes in subsequent annual budgets. This therefore limits the scope of input that could have come from participatory processes. Moreover, especially for rural municipalities, capital spending is mainly funded through conditional grants from the national government which come with predetermined conditions that are largely not negotiable. Therefore, although the law creates the impression that everything in the municipal budget is negotiable, discretion in capital spending is often limited thus constraining the room for and the significance of public participation.

Despite South Africa having an elaborate system for public participation, its local governments still experience a high rate of protests. While this may be indicative of a failure of the quality of formal participation, it may also be a symptom of the disconnect that exists between pre-budget participation (both at the formulation and approval phases) and participation at the implementation stage. Moreover, it can also be seen as informal participation in invented spaces. There is, therefore, need to ensure quality participation in all the phases of the budget process. Notwithstanding, such protests, being an informal form of participation, have been key in producing policy changes on broader issues and highlighting weaknesses and failures in local systems of participatory democracy thus giving room for improvement or intervention by other spheres of government.

Notwithstanding, the urban-rural divide is evident with respect to the nature and extent of participation that is undertaken by South African municipalities. Legislative measures aimed at differentiation and asymmetry have however been put in place in an attempt to bridge the divide by accommodating the peculiarities of the various categories of local government in terms of the extent of their resources and the uniqueness of their demographics. While the

³³² *ibid* 447.

³³³ *ibid* 449.

³³⁴ The World Bank 'Accountability in Public Services in South Africa' (2011) 62

<http://siteresources.worldbank.org/INTSOUTHAFRICA/Resources/Accountability_in_Public_Services_in_Africa.pdf> accessed 2 December 2019.



differentiation has gone a long way in increasing room for participation in rural municipalities, urban municipalities nonetheless enjoy higher levels of participation due to the advantages of budget literacy and better access to budgetary information as well as having steady and wider pools of own-source revenue compared to rural municipalities.

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Legal Documents:

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11.4 Municipal Budgeting and Planning during Covid-19

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Relevance of the Practice

A municipality's Integrated Development Plan (IDP) is a five-year strategic plan, where the many interests, wishes and preferences of a municipal community are mediated and put into action. The municipality's budget allocates resources to this plan. Each year, municipalities review their IDPs and pass a budget for their financial year, which runs from 1 July to 30 June.³³⁵ The IDP is an important decision-making process in which municipal councils are legally obligated to enable the participation of the local community, which comprises of residents, ratepayers, civil society and visitors in terms of Section 1 of the Municipal Systems Act.³³⁶ As will be shown below, the disruptions flowing from Covid-19 have had differential impacts between and within urban and rural local governments and have significant implications for inclusive participation and good governance.

Description of the Practice

This practice note highlights how the legal framework for the IDP process has changed during Covid-19 and what this has meant for public participation. The focus is on the overarching principle that municipalities must encourage and create conditions for local communities to participate in the formulation (and review) of the IDP and in the adoption of budgets, including budget related policies (Section 16(1) Municipal Systems Act (MSA), Act 32 of 2000).

Municipal Budgets

Municipal Budgeting in Normal Times

The process of reviewing the IDP is coordinated by the mayor who must work closely with the Municipal Manager (MM) on this in terms of Section 21(1) Municipal Finance Management Act (MFMA), Act 56 of 2003.³³⁷ This is governed by the Municipal Systems Act and its regulations, which provide that changes to the IDP must be published for public comment for at least 21 days (Regulation 3(4)(b) Municipal Systems Regulations, 2001). This IDP (revised or not) must inform the municipality's budget.

³³⁵ See report section 5 on Intergovernmental Relations of Local Governments.

³³⁶ Sections 5(1)(c) and 16(1) Municipal Systems Act 32 of 2000.

³³⁷ See report section 5 on Intergovernmental Relations of Local Governments.



The budget process,³³⁸ also coordinated by the mayor (working with the MM and the chief financial officer) is governed by the MFMA. This Act instructs the mayor to table a budget in the council before the end of March of each year (Section 16(2) MFMA). It must be accompanied by key policies and resolutions, for example any IDP amendments, rates and tariff increases, and indigent policies. All of this must be published and the local community must be invited to comment (Section 22(a)(i)(ii) MFMA). The Municipal Systems Act identifies rate payers, residents, civil society and visitors as constituting ‘the community’ as noted above.³³⁹ The Municipal Systems Act places a special focus on vulnerable groups within the community such as the poor and disadvantaged, which brings the homeless and informal residents into the definition of community.³⁴⁰ Section 19(3) of the Municipal Structures Act requires municipal councils to develop mechanisms to consult the community, and especially to consult community organisations, and where necessary to consult traditional authorities.³⁴¹ Further, in *Matatiele*,³⁴² the Constitutional Court rejected the argument that elected officials can speak on behalf of the electorate and thereby fulfil the requirements of participatory democracy. Therefore, the courts recognise the rights of communities, including ratepayers associations, to comment, and if they are denied the opportunity to comment, to litigate.³⁴³ The budget must also be submitted to other stakeholders, such as the National Treasury and the provincial treasury (Section 22(b) MFMA). The council must consider all the submissions on the budget (Section 23(1) MFMA) and must allow the mayor an opportunity to respond to the submissions. The entire council is expected to engage with the budget tabled by the mayor and the inputs of the community. When necessary, the mayor may revise the budget and table an amended budget to the council for consideration (Section 23(2) MFMA). The council must meet to consider the budget before 30 May (Section 24(1)(2) MFMA). If the council does not approve the budget, it must reconsider and take another vote within seven days (Section 25(1) MFMA). This must be repeated until a budget is approved. If by 1 July (the start of the financial year for municipalities), a municipality does not have an approved budget, the provincial government intervenes. Section 139(4) of the Constitution requires that if a municipality fails to approve its budget, the provincial executive must intervene by taking appropriate steps to ensure the adoption of the budget, such as by dissolving the municipal council, and appointing an administrator and approving a temporary budget.

The 2020-2021 Municipal Budget Process

It is clear from the above that the period between the end of March and the end of May is a crucial time in the municipal calendar. Preparations for the budget start much earlier but these two months are very intense, particularly when it comes to (1) public participation and (2) the council engaging with the budget. Covid-19 hit South Africa’s shores in March. As a result, this crucial period for municipalities coincided almost precisely with an unprecedented lockdown.

³³⁸ See report section 5 on Intergovernmental Relations of Local Governments.

³³⁹ Nico Steytler and Jaap de Visser, *Local Government Law in South Africa* (Juta 2018) 6-5.

³⁴⁰ *ibid.*

³⁴¹ Also see Section 17(2)(d) Municipal Systems Act, and the Traditional Leadership and Governance Framework Act 41 of 2003.

³⁴² *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 (1) BCLR 47 (CC).

³⁴³ For example, see *Stellenbosch Ratepayers’ Association v Stellenbosch Municipality* 2009] JOL 24616 (WCC) para 17.



It was therefore impossible for municipalities to adhere to the above regime. The legal regime itself also underwent many changes.

Shortly after the lockdown was announced on 23 March 2020, the Minister of Cooperative Governance and Traditional Affairs (COGTA) issued regulations and directions in terms of Section 27(2) of the Disaster Management Act of 2002. These prohibited municipalities from convening council and community meetings. This immediately made all physical community engagement on the proposed changes to the IDP and 2020-2021 budget impossible. The Minister instructed all municipalities to cede all executive authority related to the pandemic to the mayor and the municipal manager, who were to report to council after the state of disaster.

On 30 March, the National Treasury exempted all municipalities from undertaking actions required by the MFMA during the period of the national state of disaster. Municipalities and municipal entities will instead be required to undertake such actions within 30 days after the national state of disaster lapsed or is terminated. While the MFMA exemption freed municipalities of many strictures related to budgeting and financial management, there was no similar exemption in terms of the Municipal Systems Act. When it came to the review of the IDP, therefore, municipalities were still required to comply with the act and facilitate public participation in the IDP review process, including the abovementioned 21-day consultation period.

With the slow easing of the lockdown, the legal regime for municipal governance and budgeting was changed again on 7 May 2020. The Directions were amended to provide that municipalities were required to perform various legislated functions including the adoption of IDPs, deliver municipal services and collect revenue (Amended Direction 6.7.1). They were instructed to ensure, that, in doing so 'there is strict adherence to all Covid-19 public health and containment prescripts, especially those relating to gatherings, physical distancing, health and safety' (Amended Direction 6.7.2).

The ban on council meetings was lifted and municipalities were now instructed to convene meetings via online platforms, such as teleconferencing and video conferencing (Amended Direction 6.7.3). This inevitably brought the digital divide to the forefront. When reviewing IDPs and drafting budgets, municipalities were still required to consult communities despite the ban on gatherings. They were directed to replace contact sessions for such consultations with alternative methods of consultation, including the media (Amended Direction 6.7.4(b)). Council meetings are required to be open to public participation, therefore Amended Direction 6.7.4(b) presents a big hurdle for inclusive participation especially for community members who do not have access to digital devices such as smart phones, and computers, or who do not have access to data. Consequently, a process that would have enabled communities, especially vulnerable members of communities, to share their views, inevitably became an elitist affair, and a further barrier to public participation in council meetings. Further, the practical experiences in municipalities highlight that although the digital divide is typically associated with the urban and rural cleavage, in practice, the digital divide within urban centres meant the provision or denial of public participation in council meetings where crucial processes such as the budget and IDP were discussed. There is economic inequality within urban centres which perpetuates the digital divide within urban centres, in addition to the digital divide between urban and rural areas. In terms of municipalities themselves, urban areas comprise of metropolitan cities, secondary cities, and small towns which all have different budgets and



different financial and human resource capacities, and these factors can influence their use of digital platforms. Additionally, the communities living within the urban centres and rural areas also experience inequalities and the digital divide. Disadvantaged communities (such as low-income earners, the indigent and the homeless) tend to have less access to digital devices, and also less access to money to pay for internet access, which is exacerbated by the relatively high costs of data from telecommunication service providers in the country keeping in mind that over half of the population – that is 30.4 million, live below the poverty line.³⁴⁴ This meant that the majority of the population would not have been able to participate in online processes, and it is the minority that would have been able to participate on digital platforms. This also means that communities' space for contestation was limited as they could not participate in meetings where they could hold their municipal councillors accountable, further embedding inequalities between those who can speak out about their frustrations because they have data and phones or computers, and those who cannot, because they do not have data, smart phones or computers.

The prohibition on community gatherings meant that contact sessions to consult communities on the IDP and the budget remained impossible. This would have excluded communities from the budget process if municipalities did not seek alternatives. Some municipalities used community radio and social media to broadcast their tabled budgets. There were also municipalities that used email or messaging services (WhatsApp) to solicit inputs, or even developed dedicated apps to receive inputs. However, these innovative methods varied across municipalities, and depended on the creativeness of the municipality, its access to resources, and the capacity of the municipality including human resources.

The Special Adjustments Budget

During Covid-19, municipalities were given an additional opportunity to pass an adjustments budget. Municipalities were permitted to pass a special adjustment to their 2019/20 budgets. These have to be tabled by 15 June 2020. This enables municipalities to legalise expenditure related to Covid-19 which had not been catered for in their 2019/20 budgets. These adjustments may only relate to funding for Covid-19 related responses. The law does not compel municipalities to undertake public participation with respect to the adjustment budget.

Council (and Committee) Meetings

Budget and IDP processes are tabled and debated in council meetings. As mentioned above, municipal councils were initially prohibited from convening any council and committee meetings. On 7 May, government changed direction and instructed all municipalities to conduct virtual meetings using online medium platforms (Amended Direction 6.7.3. and 6.7.4 (a)). During the second half of May, municipalities across the country thus held their first-ever virtual meetings. It was a baptism of fire, given the fact that this first-ever virtual meeting was perhaps the most important meeting of the year, namely the adoption of the 2020-2021

³⁴⁴ 55.5% of the population is below the poverty line as at 2015. The figures are calculated using the upper-bound poverty line (UBPL) of R992 per person per month (pppm) in 2015 prices. See Statistics South Africa, 'Poverty Trends in South Africa An examination of absolute poverty between 2006 and 2015' (2017) Statistics South Africa: Pretoria.



budgets. Municipalities were therefore thrust into a new era of virtual council meetings with little time to adjust.

An example of this was that few, if any municipality had made provision for virtual meetings in their rules of order, i.e. the rules that govern council and committee meetings. SALGA assisted by developing generic rules for online meetings and sittings, by way of the SALGA 'General Rules for Virtual Meetings or Sittings', Circular no 18/2020, 11 May 2020. It invited its members to consider, customise and adopt these rules. These draft rules cover issues, such as notice of meetings, decision-making and voting, and the facilitation of public involvement.

What does this new way of conducting council meetings mean for transparency and public participation in local government? The legislation is clear: municipalities must be transparent about their meetings and allow public admission into their meetings. In short, these are the rules:

The Municipal Systems Act requires all meetings of the municipal council to be open to the public. Municipalities may provide for limited circumstances when it is reasonable to close the meeting to the public (Section 20(1) Municipal Systems Act). In any event, meetings on the IDP and the budget must always be open to the public (Section 20(2) Municipal Systems Act). The same rules apply to meetings of committees of the council (including executive committees and mayoral committees). The Municipal Systems Act also directs municipalities to provide space for the public in council chambers and in any other places where the council and its committees meet (Section 20(4)(a) Municipal Systems Act). Municipalities are required to build the capacity of their respective communities, councillors and staff to foster effective community participation. Every municipality must set aside a budget every year to fund this (Section 16(1)(b) Municipal Systems Act).

What does this mean in the era of virtual meetings? Virtual council meetings were a necessary innovation to counter the challenges presented by Covid-19. However, there is more to it. They present both opportunities and challenges for transparency and public participation. Virtual meetings can undermine transparency and public involvement when they are not livestreamed and the public is excluded. On the other hand, if they are livestreamed, do they perhaps open up local democracy for the local community? If so, this could be a positive development coming out of our experience with Covid-19 and would meet dual purposes, information sharing by municipalities, and taking up both information from the local community through online platforms including social media. When being physically present is not required, members of the public no longer need to navigate distance and competing diaries, to be part of a council meeting. Instead, it is possible to attend council meetings from anywhere. However, in light of the lack of access to digital devices, high cost of data, and poor telecommunications infrastructure in rural areas, it is more likely for municipalities in rural areas to be unable to make use of this opportunity, and if members of the community do not have data and/or devices to view the meetings, it has the opposite effect, namely making access something for the privileged few. In large urban centres such as metropolitan cities and secondary cities on the other hand, there could be positive outcomes in terms of participatory democracy.

In this context, the abovementioned instruction on municipalities to build capacity for community participation takes on a new form. Now that we are in the world of virtual meetings, what forms does such capacity building take? Should this include municipalities



reprioritising their budgets to fund innovative ways of enabling and promoting community participation and transparency during Covid-19 times and beyond?

Assessment of the Practice

The Covid-19 pandemic, and the measures to contain it, are testing the ability of municipalities to comply with the rules and principles for transparency, participation and oversight applicable to planning and budgeting. The Covid-19 directions aimed to enable municipalities to continue functioning by allowing them to conclude IDP and budget processes and circumventing the 'normal' legislative requirements under the MFMA and the MSA. To this end, the implementation of the directions was successful as municipalities successfully passed municipal budgets and special adjustment budgets. However, the directions perhaps overlooked the implications of these aims on other crucial policy aims of inclusive participation and good governance, especially in terms of accountability and transparency of municipalities to their local communities. The digital divide within and between urban and rural municipalities, inadvertently reduced the space for public participation for vulnerable groups such as those in the lower income brackets as the costs of data, and access to digital devices such as phones and computers proved to be restrictive. As noted above, there is inequality between urban and rural municipalities in terms of their access to digital devices, network systems and infrastructure, distance, skills and capacities, and further, there is inequality among urban municipalities and among rural municipalities. Some rural municipalities are located at the fringes of urban centres and therefore can benefit from linkages to telecommunications infrastructure, which can make it easier for these rural municipalities to adjust to making use of digital platforms during the Covid-19 pandemic, and may therefore be able to maximise local participation in online platforms. However, other rural areas are quite remote and lack sufficient infrastructure for the municipality itself and for the local community to access online municipality platforms and meetings. It is also in these very remote rural areas that local community members are least likely to have access to digital devices and stable internet access. In the end it could be that the wealthy are favoured by the digital divide and can profit from increased ease of public participation through digital platforms, whereas the poor, the rural and the remote can be further excluded.

Municipalities were forced to 'think on their feet' and respond to a rapidly changing governance environment. At the same time, the crisis is not an excuse to compromise on inclusive participation and good governance. The local community members (residents, rate payers, civil society and visitors) are entitled to information about municipal finances, to make inputs into municipal budgets and to observe council and council committee meetings. Furthermore, the crisis may have jolted municipalities out of the 'tried and tested', and into a new era of responsive budgeting.

References to Scientific and Non-Scientific Publications

Constitution of the Republic of South Africa, 1996



Municipal Structures Act 117 of 1998

Municipal Systems Act 32 of 2000

Municipal Systems Regulations of 2001

Disaster Management Act of 2002

Municipal Finance Management Act 56 of 2003

Regulations and Directions in terms of Section 27(2) of the Disaster Management Act of 2002

SALGA, 'General Rules for Virtual Meetings or Sittings' (Circular no 18/2020, 11 May 2020)

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11.5 Transparency in Local Government Procurement during Covid-19

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Relevance of the Practice

This practice entry discusses people's participation in the context of local government procurement. There have been problems in the procurement process during normal times,³⁴⁶ such as issues arising from project design, the appointment of service providers and the content of the agreements, substandard delivery and failure to deliver, and these challenges have only worsened during the Covid-19 emergency. This has a direct impact on basic services, because the service that the community is entitled to, and that was promised, and that local government had paid for (such as the resurfacing of a road, delivery of water tanks, regular cleaning of toilets, or street lighting) is not provided.

Communities are especially important here as they are well placed to assess whether a service is being delivered or not. If the municipality is transparent and shares key information about the above five phases (procurement information), communities can assist the municipality in holding the service provider accountable and can, in the process, hold the municipality accountable. This can be illustrated by looking at an area of municipal service delivery that is most critical in ensuring dignity and combating inequality, namely the delivery of basic services to informal settlements.

This practice note addresses the questions on how urban-rural differences and changing relations between local authorities and other government levels influence consultation processes and direct popular participation, and what are the factors that influence inclusive participation of less powerful social groups in urban and rural settings, and how does participation impact on principles of good governance, in this case transparency. The focus of this practice note is procurement information, the broader procurement process is discussed in report section 2 on local responsibilities.

Description of the Practice

Most basic services in informal settlements are delivered by service providers appointed by municipal authorities through the public procurement process. Procurement information is one of the only sources of information about the level of service that the municipality provides. This is especially important in rural areas and in informal settlements in urban areas, where water and sanitation facilities are often communal and shared between many households. Bid

³⁴⁵ We wish to acknowledge the valuable inputs and insights from Carlene van der Westhuizen.

³⁴⁶ 'Salga Welcomes Hawks Probe into Corruption in Councils' (*OnlineTenders*, 2019)

<<https://www.onlinetenders.co.za/news/salga-welcomes-hawks-probe-into-corruption-in-councils>>.



specifications or contract information indicate how often these communal facilities should be serviced and cleaned and are therefore important tools for monitoring service delivery. For example, where informal urban settlements or rural communities do not have access to piped water and receive water directly from water distribution trucks or from water tanks (*Jojo tanks*) that have to be refilled regularly, the bid specifications should indicate how often water should be delivered. This would enable communities to hold their local government accountable.

Another example of outsourced sanitation services in high density informal settlements, are the Ventilated Improved Pit (VIP) toilets, usually provided through one contract and then desludged (and to some extent cleaned) by another service provider. A single contract (but often awarded to multiple service providers) usually covers the provision and servicing (including cleaning) of chemical and portable flush toilets. The contract specifications should prescribe how often toilets should be serviced and cleaned. The key players are thus local governments, private business entities and communities/civil society. Civil society is recognised as constituting part of the local community in Section 1 of the Municipal Systems Act 32 of 2000. Further, Section 19(3) of the Municipal Structures Act 117 of 1998 requires municipal councils to especially consult community organisations. Civil society organisations have also in the past been pivotal in supporting or starting public participation in uninvited spaces, conducting research and advocacy work in the community, or in instituting class action on behalf of local communities. Thus, civil society plays an important role in participatory democracy.

Legal Context

Local government procurement is regulated in terms of the Municipal Supply Chain Management Regulations (MSCMR), issued in terms of the Local Government: Municipal Finance Management Act of 2003 (MFMA), although these regulations provide very limited guidance on what procurement information should be made public, and how this should be done. As noted in report section 2 on local responsibilities, municipalities and municipal entities are required to implement a supply chain management that is 'fair, equitable, transparent, competitive and cost effective' (see Regulation 2(1)(b)). Key provisions for public participation in procurement processes include Regulation 22(1) which provides guidelines on information to be included in a public advertisement of a tender, and Regulation 23(a) MSCMR which requires the supply chain management policy to stipulate that bids should be opened in public. The rest of this provision sets requirements for making the names of the bidders, and if practical the prices of the bids, publicly available. In addition to the duty placed on municipalities to share this information with local communities, municipalities are required to receive, process and consider the petitions and complaints, and the representations made orally or in writing, and at public meetings and hearings by municipal councils and sub-councils, and provide feedback to local communities.³⁴⁷

Public Procurement Information

Access to procurement information is a crucial part of public participation as it facilitates accountability and transparency. Local communities include the residents, rate payers, civil society organisations and visitors in the area in terms of Section 1 of the Municipal Systems Act. The term 'residents' is inclusive of both formal and informal residents in the municipality.

³⁴⁷ Sec 17(2), Systems Act.



Local communities can speak individually through oral and written submissions which the municipality is obligated to invite, receive, read and consider and provide feedback. Local communities can also express their needs at meetings of the municipality or sub-councils, including ward committees. Ward committees are usually the closest platform for direct engagement between community members and the ward councillor. The ward committee comprises of one ward councillor and a few community members.

Procurement information tells communities about the exact nature of the service they should receive and how often a service should be delivered. The most important information communities need in order to monitor the procurement and delivery of contracted services includes information relating to:

- tender notices and the full set of bid specifications;
- tender awards (including the names of all winning bidders and the total contract amounts);
- any additional service delivery agreements or schedules negotiated after the award of the contract;
- contract monitoring information; and
- information about extensions to and deviations from existing contracts.

The bid specifications are a critical source of information as they should provide detailed information about exactly what a service provider should be delivering on the ground. For example, the specifications for the cleaning of chemical toilets should tell residents which days of the week their toilets should be cleaned, as well as exactly which parts of the toilets should be cleaned. In addition, the bid specifications should provide information on the chemicals to be used in this process as well as the Personal Protective Equipment (PPE) that should be provided to workers. The timely publication of tender awards will tell residents who has been awarded the contract for the delivery of a service. In many cases, bid specifications explicitly indicate that after the award of the contract a further service agreement will be negotiated, or a service delivery schedule will be drawn up. These additional documents often include more specific information about the service provider responsible for the delivery of the service to a particular area, how often and on which days the service should be delivered, and more detail about the scope of the service. Contract monitoring information includes monitoring reports (such as time sheets, job cards, and access control sheets), contractor invoices, and contractor payment sheets (documents signed by municipal officials to authorise payments). This information is valuable in that it tells communities what information regarding service delivery the municipality considered before making payments to service providers. Communities can compare this contract monitoring information with what they observe on the ground in terms of the actual delivery of the service. In many cases the contracts for the delivery of basic services are extended beyond the contract's initial end date, through a deviation or an extension. Information about deviations or extensions informs residents for how long the contract has been extended and with which contractors. It enables communities to continue to hold the relevant contractor and the municipality accountable for the delivery of the service. Armed with relevant procurement information, communities can monitor whether services are being delivered according to the contract specifications, which can be considered a minimum standard in the current context. Communities can also advocate changes to these



specifications where the minimum standard is inadequate in response to the Covid-19 pandemic. In the absence of formal processes, local communities can engage in protests (i.e. participate in uninvited spaces), and this is a common occurrence especially in service delivery protests across the country. However, this is a more common occurrence in urban centres, as there are seldom protests in rural areas. The population is often sparsely populated and remote which can make it difficult to build a critical mass.

Information about the emergency procurement of water delivery, for example, will tell residents if their settlement has been included in a specific contract, who is responsible for the provision of water in their settlement, and how often this should happen. Again, access to this information will help residents to engage with the relevant municipality if they do not have access to water or if water is not being delivered regularly.

Assessment of the Practice

In our experience during the lockdown, where civil society organisations and the communities they work with were looking for information, for example, on tenders awarded and specifications for the provision and transportation of water using water trucks and tankers, it was found that in particular during the Level 5 and 4 lockdown periods, municipalities were slow in adding any tender information (notices, specifications and awards) to their websites or submitting it to the eTender portal of the National Treasury. Many did not make any procurement information publicly available during this period. Some improvements were noted from June of 2019 when the lockdown measures were relaxed.

However, accessing local government procurement information was a challenge even before the onset of the Covid-19 pandemic. Civil society organisations and communities have struggled in the past to access procurement information, such as bid specifications. Many municipalities still do not publish the full set of specifications with the tender notices on their website, or do not submit this to the eTender portal. In addition, once a contract has been awarded, the bid specifications are often no longer publicly available. Municipalities tend to remove this information shortly after the bid closing date, and usually before the award of the tender. In the case of the eTender portal, the information ceases to be available on the portal on the same day as the bid closing date.

The specifications form the foundation of the contract but are no longer publicly available once the contract has been awarded and the service is being delivered (or not). Additional service level agreements or service delivery schedules, as well as contract monitoring information, are never published. This makes it difficult for communities to access this information once the bid closing date has passed. It also makes it difficult for communities to monitor and hold the private company and/or local government accountable. This has significant implications for accountability and good governance and for service delivery. If the described transparency measures fail, the poorest in the community are most likely to be excluded. In this case, it is exclusion from service delivery, especially the most basic service delivery, such as the provision of potable water, sanitation, refuse removal and electricity, for example. As has been seen during the pandemic, access to water was (is) pivotal to the fight against Covid-19, and it is mostly rural areas and informal areas in urban centres, such as metropolitan municipalities,



that have the greatest need for water infrastructure and potable water. The lack of transparency regarding service level agreements on the provision and filling of water tanks, makes it difficult for these vulnerable groups to hold their municipalities to account. In addition to the issues of accountability, there is also a digital divide, worsened by the Covid-19 lockdown which limited the mobility of communities and consequently reduced access to facilities such as internet cafes and local libraries where community members could access computers and the internet and view eTender portals especially in urban municipalities. Rural communities and lower income earners (such as in urban informal settlements) tend to have greater difficulty accessing digital devices and internet access to view the bids online, and the situation was exacerbated by the mobility restrictions under the lockdown, which prevented communities from accessing public facilities that provide computers and internet access such as public libraries.

While some municipalities follow the legal requirement of making tender award information public within seven working days on their websites or on the eTender Publication Portal, others do so infrequently. Many municipalities follow the same lax practice when it comes to publishing information about extensions to and deviations from existing contracts. Moreover, although many rural municipalities are tech-savvy, some may require capacity building on digital technologies to improve their use of eTender portals.

References to Scientific and Non-Scientific Publications

Local Government: Municipal Finance Management Act of 2003 (MFMA)

Municipal Supply Chain Management Regulations (MSCMR)



12. People's Participation in Local Decision-Making in Ethiopia

12.1 The System of Local Government in Ethiopia

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Types of Local Governments

The Federal Democratic Republic of Ethiopia (FDRE) Constitution has established a federal state structure composed of nine ethnic based constituent units namely: Tigray, Afar, Amhara, Oromia, Somali, Benishangul/Gumuz, Gmbella, Southern Nations, Nationalities and Peoples (SNNP) and Harari. Ethiopia is a dual federal state since Article 50(1) of the Constitution stipulates as The Federal democratic Republic of Ethiopia comprises the federal government and the state members. Local government is not explicitly stipulated by the Federal Constitution which remains almost silent. This paves the way to the constituent units to enjoy unlimited constitutional space in the area. Article 50(4) of the federal Constitution merely states that 'State government shall be established at the state and other administrative levels that they (i.e. the regional states) find necessary'. In fact, the second sentence of the article gives a specific federal mandate to the region and reads 'Adequate power shall be granted to the lowest units of government to enable the people to participate directly in the administration of such units'. This implies the Constitution has implicitly provided for the establishment of non-ethnic local governments.

In addition, Article 39(3) states that Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits'. According to this article, local governments are established along ethnic lines for ethnic groups which are basically 'ethnic local government'.³⁴⁸ Here, the Federal Constitution poses a duty on the regional states to realize genuine self-government and ample amount of decentralization of power to the local levels. Accordingly, all regional state constitutions have provisions related to local government with a relative uniformity.

As mentioned above, the constitutional recognition of local government in Ethiopia has remained debatable. Despite this debate, local governments are constitutionally recognized at least implicitly. If one gets a closer look to the provisions of the Federal Constitution, it envisaged the establishment of two kinds of local governments: ethnic and regular.³⁴⁹ These

³⁴⁸ Zemelak A Ayele and Yonatan T Fessha, 'The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia' (2012) 58 *Africa Today* 89, 93.

³⁴⁹ Zemelak A Ayele, 'The Existence of Local Government and its Institutional Security within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (UNDP and Center for Federal Studies 2015) 203.



two categories of local governments have two distinct objectives.³⁵⁰ Ethnic local governments aim at realizing the self-determination rights stipulated under Article 39(3) of the Federal Constitution. Practically these local governments are established in the name of ‘nationality zones’ or ‘special *woreda*’ in all regional states except Oromia, Harari and Somali. On the other hand, the regular local governments are established by the regional states as per the Federal Constitution’s provision of Article 50(4) in the name of *zone*, *woreda* (city/town administration) and *kebele*.

Regarding administrative structure, all regional states, except Harari³⁵¹, are composed of three levels of local governments: nationality (*zone*), special (*woreda*) and *kebele*. Nationality *zones*, *woredas*, special *woredas* and *kebeles* have three tiers of institutional structure composed of a council; administrative council and judicial body.³⁵² Zones are administrative levels just below the regional state comprising a number of districts (*woredas*) or urban centers. Unlike nationality *zones*, regular zones are founded by ordinary legislation with no council in Amhara, Oromia, Somali, Afar and Tigray regional states. It is a deconcentrated administrative body of the regional state. The *woreda* is the local government level standing next to the zone, encompassing *kebeles* and administratively subordinate and accountable to both the zone and regional state. *Kebele* is the lowest local government level included in all regional state constitutions. There are two categories of urban local governments: cities and towns. ‘Cities’ signifies the two cities under the federal jurisdiction (Addis Ababa and Dire Dawa). There are urban centers named by the legislations of their respective regional state councils. Towns are urban centers located beneath the zonal administrative structure and ranges from small to large based on their population size. Unlike others, small and medium towns may have a *woreda* status and in each *woreda*, there is a town from which the *woreda* is administered.³⁵³

Legal Status of Local Governments

Institutional security of local government is a crucial element of political autonomy of local government.³⁵⁴ In order to protect the existence of local government as a sphere or level of government from the encroachment of the central government, constitutional recognition is recommended as an effective formal mechanism.³⁵⁵ Political autonomy also entails uninterrupted existence of local government. The constitutional recognition of local government as an autonomous level of government does not only resist the intrusions from other levels but it also enhances the political and economic role that local government ought to play. Accordingly, local government administrations are supposed to be autonomous units.

³⁵⁰ *ibid.*

³⁵¹ Harary regional state is composed of only two levels of governments: regional state and *kebele*.

³⁵² Christophe Van der Beken, *Completing the Constitutional Architecture: A Comparative Analysis of Subnational Constitutions in Ethiopia* (Addis Ababa University Press 2017) 141.

³⁵³ WSUP Advisory, ‘Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia’ (Draft Situational Analysis for Ethiopia’s IUSHS) 20.

³⁵⁴ Ayele, ‘The Existence of Local Government and its Institutional Security within Ethiopia’s Federal System’, above, 202.

³⁵⁵ *ibid.*



However, no constitutionally entrenched functions meet the above standards in the Ethiopian federal tradition. The Federal Constitution leaves this to the regional states to determine tiers, powers and functions.

As an element of political autonomy, local government functional competencies should be original, clearly defined, and development-related.³⁵⁶ This is usually achieved through providing constitutional guarantees and full power to local governments on those functions. Considering the dual nature of the Ethiopian Constitution, local government units do not have original functions.³⁵⁷ Rather their functions are determined by regional states.

(A) Symmetry of the Local Government System

Despite the fact that both typologies of local governments lack original autonomy, there is some kind of asymmetry between urban local governments and other regular (*woreda*) and ethnic (nationality zone and special *woreda*) local governments. The state constitutions constrained the councils of the latter in law-making powers. On the other hand, urban councils are empowered to issue policy and regulations of their own.³⁵⁸ Accordingly, medium and large towns have enjoyed special status as compared to *woreda* governments having larger population. Moreover, a kind of paradox has arisen as the city councils which are under the supervision of the nationality zone council have a law-making power while the latter is restricted to its specific implementation guidelines.

Political and Social Context in Ethiopia

Ethiopia had entered in to the process of decentralization before a formal federal arrangement was endorsed in 1995. The Ethiopian People's Revolutionary Democratic Front (EPRDF), the incumbent political party since 1991, encouraged the establishment of local government units along ethnic lines. This was deemed to be a necessary response to accommodate diversity which was considered to be the most pressing challenge of the country.³⁵⁹ Proclamation number 7/1992 was instrumental for the beginning of the first phase of decentralization (1991-2001). The Proclamation also laid down the foundation for the Federal Constitution. It had listed 64 ethnic groups to establish their own ethnic self-administration.³⁶⁰ After ten years, the party realized that emphasizing only ethnicity leads to inefficiency in ensuring development and equitable service delivery and engaged in the further creation of new local governments

³⁵⁶ Zemelak A Ayele, 'Decentralization, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (Doctoral dissertation, University of Western Cape 2012) 55.

³⁵⁷ *ibid* 488.

³⁵⁸ Van der Beken, *Completing the Constitutional Architecture*, above, 187.

³⁵⁹ Zemelak A Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia' (2014) 6 Perspectives on Federalism 89, 109.

³⁶⁰ National/Regional Self Governments Establishment Proclamation no 7/1992, Art 3, Federal Negarit Gazeta, No 2.



and at some degree amalgamates certain of the existing ones.³⁶¹ Indeed, in 2001, the District Level Decentralization Program (DLDP) launched by the federal government, administrative convenience, good governance and development issues began to be the salient justifications for strengthening the decentralization process.

Currently, there are no less than 60 political parties registered in Ethiopia. Based on their constituency, political parties often classified in to three: national, regional and local parties. They also could be categorized in to three based on their political programs: EPRDF, incumbent party and composed of four ethnic based parties representing regional states of, Amhara, Tigray, Oromiya and Southern Nations Nationalities and Peoples.³⁶² EPRDF's affiliates are five in number which comprise Afar, Somali, Benishangul-Gumuz, Gmbella and Harari regional states.³⁶³ These parties are ethnic based and not opposition parties following EPRDF's ideological orientation. Except a few, most of the opposition parties are ethnic based; their constituencies are regional and local governments. Ethnic based local parties are mostly oppositions mainly seeking either regional statehood or new ethnic local government status. Member parties of EPRDF are represented by an equal number of people both in its executive committees and despite the obvious difference in population size each party is supposed to represent. Moreover, many agree that the TPLF was the most influential member of EPRDF.³⁶⁴ The party structure which controls all levels of government and its decision-making procedures on the principle of 'democratic centralism' affected local government creation and undermines the role of regional states in creating local government systems based on their circumstances.³⁶⁵ Following the 2016 protests in the country an increasing party fragmentation within EPRDF has been seen. This political dynamic changed the previous centralized nature of the party and TPLF has been relegated from its core position in the party.³⁶⁶ Enjoying this political liberalization opposition ethnic based local parties are getting more assertive in their claim of new territorial autonomy.

A City/Town administration, as the term implies, is established in urban areas. Based on classification, urban centers of Ethiopia are classified in five categories ranging from small towns to metropolitan City of Addis Ababa based on demographic size. According to Situational Analysis of IUSHS, the population size of small towns ranges from 2,000 to 20,000 people and constitute 80 per cent of total number of towns and only 33 per cent of urban population. The medium-sized towns range between 20,000 and 50,000, and hold 25 per cent of the urban

³⁶¹ Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia', above, 109.

³⁶² Amhara National Democratic Movement (ANDM) currently called Amhara Democratic Party/ADP/. Tigray People Liberation Front (TPLF), the Oromo Peoples' Democratic Organization (OPDO) currently called Oromo Democratic Party/ODP/, and the Southern Ethiopian Peoples' Democratic Movement (SEPDM).

³⁶³ Afar National Democratic Party (ANDP), Somali People's Democratic Party (SPDP), Benishangul-Gumuz Peoples Democratic Party (BGPDP), Gambela people's Unity Democratic Movement (GPUDM), and Harari National League (HNL).

³⁶⁴ Following party fragmentations, this has been confirmed by the leaders of the remaining member parties as there was no equal power balance within and TPLF took the upper hand in decision-making and even interfering in the internal affairs of each member parties.

³⁶⁵ Ayele, 'The Politics of Sub-National Constitution and Local Government in Ethiopia', above, 90.

³⁶⁶ Currently, the regional parties except TPLF and all affiliate parties have been merged in to one monolithic national party in the name of Prosperity Party.



population. Large-sized towns range between 50,000 and 100,000 people. There are 13 mega towns with a population between 100,000 and 500,000 people each. Addis Ababa is the only city in the country that hosts over 500,000 with about 3.5 million residents.³⁶⁷

References to Scientific and Non-Scientific Publications

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National/ Regional Self Governments Establishment Proclamation no 7/1992

Scientific and Non-Scientific Publications:

Ayele ZA, 'The Existence of Local Government and its Institutional Security within Ethiopia's Federal System' in Asnake Kefale and Assefa Fiseha (eds), *Federalism and Local Government in Ethiopia* (UNDP and Center for Federal Studies 2015)

— 'The Politics of Sub-National Constitution and Local Government in Ethiopia' (2014) 6 Perspectives on Federalism 89

— 'Decentralisation, Development and Accommodation of Ethnic Minorities: The Case of Ethiopia' (doctoral dissertation, University of Western Cape 2012)

Van der Baken C, *Completing the Constitutional Architecture: A Comparative Analysis of Sub National Constituions in Ethiopia* (Addis Ababa University Press 2017)

— and Fessha YT, 'The Constitutional Status of Local Government in Federal Systems: The Case of Ethiopia' (2012) 58 Africa Today 89

WSUP Advisory, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia'(Draft Situational Analysis for Ethiopia's IUSHS, 2015)

³⁶⁷ WSUP, 'Developing an Integrated Urban Sanitation and Hygiene Strategy and Strategic Action Plan for Ethiopia'.



12.2 People's Participation in Local Decision-Making in Ethiopia: An Introduction

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Scholars consider local government to be the best level of government for public participation.³⁶⁸ This mainly because it is relatively small in territorial and population size which makes it effective in allowing public participation. The Ethiopian Constitution also links the establishment of local government with enhancing public participation. Likewise, the District Level Decentralisation Program (DLDP) was implemented with enhancing public participation at the local level. In the policy papers that articulated the need to decentralize powers at the local level it was clearly stated that doing so was imperative to empower local communities to 'participate, negotiate and influence' the decision-making processes concerning local matters. To this effect it was stated that regular local elections would be conducted and that the capacity of local representative councils and other democratic institutions would be strengthened.³⁶⁹ The decentralization program was also underpinned by the need to create enhanced opportunities for civil society organizations to play an important role in the process of service delivery by facilitating 'interaction, and mobilizing groups and communities to participate in social, economic and political activities' in particular at local level. The need to empower women was also taken as an integral part of this local political reform.³⁷⁰

Public participation at the local level takes place in two major ways. The first is an indirect one, through the electoral process. Local governments of all tiers have an elected representative council and a parliamentary form of executive. Members of local councils are directly elected by local communities on the basis of a multiparty system. Since the adoption of the 1995 Constitution five local elections have been held (in 1997, 2002, 2008, 2013). The sixth local elections were supposed to be held in May 2018. Due to the political crisis in the country which began in 2015 and the poor security situation, these elections have been postponed indefinitely. Local elections in Ethiopia are not in general viewed as important elections both by political parties and the voters. The opposition parties have never taken part in local election since the adoption of the 1995 Constitution. They often accuse the ruling party of political repression and boycott local elections. The reason for doing so does not however seem to be only the repression by the ruling party. Opposition parties take part in national elections while complaining about political repression. It rather seems that they do not view winning local elections as important political exercise. There seems to be also a general lack of enthusiasm about local elections among voters. Yet, post-election reports of the National Electoral Board of Ethiopia – the federal agency which is charged with administering elections - claim that voter turnout is around 90 per cent. These numbers are not however to be trusted. The fact is that

³⁶⁸ See David Beetham, 'Theorising Democracy and Local Governance' in Desmond King and Gerry Stoker (eds), *Rethinking Local Democracy* (Macmillan 1996) 38; Keith Dowding, 'Public Choice and Local Governance' in Desmond King and Gerry Stoker (eds), *Rethinking Local Democracy* (Macmillan 1996) 53; Jaap De Visser, *Developmental Local Government: A Case Study of South Africa* (Intersentia 2005).

³⁶⁹ Federal Democratic Republic of Ethiopia Ministry of Finance and Economic Development (MoFED), 'Sustainable Development and Poverty Reduction Programme' (2002).

³⁷⁰ *ibid.*



in every local elections EPRDF's candidates ran in every constituency uncontested and become declared winners. Local elections as means of political participation for local communities seem to have little relevance. And the local voters had little incentive to come out in large number and cast their votes.

The other form of participation is direct participation. Members of local communities are expected to participate during planning process. This especially takes place at the *kebele* level which is, as explained in report section 4 on local government structure, the lowest tier of local government. At the *kebele* level, members of a local community, both individually or through civil society organizations, are entitled to take part in annual planning processes by stating what services need to be given priority in a given fiscal year. The local officials are expected to consider what local communities say should be given priority when drafting annual plan with respect to service delivery. According to Zemelak Ayele, local planning takes place in the following process:

'A *woreda*'s development planning begins with public consultation at village level, the main purpose of which is to identify community problems and prioritise them. The consultations are facilitated by employees of the *kebele*. Civil society organizations (CSOs) are also invited to participate. The CSOs that are invited include traditional associations called *Idir*,³⁷¹ and others which are engaged in provision of certain basic services including water, sanitation and the like. The community needs that are identified at village level are consolidated at *kebele* level and become a "single *kebele* priority list". The aggregated priorities at *kebele* level are also discussed at a *kebele* general community meeting of the *kebele*'s residents. The *kebele* priority lists are then sent to a *woreda* where the priority lists of the various *kebeles* are consolidated by the *woreda* development planning committee. The aggregate *woreda* priorities are then re-organised on a sectoral basis and passed on to the sectoral office concerned. Based on the priority list, each sectoral office decides on the "intervention areas" and produces a plan. The plan of each sector is then aggregated and "linked to a budget". The plans that are prepared at sectoral level are discussed and negotiated among the various offices with the facilitation of the *Woreda* Planning and Budgeting Desk. The end-result of this negotiation is a single *woreda* plan identifying *woreda* priorities and linking them to budgets. The *woreda* plan is finally submitted to a *woreda* council for approval.'³⁷²

Studies show that direct public consultation at the local level are far from participatory and ineffective in terms of identifying what the public requires to be prioritized. First, public consultations are mainly used for extracting information rather than involving local communities in decision-making. Moreover, whatever members of a local community have said should be prioritized in terms of service delivery are often lost in the process of aggregation and disaggregation by local government experts. Moreover, local officials often

³⁷¹ These are traditional association, often informally established, and meant to serve as self-help association. The assist their members with matters relating to funeral and other social issues.

³⁷² Zemelak Ayele, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities* (Nomos 2014).



ignore what have been identified by local communities as important intervention areas in terms of service delivery and implement their own preferences.

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De Visser J, *Developmental Local Government: A Case Study of South Africa* (Intersentia 2005)

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12.3 Participation in Urban Water Management Board in Adama/Oromia

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Relevance of the Practice

The urban water supply can be considered as a relevant experience for analyzing people's participation in local decision-making. Both the water policy and legal frameworks of Ethiopia allows the Urban Water Supply Service Enterprise (UWSSE) to perform its functions autonomously with very limited supervision from the supra-local level. The UWSSE has the duty to cover all its service delivery charges by collecting water tariff from its urban water service customers. Whether the people's participation in the UWSSE has helped to match the supply and demand for water; whether the participation of the people in water tariff setting and whether there is adequate involvement in the water management board or the supreme decision-making body process is worth describing. For this purpose, Adama, the rapidly urbanizing City of Oromia, is selected as a case to assess the practice of participation in the water management board. The study also highlights how the local communities participate in the rural water service provision and to what extent the urban and rural governments are connected with regard to water supply service issues.

Description of the Practice

Adama is in proximity to and at an optimal distance of 100 km from Addis Ababa. Adama serves as the intersection of the main highways coming from Dire Dawa, Harar, Bale and Arsi, where different imports to the country first arrive. Adama also hosts a number of industrial factories as well as a newly inaugurated industrial park. Ecologically, the city is located in the highly degraded Awash catchment. Because of an easy transportation of alluvial deposits in this catchment, Adama has been exposed to frequent flooding.

Both the physical expansion and the trends of population growth show rapid urbanization of the City of Adama. Under the first master Plan, the areal extent of Adama was 120ha. It had grown to 320ha in 1949, 1000ha in 1957/58, 3140ha in 1995, Adama had grown to a size of 1000ha and 13,665ha in 2004.³⁷³

In terms of demography, the first Population and Housing Census of 1984 puts the population size of Adama as 77,237. The second and third Population and Housing Censuses of 1994 and

³⁷³ Gutema, 'The History of Adama' (MA thesis, Addis Ababa University 1996); Adama City Administration, 'Adama Master Plan Revision Project (AMPRP)' (2004).



2007 reported 127,842 and 220,212, persons respectively. The CSA population projections of the city for 2012 and 2015 are reported as 282, 974 and 356,344, respectively.³⁷⁴

Adama is the second largest in terms of the number of water customers, next only to Addis Ababa. The average output ranges from 19000m³ to 20,000m³ per day while the demand ranges from 35,000m³ to 36, 000m³ per day.³⁷⁵ The regional standard for water supply for Adama is 80 litre/ capita/ day. The Urban Water Supply Enterprise (UWSE) estimates that the total population for which it provides water supply service from the city and surrounding areas altogether is 440,000. The projected population of Adama city by itself is 356,000. If we take the daily production to be 20,000m³ and compute the coverage of water supply for Adama city, the estimate of water coverage is 56.18 per cent i.e. nearly half of the population could not access water. Put differently, the water consumption is about 45l/day/capita, while the regional water Bureaus's standard is 80l/s/day.

According to the water policy and legal frameworks, the UWSE is meant to perform its functions autonomously with very limited supervision and support from the regional and federal governments. Also, the UWSSE has been provided with the duty of covering all its service delivery charges by collecting water tariff from its customers. At Oromia regional state level, the Proclamation no 78/2004 for establishment of Urban Water Supply and Sanitation Enterprise along with its Amendment Proclamation no 97/2005 provides for the organizational structure, duties and power of the key organs of the Enterprise, accountability relationships between the Enterprise, Water Management Board and the Regional Water Bureau. The Water Management Board (WMB) is the supreme body of the Enterprise that follows and monitors the overall work of the enterprise. It has the power to examine and approve the annual work program and budget of the enterprise, evaluate the financial and performance reports of the enterprise, determine the structure and salary of the staff of the Enterprise, select and assign the manager of the Enterprise, and can study and amend the rates of charges for the services that the Enterprise provides.

It is the Oromia Bureau of Water and Energy Development (OBWERD) which establishes the WMB for the cities like Adama, and assigning the Chairperson of the WMB is the mandate of the Bureau. The other WMB members include: one person from Regional State's Water Resource Bureau, one person from city's Health Office, one person from City's Women's Affairs Office, one person from the City's Finance and Economic Development Office, one person from Branch Office of Electric Power Corporation in the city, one person from Education Office, and two elderly persons representing the local community or customers of the Water Supply Enterprise. Although there is no clear procedure as how the representatives of local community are selected, the practice shows that these representatives are not only politically active but also have close contacts with the city administrators.

The Manager of the Adama water supply enterprise is appointed by the board and is accountable to the same. He or she has the duty to implement the decision of the board. He can employ, manage, and terminate the employment of the workers of the Enterprise water and perform other duties as assigned to him/her by the board. In principle, the Manager of the

³⁷⁴ Adama City Administration, 'Socio-Economic Profile of Adama' (2016).

³⁷⁵ Adama City Administration, 'Adama City Water Service and Sewerage Services Enterprise (ACWSSE)' (2016).



Enterprise is expected to be appointed based on relevant water related education and work experience. The Water Supply Service Enterprise is accountable to the board established by the bureau, while the bureau is accountable to the regional cabinet which in turn is accountable to the Oromia Regional State Council or the *Coffee*. The Water Management Board has tried to establish an urban water forum whereby the local people are supposed to participate in and set the water tariff rates and represent customers' willingness to pay for the service. It is, however, the WMB that passes the final decision to fix the water tariff rates. The urban water forum, composed of different sections of the residents, were just established but it did not play any meaningful role in addressing the water shortage in the city. Thus, the legal and institutional framework sets up long and upward accountability that makes the people's participation in decision-making weak.

On the one hand, as the information from ACWSSE showed that Mr. Tegenu, who was at the same time the Federal Minister of Water and Energy of Ethiopia, has served as chairperson of the WMB. This shows that the key decision-makers in the board are also key politicians at the supra-local level. On the other hand, the Manager of the Enterprise is in principle expected to be appointed based on relevant water related education and work experience. The case of Adama, however, shows that the selection of the Manager was on political membership and affiliation to OPDO/EPRDF rather than technical and professional competences on urban water supply. Inasmuch as the Manager is inclined to please politicians, it has become difficult to separate the political from the managerial activities, and this has obscured the checks and balances between the regulator and the service provider, and the local people lacks meaningful influence on the water management board. The other members of the WMB are sector heads, not professionals having adequate knowhow of water supply service.

Unlike the urban Water Supply Services Enterprise, rural local government has a differ legal regime for drinking water supply services. As hinted above, the urban drinking water supply is established as Enterprise model that follows the principle of 'whoever pays can get the service.' Rural local governments have no power to design and run water projects other than the hand-dug wells, which can be performed by the district's budget and local community's contribution. There is another mechanism of Water Supply Committee system for the participation local people in the rural water supply service provision. The water committees are normally selected from the beneficiary community in order to run the regular activity of water supply schemes. The composition of the committee varies according to the water supply schemes. In this case, the member of the committee is seven for motorized schemes and five for shallow wells fitted with hand pumps. The water committee consists of chairman, secretary, treasurer, storekeeper, care takers and counselors. Two of the members of the water committee should, however, be women, and each water committee serves for two years. The chairman/chairwoman reports to the District's Water Office and to the local community. Whether the water schemes were constructed by the government or non-governmental organizations, the rural water supply committees were practically organized by the rural government's Water Office. Due to lack of technical and material capacities, the water committees rely on the District's water office. consequently, the water committees serve as information provider on the status of rural water institutions rather than actually governing it.



Assessment of the Practice

The meetings between the WMB and local people were conducted at times of water supply crises in the City of Adama. The WMB has held limited public hearings with regard to water supply service shortages because the chairperson of the board is barely available for local consultation with the people because he/she is busy somewhere at regional or federal level. The essence of the meeting appears as just gathering the people by the supra-local authorities through the water management board to let them know the decision of the regional water Bureau, and beyond.

The representatives of the customer community in the WMB are not only selected by the politicians but also the public view is not well represented in the water management. There is no clear formal rule for the selection of the representative of the people in the WMB. Though the nature of urban water supply service requires basic technical and hydraulic skills, there is no clear guideline to consider the technical capacity of the members of the WMB. Moreover, the members of the board are dominated by people with official and political views rather than those concerned with the customers' water demands, and the upward accountability of each of the officials represented in the WMB to the supra local structures (Zone and regional state) makes the participation of local people secondary. Such composition of the WMB barely attains adequate local people participation in the public service provision. In fact, the dominant party system and the control of all layers of government by the same party has enabled the party channel to have replaced the principle of people's participation in local decision-making.

Both the city administration and the regional state water bureau usually hold meeting with local water committee and selected community representatives on how to resolve the severe shortages of water supply service in the city. Nonetheless, this effort to participate the people in urban water supply service provision came at times of water crises and for attracting and mobilizing the political support from the urban population rather than remaining accountable to the local electorates.

Obviously, water supply service in the City of Adama is dependent on the availability or source of water coming from the surrounding rural administration. Cognizant of this, the official plan of Adama City Water Supply Services Enterprise states that the Enterprise shall provide clean drinking water to both Adama city and its surrounding rural administrations. In practice, Adama city Water Supply Service Enterprise has been providing drinking water to the rural administrations like Wanji because the city takes underground water from such rural areas. Nonetheless, in concrete terms, it is the regional state water bureau that has got both the mandate and technical capacity to undertake big water projects that could connect and serve both urban and rural residents at a time.

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12.4 Local Governance and Gender in Family Relations

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Relevance of the Practice

In Ethiopian federalism the subject matter of power division left some of the salient arenas to gender equality, such as regulation of family relations, as a residual power to the states. As per the Article 52(1) of the Federal Republic of Ethiopia's (FDRE) Constitution, the making and administration of family law fall within the reserved powers of states. In addition, the Constitution in Article 34(5) gives customary and religious institutions the power to regulate marital relations based on the consent of the parties. From ten regional states of the Ethiopian federation, seven regional states have their own family law that empowers customary and religious institutions to regulate family relations at local level.³⁷⁶ Throughout Ethiopia, customary local institutions play wide roles in the regulation of family relations, particularly in rural areas where there is limited access to formal institutions of the state.³⁷⁷

Following the adoption of an ethnic-based federal state structure, in some regional states, such as Southern Nations, Nationalities and Peoples (SNNP), regional community-based civil society organizations (CSOs), in collaboration with political elites of ethno-cultural communities who mainly live in urban areas, and traditional leaders of customary local institutions which are mainly found in rural areas, engaged in the transformation of customary laws from oral tradition to written form to revitalize customary rules to make it a politically salient feature as well as to make it compatible with women's rights enshrined in the FDRE Constitution.³⁷⁸ The relevance of this practice lies in showing the limitations of the process of transforming customary laws from the perspective of protecting women's rights and the promotion of gender equality, taking as an example the case of the Guraghe Zone. The Guraghe Zone is one of the autonomous local governments in the SNNP region established with the purpose of accommodating diversities.

Description of the Practice

The Guraghe community-based CSOs found in the federal capital, Addis Ababa, are among the first associations that initiated the transformation of customary laws in collaboration with the political elites of the Guraghe Zone and traditional leaders of customary local institutions which are mainly to be found in rural areas of the Zone. The Sebat-bet Guraghe community have a

³⁷⁶ The regional states that enacted regional family laws are the states of Tigray, Oromia, Amhara, Harari, Southern Nations, Nationalities and Peoples (SNNP), Gambela and Benishangul Gumuz

³⁷⁷ Gebre Yatiso, Faqada Azaza and Assefa Fiseha (eds), *Customary Dispute Resolution Mechanisms in Ethiopia* (Ethiopian Arbitration and Conciliation Center 2011).

³⁷⁸ Sisay Kinfe, 'Cultural Legitimization of Human Rights: The Case of the Guraghe Ethno-cultural Community in Ethiopia' in Wolfgang Benedek, Tadesse Kassa Woldetsadik and Tesfaye Abate Abebe (eds), *Implementation of International Human Rights Commitments and Implications on Legal Reforms in Ethiopia* (Brill Nijhoff 2019).



customary local council called *yajoka* which exercised the traditional legislative function for the community for centuries. Historically this council is exclusively composed of men and attempts to justify the exclusion of women. Under the guidance of the community-based CSO of the Sebat-bet Guraghe community, *yajoka* deliberated and ratified the transformed customary law of the community which was printed for use in 1998. In the printed document/transformed customary law, it states that making customary rules of the community compatible with women's rights enshrined in the FDRE Constitution is one of the objectives of transforming the community's customary law.³⁷⁹

However, in the process of transformation or deliberation neither women were represented nor were their rights in family relations respected. The transformed customary law, even though there is a general provision that states that women's rights shall be respected equal to men in all spheres of life,³⁸⁰ systematically maintained the discriminatory customary marriage and divorce law of the *anqiti*. *Anqiti* is a customary norm and cultural belief adopted by the Sebat-bet Guraghe regarding marriage and divorce which has the purpose of avoiding divorce requested by a woman.³⁸¹ This customary rule forbids the Sebat-bet Guraghe woman from divorce and remarriage without the will of the man she once had married or engaged. Therefore, if a woman wants to divorce her husband for any reason, she must get the consent of the husband. Without such consent, the marriage would not be dissolved and the woman would not be allowed to remarry. On the other hand, the husband is free to divorce his wife at any time as well as marry as many times as he likes without in fact divorcing the former wife. Moreover, a woman who decided to divorce her husband takes almost nothing from the matrimonial property as per the customary rule of *anqiti*.³⁸²

Assessment of the Practice

The use of community-based CSOs and customary local institutions to transform customary law is, first, underutilizing the degree of autonomy guaranteed to the community in the federal and regional constitutions. An autonomous local government unit that has been created for the accommodation of diversity in Ethiopia such as the Gurage Zone has three critical features which have the capacity to accommodate interests of customary local institutions although this has not been exploited. First, it makes national minorities local majorities, restoring the dignity and pride of such communities in their cultural settings. Second, it leads to the establishment of government institutions that exercise political power. Third, there is devolution of defined competences which are relevant for the protection of the identity and culture of the ethnic communities.³⁸³ With regard to the first feature of autonomy in the

³⁷⁹ *ibid*; KITCHA: The Gurage Customary Law.

³⁸⁰ Art 5(1) of KITCHA: The Gurage Customary Law.

³⁸¹ Yewendiwasan Awilachew, 'Yajok Kitcha: Sebat-bet Guraghe Customary Dispute Resolution Mechanism' in Gebre Yatiso, Faqada Azaza and Assefa Fiseha (eds), *Customary Dispute Resolution Mechanisms in Ethiopia* (Ethiopian Arbitration and Conciliation Center 2011).

³⁸² Knife, 'Cultural Legitimization of Human Rights', above.

³⁸³ Zemelak A Ayele, *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities* (Nomos 2014).



Gurage Zone, the Gurage communities are now local majorities in the Zone. The Zone has established all the three branches of government which exercise autonomous political power without contradicting the powers and laws of the federal and regional governments. Regarding the third feature of autonomy, the Federal Constitution and regional constitutions indicate competences that can be exercised by every ethnic community in the country.³⁸⁴ Making use of custom-respecting human rights and democratic principles is a recognized cultural right of all ethno-cultural communities endorsed by both the state and federal laws.³⁸⁵ This makes transforming customary laws a power potentially left to autonomous local government units. However, no effort has been made so far by policy-makers, i.e., either by political parties or women's policy agency, to bring the issue to local government institutions. These problems emanate from limited awareness of autonomy at local level as well as the sense of insecurity created by ethnic-based federalism in Ethiopia which contains provisions that consider every ethnic community homogeneous as well as confines the sphere of influence of every ethnic community only to their ancestral land that is mainly found in rural areas.

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³⁸⁴ See, for example, Art 81 of the SNNPR Constitution.

³⁸⁵ See, for example, Art 91(1) of the FDRE Constitution.



12.5 Political Participation Along Ethnic Lines: The City of Dire Dawa

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Relevance of the Practice

Dire Dawa, the second largest city in Ethiopia, is located in the south-eastern part of the country some 262 kilometers from Djibouti and 452 kilometers from Addis Ababa. It was established in 1902 along the Ethio-Djibouti railway and following its construction grew up to be a vibrant city and a melting pot for many coming from every part of the country. In the years preceding the establishment of the Ethiopian federal system, the residents of the city had developed their own distinct identity and the city was 'often portrayed in popular culture as an embodiment of multicultural coexistence'.³⁸⁶ After the establishment of the Ethiopian ethnic-based federal system, Dire Dawa has been a bone of contentions between the Oromia and the Somali state both of which claim ownership of the city which impacted the city negatively in economic, cultural, and political terms. This practice entry elaborates on why this is the case.

Description of the Practice

The Ethiopian federal system was established in the 1990s with the aim of territorially accommodating all ethnic communities of the country. The federal system was built on the assumption that each ethnic community lived in a territorial area with defined or definable boundaries. It also assumed some degree of ethnic homogeneity in every ethnic-based state or sub-state unit. This assumption completely ignored the existence of several urban areas which have multi-ethnic residents. Most of the cities were put under the political and economic control of one of the ten states which imposed a single working language and a political system that aimed at excluding those not belonging to the dominant ethnic group of the states. Some of the states, for instance, adopted laws specifically designed to restrict the political participation of urban residents not belonging to those which are considered as endogenous communities of the states. For instance, Oromia had adopted a law that reserves over 70 per cent of the seats in cities within the state for ethnic Oromos, even if the Oromos were in the minority in the cities. Similar laws have been adopted in SNNP, Benishangul-Gumuz and other states. The mismanagement of ethnic diversity in cities is one of the most serious shortcomings of the Ethiopian ethnic federal system.

³⁸⁶ Mistir Sew, 'Dire Dawa's Dilemma: Sharing Power in Ethiopia's Eastern Melting Pot' (*Ethiopia Insight*, 9 August 2021) <<https://www.ethiopia-insight.com/2021/08/02/dire-dawas-dilemma-sharing-power-in-ethiopias-eastern-melting-pot/>> accessed 16 October 2021.



As mentioned, Addis Ababa and Dire Dawa are federal cities which are not within the political jurisdiction of any ethnically organized states. Addis Ababa is constitutionally designated a federal city (Article 49 of the Constitution). Dire Dawa, on the other hand, was put under the federal jurisdiction, supposedly temporarily, until the claim of the Oromia and Somali states on the city was settled. Some three decades after the formation of the federal system, the ownership of the city remains unsettled and the city remains within the federal jurisdiction.

In order to settle the ethnic contestation in the city, a semi-consociational arrangement has been put in place in the city which is called the 40:40:20 arrangement and thus determines the chances of political participation for each community. This arrangement means that the Somalis and the Oromos (i.e. the parties representing these communities) each have a 40 per cent representation in the city council and executive structures of the city, with the remaining 20 per cent being controlled by those hailing from other communities. The office of the mayor rotates between an Oromo and a Somali within a single electoral term. It should be noted here that Dire Dawa has a population of close to half a million, and not one ethnic community is in the majority in the city. The Oromos, which account for 46 per cent of the city's residents, constitute the largest ethnic group in the city, followed by the Somali (24 per cent), Amhara (20 per cent), Gurage (5 per cent), and others (5 per cent).³⁸⁷

Assessment of the Practice

Given the ethno-cultural diversity of the Ethiopian people, establishing a federal system which creates an inclusive political and cultural institutional structure was/is imperative. However, the one-size-fits-all approach that the federal system adopted has been a cause for numerous problems. This is especially visible in urban areas such as Dire Dawa. Cities in Ethiopia, as is the case almost everywhere, are often multi-ethnic and multi-cultural. Yet, this is often not recognized, as several states adopted laws to reserve a majority of seats in city councils to residents belonging to the demographically and politically dominant group of that state, even if this group is sometimes in a minority position in some of the cities concerned. A political arrangement that fits the unique multi-ethnic and multi-cultural character of Ethiopian cities is thus a necessity. The arrangement in Dire Dawa that has been described above has been both praised and criticized. It is praised mainly because by ensuring the equal representation of the Somali and the Oromo communities in the executive structure of the city, the arrangement has quelled the political dispute between the two communities. Yet, the arrangement is criticized for being undemocratic and that it excludes non-Somalis and non-Oromos from adequate representation in the political structure of the city. Kefale has put this as follows:

'First, the Oromo and Somali political elite in the city are unhappy that the charter did not provide recognition of their territorial claim. Second, there is a feeling that the ethnic power-sharing scheme which is practiced in the city promotes sectional interests and reifies ethnic identity (...) [A]s officials of the city feel that they are vanguards of the ethnic interests of their groups, they do not reach out to the other groups and work

³⁸⁷ Data retrieved from the Federal Democratic Republic Ethiopia Central Statistics Agency (2007).



for the common good of the city. Third, the rotation of the mayoral office within a single electoral term is particularly unpopular to experts working in the city government and other informants. They underscore that the splitting of a single term of office into two undermines the development and implementation of medium and long-term plans.³⁸⁸

Moreover, the ethnic politics and contestations have reduced Dire Dawa, once a peaceful and vibrant city, into a stage for ethnic-based violent conflicts in which close to 100 people lost their lives.

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Sew M, 'Dire Dawa's Dilemma: Sharing Power in Ethiopia's Eastern Melting Pot' (*Ethiopia Insight*, 2 August 2021) <<https://www.ethiopia-insight.com/2021/08/02/dire-dawas-dilemma-sharing-power-in-ethiopias-eastern-melting-pot/>>

³⁸⁸ Asnake Kefale, 'Ethnic Decentralization and the Challenges of Inclusive Governance in Multiethnic Cities: The Case of Dire Dawa, Ethiopia' (2014) 24 *Regional & Federal Studies* 589, 600.



13. People's Participation in Local Decision-Making in Argentina

13.1 The System of Local Government in Argentina

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Types of Local Governments

Argentina is a federal country consisting of 23 provinces and the Capital City of Buenos Aires as a federal district. Their autonomy is enshrined in the Constitution of 1853, which was last time reformed in 1994. According to the Federal Constitution, provinces can vote their own constitutions and laws. They have the power to elect their authorities and organize their own administrations, even in areas of justice and security. In addition, provinces have broad constitutional autonomy in fiscal and spending functions. A delineation of powers between central government and the provincial states is based on the general principle that all provinces have the power of those competences not expressly delegated in the Constitution to the federal state.

The third tier is composed of local governments. As the provinces have a political, administrative, judicial, and financial autonomy, the scope of municipal autonomy is determined by the province in which they are located. That translates into a wide range of definitions and configurations for local governments. Several municipal governments, depending on the provinces, have the authority to draft municipal charters (usually depending on the size of their populations). In some provinces, municipalities include only urban areas around cities, leaving rural areas under the jurisdiction of provincial governments. This translates into serious challenges for the delivery of social services. In others, municipal governments may include several cities and rural areas too.

Departments are an administrative division between provinces and municipalities, which do not have policy functions nor fiscal responsibilities. They mainly have a cadastral and statistical role, but in some provinces, they are also electoral districts to elect provincial representatives.

The adoption of federalism and a decentralized system of government that recognized autonomy to subnational units was the result of civil wars in the 1820s, after independence, and the only possible way to solve the political and economic conflicts in a country of enormous territorial extension.

Legal Status of Local Governments

Both the national Constitution, as amended in 1994, and most of the provincial constitutions explicitly recognize the autonomy of municipalities. According to Article 123 of the Argentine



Constitution, '[e]ach province dictates its own Constitution, in accordance with the provisions of Article 5 ensuring municipal autonomy and regulating its scope and content in the institutional, political, administrative, economic and financial order.' The sanction of several municipal charters (*cartas orgánicas municipales*) marks a progressive increase in the decision-making capacity of the municipalities. But this contrasts with limited administrative capacities to provide services (many of them decentralized at the provincial level) and scarce public resources and tax powers to finance their expenses (mostly concentrated at the national level).³⁸⁹

(A) Symmetry of the Local Government System

Although the Argentinian Constitution establishes a substantial autonomy for subnational tax powers, in practice the provinces have delegated large amounts of responsibility to the national government for the collection of revenue (income taxes, sales, special taxes and taxes on fuel). The resulting revenue concentration contrasts with a process of decentralization of expenditure whereby the responsibility for key social functions is in the provincial hands. The only activities that are the exclusive competence of the national authorities are those related to defense and foreign affairs. In the areas of economic affairs, public security, and social infrastructure, the national government shares responsibility with the provinces, while the latter have exclusive competence in primary and secondary education and local (municipal) organization and services. The Constitution defines a wide area of public services for which national and provincial authorities can participate in the legislation and provision of public services, although the tendency in the last two decades has been for the national government to decentralize direct administration of those functions to the provinces. Therefore, the provinces are currently in charge of most social expenditures (including basic education, health services, poverty programs, housing) and economic infrastructure. Despite this, the national government maintains a significant regulatory power in many of these areas and manages some programs within these sectors, such as social security, social programs for poorer households, and complementary educational programs that subsidize poorer schools.

Given this decentralization of spending and fiscal centralization, there is a high degree of vertical fiscal imbalance. Argentina addresses this large vertical fiscal imbalance through a complex system of intergovernmental transfers. The most important component of this system is the revenue sharing agreement (called *coparticipación*), which is the process by which part of the revenues collected by the central government are transferred to the provinces. Over time, the system has redistributed revenue from the richest central region to the most backward provinces in the northwest and northeast. It has also favored richer and low-density Patagonian provinces. Despite this, the system has corrected part of the large regional income asymmetries among provinces in Argentina. We have to bear in mind that regional inequalities in Argentina are enormous. Formosa, for instance, has a GDP per capita more than 10 times lower than the City of Buenos Aires (2,256 versus USD 23,439). Although it has corrected

³⁸⁹ Monica Iturburu, 'Municipios Argentinos: Potestades y restricciones constitucionales para un nuevo modelo de gestión local' (2nd ed, Instituto Nacional de la Administración Pública 2000) 33.



regional income inequalities, the revenue transfer system has not had a substantial impact on provincial and local welfare indicators, as most social functions depend on the provinces (and are strongly correlated with provincial spending, particularly in social areas).

Political and Social Context in Argentina

The main parties that govern the provinces are the Justicialist Party (PJ), *Cambiemos*, which is the alliance governing the national government (formed by the Radical Civic Union, or UCR, Republican Proposal, or PRO, and other minor parties), and a constellation of minor parties, including the Socialist Party and provincial parties. *Cambiemos* governs four provinces (Buenos Aires, Corrientes, Jujuy and Mendoza) and the City of Buenos Aires. The PJ (in one of its several factions) governs 14 provinces (Catamarca, Chaco, Córdoba, Entre Ríos, Formosa, La Rioja, La Pampa, Salta, San Juan, San Luis, Santa Cruz, Tierra del Fuego, Tucumán, and Santiago del Estero). The socialists govern one province (Santa Fe) and provincial parties govern the other four provinces (Chubut, Misiones, Neuquén and Río Negro). Argentina has 1922 municipalities³⁹⁰ governed by these and other national, provincial or local parties.

According to the last census, Argentina has 40,117,096 inhabitants, out of which more than 91 per cent (36,517,332) live in urban areas and the rest (3,599,764) in rural areas. More than 19 million live in 10 cities of more than 500,000 inhabitants, the largest being the metropolitan area of Buenos Aires (with 12,806,866 inhabitants and 31.9 per cent of the population).

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Iturburu M, 'Municipios Argentinos: Potestades y restricciones constitucionales para un nuevo modelo de gestión local' (2nd ed, Instituto Nacional de la Administración Pública 2000)

³⁹⁰ Iturburu, 'Municipios Argentinos', above, 80.



13.2 People's Participation in Local Decision-Making in Argentina: An Introduction

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In Argentina, the incorporation of mechanisms of direct democracy into its legal framework is recent and was not due to a demand from society for greater participation and transparency, but it rather was part of a package of reforms promoted in 1994 by the national government with the aim of convincing voters and enabling presidential reelection.³⁹¹ The main mechanisms are: referendums and popular consultations, popular legislative initiative, revocation of mandate, popular juries, public hearings, and participatory budgets. The main aim of these institutions is mainly propositional, although depending on specific regulation, they can also be informative, consultative and, in some cases, it can mandate a decision.³⁹²

In recent decades, direct democracy mechanisms occupied an important place in the political agenda, due to three main processes: the aforementioned constitutional reform promoted by leaders who sought to eliminate institutional obstacles to stay in power; the crisis of representative democracy, with the increase of citizens' distrust in politics and increasing protests; and the decentralization process, which allocated greater powers to subnational levels of government and increased the relevance of participation mechanisms for citizens.³⁹³

Despite this common context, the institutionalization of participatory democracy mechanisms shows uneven development in Argentina. The national Constitution makes tacit reference to direct democracy mechanisms but does not regulate their functioning at the national, provincial, or local level. In the last three decades, the legislation that formally institutionalized the mechanisms of direct democracy was fundamentally developed at the municipal level. In most cases, they were formalized in the provincial constitutions and provincial laws for municipal regimes (municipal organic laws), while in others, they were regulated by municipalities in their organic charters.³⁹⁴

In the Province of Buenos Aires, the municipal organic law does not refer to the mechanisms of direct democracy but the Constitution of the province and the City of Buenos Aires enshrine these instruments. In some cases, the provinces explain the procedures necessary for their implementation or in others they indicate the need to pass a law that establishes specific conditions. The legislation of the provinces of Catamarca, Entre Ríos, La Pampa and Santiago del Estero scarcely mentions these mechanisms. In Santa Cruz, San Luis, Salta, and Tierra del Fuego there is not even mention of the three main mechanisms: referendum, revocation of mandate, and popular legislative initiative. However, a significant number of municipalities

³⁹¹ Yanina Welp, 'La participación ciudadana en la encrucijada. Los mecanismos de democracia directa en Ecuador, Perú y Argentina' (2008) 31 *Íconos* 117, 127.

³⁹² María Laura Eberhardt, 'Acerca de la participación y la protesta social en Argentina' (*Diagonales*, 15 July 2019) <<https://diagonales.com/contenido/acerca-de-la-participacion-y-la-protesta-social-en-argentina/15542>> accessed 21 December 2019.

³⁹³ Welp, 'La participación ciudadana en la encrucijada', above, 118.

³⁹⁴ José Guillermo García, 'Los mecanismos de democracia directa como procedimientos institucionales de participación ciudadana en Argentina' (2009) 51 *RMCP* 77, 88.



established in their organic charters some instruments that directly appeal to citizens. The Constitutions and Municipal Organic Laws of Mendoza and Santa Fe do not mention direct democracy mechanisms. The capital municipalities of these provinces have not yet approved their organic charters, where they could include these mechanisms, in accordance with the principle of municipal autonomy enshrined in the national Constitution of 1994. At the other extreme, Catamarca, Córdoba, Chubut, Chaco, and Río Negro show a greater development of the mechanisms of direct democracy in their Constitutions, Municipal Organic Laws, and Organic Charters. They are regulated in such a detail that it is unnecessary to regulate them in specific ordinances.³⁹⁵

While recognizing the increasing relevance of this legislation in Argentina, all direct democracy mechanisms have obvious limitations as a source of access for citizens to the political system. In the first place, many of the procedures need to be activated or mediated by state powers (the executive and legislative branches).³⁹⁶ Second, the requirements of large investments in time and money usually cause apathy and lack of commitment in citizens. In this context, motivations for mobilization are temporary, and they dissolve once individual demands have been met.³⁹⁷ Finally, in many cases the leaders resorted to these mechanisms to overcome the checks imposed by other State powers, strengthening what O'Donnell defined as 'delegative democracy'.³⁹⁸

All these criticisms of the effectiveness of institutionalized forms of participation mechanisms have a correlation in the importance of other non-institutionalized or spontaneous forms of citizen participation in Argentina. The fact that we call them non-institutionalized does not mean that they lack any organization, direction, incentive or promotion. It only means that they do not emerge from a legal regulation (at most it is restricted by it). Unlike institutionalized participation that is mainly propositional, the non-institutionalized forms have an accountability role and tend to be critical to formal political decisions.³⁹⁹

Popular demonstrations in public spaces have been gaining ground since the late 1990s and the historic mobilization in the 2001 crisis, which led to the resignation of the President.⁴⁰⁰ These movements show not only the existence of a citizenry capable of mobilizing and contesting governments. They are also a new form of collective action, legitimate ways of channeling demands, especially those for decent jobs, material goods, and social services. Governments have tended to respond to them through the delivery of social programs, mostly designed to contain these conflicts.⁴⁰¹

³⁹⁵ *ibid* 90.

³⁹⁶ *ibid* 93.

³⁹⁷ María L Eberhardt and others, 'Mecanismos de Participación y Control Ciudadano en la Argentina' (FSOC 2008).

³⁹⁸ Welp, 'La participación ciudadana en la encrucijada', above, 118.

³⁹⁹ Maria Laura Eberhardt, 'Acerca de la participación y la protesta social en Argentina' (*Diagonales*, 15 July 2019) <<https://diagonales.com/contenido/acerca-de-la-participacin-y-la-protesta-social-en-argentina/15542>> accessed 21 December 2019.

⁴⁰⁰ *ibid*.

⁴⁰¹ Maricel Rodríguez Blanco, 'Participación ciudadana no institucionalizada, protesta y democracia en Argentina' (2011) 40 *Íconos* 89.



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13.3 Participation in an Environmental Conflict in Malvinas Argentinas, Cordoba Province

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Relevance of the Practice

This practice is an example of an inclusive direct participatory processes of local decision-making, both formal and informal, and of multilevel cooperation and balancing of interests among urban (ULGs) and rural local governments (RLGs). It also shows the interplay and linkage between informal and formal participatory mechanisms throughout the process. It also allows us to study the main factors that influence inclusive participation of less powerful and marginalized social groups (such as women and poor citizens) in urban and rural settings and how participation impacts on other principles of good governance (accountability, rule of law, transparency, equality and non-discrimination, responsiveness) in both ULGs and RLGs.

The most substantive aspect of this case is that it is an example of (i) citizen activation against the state and a multinational company for failing to comply with the environmental law; (ii) politicization of dispersed social sectors; (iii) women's relevant role; (iv) activation of informal participation mechanisms, despite the existence of formal ones.

Description of the Practice

In Argentina, the exponential expansion of transgenic crops and the increasing use of glyphosate as a pesticide led to controversies around their production and consumption. In this context, this section analyzes an emblematic case of citizen participation and protest during four years against the construction of a transgenic seed plant in Malvinas Argentinas, a town of 12 thousand inhabitants located 14 kilometers from the capital of the Province of Córdoba (the second most populated province in the country). A group of neighbors carried out a judicial and social process against a powerful economic sector that seemed asymmetrical at the beginning but in which results were important. Women played a critical and relevant role in this struggle.⁴⁰²

Malvinas is a city surrounded by crops, it is a hybrid place, neither completely urban nor rural where there are not many jobs available. In June 2012, Monsanto announced the construction of one plant for processing corn seeds that would create employment for 400 people at the construction stage and could reach 800 when fully operating. Conditions for the company were quite ideal: the city has access to the natural gas network, connections to main provincial and national roads, reliable sources of water, and had a poorly organized population, with low

⁴⁰² María Eugenia Ludueña, 'Malvinas Argentinas, el pueblo cordobés que venció a Monsanto' (*Chequeado*, 29 Mar 2017) <<https://www.chequeado.com/investigacion/malvinas-argentinas-el-pueblo-cordobes-que-vencio-a-monsanto/>> accessed 21 December 2019.



levels of qualifications and very much in need for jobs.⁴⁰³ However, based on a combination of formal and informal participation mechanisms, local residents managed to stop the construction of the plant and prosecute public officials who failed to comply with environmental laws.

The conflict involved the three levels of government and three political parties: the President of the Nation, member of the *Frente para la Victoria* party, who announced the construction of the plant; the Ministry of Environment at the provincial level, where the *Unión por Córdoba* party ruled; and the municipality governed by a mayor from the Radical Civic Union (or *Unión Cívica Radical* in Spanish, UCR).⁴⁰⁴

The National Environment Law (no 25,675) gave the legal framework for this case. This law establishes 'the minimum standards for the achievement of a sustainable and adequate management of the environment'. Those affected by the construction of the Monsanto plant relied on two aspects of this law. The first indicates that 'any work or activity (...) will be subject to a procedure of environmental impact assessment, prior to its execution'. The second one states that 'every person has the right to be consulted and to give her opinion on administrative procedures that relate to the preservation and protection of the environment.' In order to achieve this, authorities must institutionalize consultation or hearing procedures and the opinion expressed therein will not be mandatory for the authorities; but authorities must defend their decisions publicly in case they take actions contrary to the interests expressed in these consultation or hearing procedures.

Moreover, the Environmental Policy Law of the Province of Córdoba (no 10208) 'complements the minimum standards established in National Law'. It determines that the enforcement authority has to carry out the Environmental Impact Assessment process prior to the execution of any public and private operation. The evaluation procedure includes technical studies and the opinions arising from public hearings or any other citizen participation mechanism.

Malvinas Argentinas does not have an Organic Charter, so it is ruled by the Municipal Organic Law of the Province of Córdoba (no 8102). As stated earlier, Córdoba is one of the provinces that has made the most progress in the legislation related to citizen participation mechanisms. The Municipal Organic Law identifies as popular participation mechanisms the popular initiative, the referendum, the public hearings, and the revocation of mandate.

The announcement that Monsanto decided to invest in the city divided opinions in the community, even within each family. Some people argued that the city needed jobs and a company that promoted its growth. Others organized the first meetings of neighbors to oppose its arrival into the city. With the participation of activists and environmental organizations, citizens organized protests, demonstrations, and assemblies and blocked the entrance to the site where the construction of the plant would take place for three years. In this fight against Monsanto, women had a relevant role: The assembly 'Malvinas Struggles for Life' had 70 per cent women among its members.⁴⁰⁵ Also the main members of the assembly were women, who organized the blockade and took charge of daily activities such as preparing food, sleeping,

⁴⁰³ *ibid.*

⁴⁰⁴ *ibid.*

⁴⁰⁵ *ibid.*



and taking care of kids. Furthermore, the main institutional link with the assembly was the Mothers' Association of Ituzaingó, which led a similar judicial process against fumigations of pesticides that did not comply with legal regulations. Without going into details about the motivation of women to participate more than men, we can say that, in the recent history of Argentina, mothers have a central role in the 'fight for life'.⁴⁰⁶

The first action of the neighbors was the dissemination of information about the trials that Monsanto lost in other countries. Then they formed the assembly 'Malvinas Struggles for Life.' Through it, neighbors requested the municipality to stop the works of the company until the environmental impact studies were carried out and a public hearing was convened to express their opinion, as established by the Environment Law. Several organizations and the main universities of the province also recommended the suspension of activities as a precautionary measure, although there was not enough scientific evidence to prove the environmental damage.⁴⁰⁷

In September 2012, the residents filed an environmental protection action against the Municipality and a group of lawyers denounced the public officials who authorized the company to begin the construction of the plant without environmental impact studies. In February 2013, the court ordered to suspend the construction of the plant. The mayor and Monsanto appealed to the Superior Court of Justice of Córdoba, which decided that the works of the company could continue, but it also established that the company had to comply with environmental regulations. As a reaction, the assembly members decided to block the entrance of the plant. In September 2013, neighbors organized a march and a music festival, both under the slogan 'No to the installation of Monsanto in Cordoba and Latin America,' at which more than ten thousand people attended.⁴⁰⁸

In the 2015 elections, a group of members of the assembly decided to bring the conflict into the partisan competition. They competed against traditional parties for the municipal elections under the Malvinas Despierta party. Although they lost by 400 votes in an 8,000 voters' election and the UCR retained power, the assembly members got three local council seats out of a total of seven. They ended up being the main opposition force.⁴⁰⁹ The traditional parties (UCR and PJ, which obtained third place) did not oppose the installation of the plant in Malvinas.⁴¹⁰

During the blockade to the construction site there were attempts to evict and the police repressed forcefully several times. The assembly members also reported intimidations by the Construction Workers Union. At the same time, they received messages of support from local

⁴⁰⁶ Claudia Korol, 'Presentación: Socializar las resistencias, construir la memoria colectiva' in Patricia Agosto (ed), *Malvinas: Un pueblo en lucha contra Monsanto* (Ediciones América Libre 2014) <<http://livrozilla.com/doc/1427789/malvinas-un-pueblo-en-lucha-contra-monsanto>> accessed 21 December 2019.

⁴⁰⁷ Ludueña, 'Malvinas Argentinas, el pueblo cordobés que venció a Monsanto', above.

⁴⁰⁸ *ibid.*

⁴⁰⁹ *ibid.*

⁴¹⁰ Editorial, 'El tema Monsanto divide a los candidatos en Malvinas Argentinas' (*La Voz*, 11 June 2015) <<https://www.lavoz.com.ar/politica/el-tema-monsanto-divide-los-candidatos-en-malvinas-argentinas>> accessed 17 October 2020.



environmental organizations from Famatina, Gualaguaychú, Esquel, and others from France, Italy, and Uruguay. Universities and other social organizations supported the struggle, such as the Grandmothers and Mothers of Plaza de Mayo. Several scientists, artists, journalists and even Pope Francis did the same, but few politicians manifested their support,⁴¹¹ probably due to the political cost of including this issue on the agenda of their parties. The link with the academic sector was important because the municipality asked the neighbors for evidence to stop the project. Both the team of lawyers, as well as researchers and the institutional support of the universities was essential to support the popular mobilization and achieve the objectives of the assembly.

Finally, in July 2016, the former mayor was sentenced for abuse of authority and the former Secretary of Environment for authorizing the use of land not suitable for industrial activities. Monsanto sold its land in Malvinas Argentinas and the assembly lifted the blockade. It should be noted that the construction of the plant in Malvinas was not halted due to environmental pollution but because the company and different government areas did not comply with the procedures established by law. When the Municipality of Malvinas confirmed the sale of the Monsanto properties, the assembly of neighbors stated: 'The blockade is lifted, not the struggle.' Today the organizations involved in the conflict continue struggling on related issues that affect nearby places, such as the Provincial Forest Law and the garbage plant in Santa Ana.⁴¹²

This participatory process had both local, national, and international repercussions: 'a Popular International Court in The Hague declared Monsanto guilty for damages to human health and to the environment. The information collected during the symbolic process will be used to demand a reform of the Rome Statute and that, in this way, the International Criminal Court includes in addition to genocide, crimes against humanity, war and aggression a fifth figure that is ecocide.'⁴¹³

Assessment of the Practice

Looking at this practice, we can see that, first, Argentina presents successful cases of communities that make the state recognize their demands. We can stress the role of women and the need for an alliance with academic sectors against the difficulties presented by the institutional channels of citizen participation. Second, Institutional participation processes are difficult to activate and once in progress they require a lot of time. In this case, it took several years between the request was presented to the court and the final sentence. This may influence forms of citizens' participation in the future, leading them to proceed with non-institutional mechanisms.

Third, the participatory process involved powerful interest groups. Although they had the support of various organizations, the Malvinas Assembly described the process as an

⁴¹¹ Ludueña, 'Malvinas Argentinas, el pueblo cordobés que venció a Monsanto', above.

⁴¹² *ibid.*

⁴¹³ Leandro Ross, 'Las madres de la Generación Monsanto' (*EcosCordoba*, 24 May 2017) <<https://ecoscordoba.com.ar/las-madres-de-la-generacion-monsanto/>> accessed 21 December 2019.



‘asymmetric struggle’ against a multinational company. Monsanto is a well-connected and established organization, which was able to gather large political support for their position. Public officials reacted in its favor. The municipal government approved the construction works without an environmental study. The provincial government lost a great opportunity to consolidate the ‘Córdoba corn belt’ since other multinationals refused from establishing their operations in Córdoba. Fourth, there were several restrictions in the formal spaces for participation at different stages of the process, so citizen groups were forced to create more spaces. The interplay between formal and informal participation forced the authorities to take up the interests of the Malvinas Assembly, but it costs time and money.

Fifth, participatory processes in Argentina are still very restrictive. Only a small number of citizens effectively participate in formal and informal mechanisms. They are quite informed and usually are members of pre-existing organizations. This may affect the legitimacy of the results. Sixth, the growing distrust of Argentines in formal institutions and the expansion of informal participation mechanisms as more effective and faster forms of change. We might need to review our institutional designs and ensure compliance with the law to improve democratic quality and citizen satisfaction with institutions.⁴¹⁴ Currently, formal participation does not take into account metropolitan coordination or the balance of interests among urban (ULGs) and rural local governments (RLGs).

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⁴¹⁴ Yanina Welp, ‘La participación ciudadana en la encrucijada. Los mecanismos de democracia directa en Ecuador, Perú y Argentina’ (2008) 31 Íconos 117, 128-29.



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13.4 Government Goals Plan: Citizen Participation in the Control of Compliance of the Mandates in Cordoba (Action Plan of the Government)

Romina Del Tredici, *Universidad Nacional de San Martín and Universidad Católica de Córdoba*

Relevance of the Practice

The practice described below is important because Córdoba is one of the first four cities in Argentina that implemented the Government Action Plan (*Plan de Metas de Gobierno*) in 2012. Currently, this tool is being extended to other cities, such as the Federal Capital. This practice allows us to highlight the differences that exist between urban and rural settings regarding representative democracy and accountability. In larger cities, where direct contact with government officials is more difficult, citizens need tools to facilitate interaction with them. We also highlight the relevance and effects of the Action Plan in relation to citizen participation, its impact in the provision of public services, and its challenges to make this a more efficient tool.

Description of the Practice

The Government Action Plan is an instrument for planning, management, and accountability, which consists of transforming government proposals into concrete and measurable objectives through compliance indicators.⁴¹⁵ In the City of Córdoba, it was unanimously approved by the municipal council in 2011 (Ordinance no 11942/11). It mandates the local government to establish strategic actions and indicators for each area of the municipal public administration and to annually monitor and report its evolution.

A network of citizens and organizations, the *Red Ciudadana Nuestra Córdoba*, endorsed the approval of the ordinance, inspired by other similar networks: the *Red Nossa Sao Paulo* and *Cómo Vamos* from Colombia. These organizations demanded an instrument to know the priorities and criteria of the decisions public agents take and to allow citizens to control them. Before, public officials had various plans that were not designed to allow citizen monitoring and which were, in most cases, abandoned. Therefore, having an ordinance that mandated the same officials to present a plan of action, represented an institutional improvement for local democracy.⁴¹⁶

Some contextual factors and certain actions made possible the approval of this regulation. First, the support of several organizations and key local stakeholders was crucial. The two most

⁴¹⁵ Virginia Romanutti, 'Plan de metas: una experiencia de incidencia colectiva' (*Red Ciudadana Nuestra Córdoba* 2012) 4.

⁴¹⁶ Romanutti 'Plan de metas', above, 4.



important universities in the province, together with other 50 civil society organizations are members of the *Red Nuestra Córdoba*. Second, the demand from this network got large publicity in the local media, 'allowing the Action Plan to be installed as an issue in the public agenda.'⁴¹⁷ Finally, the municipal council was divided in several factions, not having any of them the majority of the votes. Members of the *Red Nuestra Córdoba* stated that although this situation could have put in danger the approval of the law, in practice, it forced local representatives to reach a common agreement. In a context of a financial and legitimacy crisis of the local government, as a consequence of several problems inherited from previous administrations and having to face a project endorsed from civil society, the best strategy for local councilors was to reach a consensus. As a result, the local council presented the Action Plan as 'an instrument to rebuild dialogue and mutual trust between citizens and the municipal government.'⁴¹⁸

The ordinance sets a maximum of 120 calendar days from the beginning of the mandate for the presentation of the Government Action Plan. It also indicates that the municipal government must submit to public hearings annual reports before March 10. Nine years after its approval, the municipal government presented two action plans for the periods 2012-2016 and 2016-2019. Both were organized around four topics: sustainable development, competitiveness, equity and inclusion, and institutional development. Within each topic, the local government defined goals and responsible areas to implement them.⁴¹⁹

Assessment of the Practice

The first two experiences of the Government Action Plan in Córdoba were positive and its approval was an important way to promote local government transparency, accountability, and citizen control. However, this does not mean that the process is not free from challenges.

First, it is necessary to improve the presentation of the plan. The local government has to train public officials because many of them do not know how to define goals in the plan. They also have to geolocate each of the goals, so that decisions are more transparent. These decisions need to have a budget attached to it and to pay attention to problems of the metropolitan area. The metropolitan area of Córdoba has grown enormously in recent years and the coordination among its local authorities is still deficient, as well as the integration of rural and urban areas. The Action Plan in particular and participation mechanisms in general, are not designed to promote cooperation among municipalities and between rural and urban local governments. The city is physically and socially integrated with rural and urban spaces surrounding it, but in practice the action plan does not favor the interaction between the city and those other areas. The plan's goals are circumscribed exclusively within the limits of its territory.

⁴¹⁷ 233ibid.

⁴¹⁸ Ibid 15.

⁴¹⁹ Municipalidad de Córdoba, Plan de Metas.



The second challenge is that citizens and organizations should make the instrument their own, so they can monitor and control the local government.⁴²⁰ To achieve this, it is important for the municipality to widely publicize the tool (as the ordinance mandates). Although in the two previous periods, the government complied with the mandatory communication, most citizens do not know what the action plan is. The appropriation of the Action Plan by marginalized sectors of society is particularly relevant. This is a common problem of mechanisms for semi-direct democracy, in which people with less education and lower income often have difficulties to get involved. Despite the fact that the Action Plan is described as 'a simple tool',⁴²¹ it requires citizens to have time and accurate information to use it.

Third, the organizations that participate in the action plan's public hearing underscore the need for public officials to answer to their proposals. Although public hearings are not a binding mechanism, the municipality could justify the reasons for the decisions that citizens object. Citizens are not involved in the development of the action plan. Currently, the 'control' that this tool allows consists of influencing the public agenda with the visibility of the urban problems or the inconsistencies between the plan, its reports, and the actions of the municipality. Sometimes what the organizations report is taken over by opposition parties, putting greater pressure on the government.

The last challenge for this participation tool is the current context. Due to the global pandemic and the emergency the municipality declared, the incoming government has not yet presented its Action Plan. Its public officials reported that it would be irresponsible to present a four year plan in a context of this uncertainty, with consequences that cannot yet be measured.⁴²² Civil society organizations and opposition councilors requested to the local government that the institutions and democratic controls become effective.⁴²³

There is still no research on the results of the Action Plan for the provision of services in the city, so it is not possible to draw conclusions on the effectiveness of this monitoring mechanism. Its advantages and disadvantages still have to be further evaluated.

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⁴²⁰ Romanutti 'Plan de metas', above, 15.

⁴²¹ *ibid* 4.

⁴²² Diego Marconetti, 'Llaryora le pone pausa al "plan de metas"' *La Voz* (Córdoba, 14 May 2020).

⁴²³ Editorial, 'Piden al municipio que vuelva la "efectiva vigencia de las instituciones democráticas"' *La Voz* (Córdoba, 11 June 2020).



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13.5 Community Participation in Local Decision-Making Regarding Lithium Production in Jujuy

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Relevance of the Practice⁴²⁴

Lithium is a strategic resource. It is at the core of the transition from fossil to renewable energies. About 80 per cent of lithium reserves are concentrated in the ‘triangle of lithium’, located in the deserts of northern Argentina (Salar de Hombre Muerto), northern Chile (Salar de Atacama), and southern Bolivia (Salar de Uyuni). Argentina is the second world exporter of lithium carbonate. With the expected exports from new production sites, it will be soon close to Chile, the first world exporter.⁴²⁵

Production in Argentina is quite recent, but it is booming. It is concentrated in the northwestern provinces of Catamarca, Jujuy, and Salta. These provinces share many historical roots and cultural traditions as well as common economic and institutional (federal) characteristics. Despite these similarities, they have very different models for the extraction and processing of lithium and articulation with social organizations and local indigenous communities. In some cases, there was strong resistance and conflict from local communities and production sites had to be closed. That is the case of Salinas Grandes and Laguna Guayatayoc, in Jujuy. In other localities, production has continued and conflict has largely been avoided, such as in Salar de Olaroz and the Susques community, also in Jujuy.

Why, despite some similarities, there is variation in conflicts with local communities and in the sustainability of production?

Description of the Practice

Contrary to Catamarca and Salta, where mining operations are in charge of private companies, the provincial state in Jujuy regulates and controls lithium extraction and processing. The Salar de Olaroz-Cachauri in the department of Susques, 4,500 meters above sea level, is the main site for the extraction of lithium in Jujuy. Sales de Jujuy and Minera Exar are the main production sites. The Argentine subsidiary of the Australian transnational mining company *Orocobre Limited* and the Japanese automaker *Toyota Tsusho* are responsible for the

⁴²⁴ Part of this section is taken from an ongoing research by Lucas González and Richard Snyder, ‘Modes of Extraction in the Lithium Triangle: Mining Politics in Catamarca, Jujuy, and Salta’ in Giovanna França, Danilo Freire and Umberto Mignozzetti, ‘Natural Resources and Policy Choices in Latin America’ (Konrad Adenauer Foundation 2021).

⁴²⁵ Bruno Fornillo (ed), *Geopolítica del Litio: Industria, Ciencia y Energía en Argentina* (CLACSO and El Colectivo 2015) 12.



operations in Sales de Jujuy. The Canadian Lithium Americas Corp. and the Chilean *Sociedad Química y Minera de Chile SA* operate the Minera Exar project.⁴²⁶

After the concessions and the declaration of strategic resource, the Province of Jujuy negotiated with *Orocobre* and created the state firm Jujuy Energy and Mining State Society (*Jujuy Energía y Minería Sociedad del Estado*, JEMSE) in 2011. The company got 8.5 per cent of the shares, while the remaining 91.5 per cent is in the hands of the holding company *Orocobre* (66.5 per cent) and *Toyota* (25 per cent).

In the case of Olaroz-Caucharí in Jujuy, *Orocobre* hired a local geologist to decide whether the salt flat was appropriate to exploit lithium, while at the same time he began to make contacts with local communities, preparing the conditions for the company to operate in the region.⁴²⁷ At the end of 2014, the firm began production, arousing an ambivalent response from the Susques community: while part of its population supported production and decided to take advantage of some of the small economic benefits associated with the activity, another group created the social organization *colectivo La Apacheta*, which demands the direct participation of local communities in the management, decision, and profits of the company.

With the Provincial Government of Jujuy invested as a partner, the company managed to divide and coopt a part of the local indigenous communities. Still, there is some resistance from *La Apacheta*. There was a consultation process (*consulta previa*, or prior consultation) with local communities, where they could decide whether they wanted lithium production in their lands. Local inhabitants meet with representatives from the companies in a local council to get informed about the operations that the company intends to conduct in the area and debate under which conditions they would allow the company to begin them in accordance with International Labor Organization (ILO) Convention 169, which Argentina ratified in 1992. In spite of the consultation, there are reports from environmental organizations denouncing the consultation process as being rigged and non-transparent, since companies provided unclear information and influenced decisions dividing local inhabitants.⁴²⁸ Production in Olaroz is growing and it is nowadays the main lithium production site in Jujuy.

On the contrary, communities near the Salinas Grandes were not previously consulted, and strongly resisted the installation of mining firms. In spite of being previously fragmented and dispersed, local communities formed the 'Mesa de Salinas Grandes and Laguna Guayatayoc', a local network of 33 local social organizations, and operated in two different fronts: the legal one, filing a case in the provincial judiciary and the federal Supreme Court, and another case in the Inter-American Court of Human Rights. Under the advice of a group of lawyers, they demanded the call for a 'free and informed prior consultation' to decide whether they want lithium mining in their territories.⁴²⁹ The second front included protests, roadblocks, and the

⁴²⁶ Pía Marchegiani, Jasmin Höglund Hellgren and Leandro Gómez, 'Lithium Extraction in Argentina: A Case Study on the Social and Environmental Impacts' (FARN 2019) 21.

⁴²⁷ Bruno Fornillo, 'La energía del litio en Argentina y Bolivia: comunidad, extractivismo y posdesarrollo' (2018) 93 *Colombia Internacional* 179, 194.

⁴²⁸ Marchegiani, Höglund Hellgren and Gómez, 'Lithium Extraction in Argentina', above.

⁴²⁹ Melisa Argento and Julian N Zícari, 'Las disputas por el litio en la Argentina: ¿ materia prima, recurso estratégico o bien común?' (2017) 19 *Prácticas de Oficio* 37, 43.



occupation of the salt flat.⁴³⁰ In July 2011, more than 900 community members, representing 86 indigenous communities and peasant organizations, blocked the National Route 52, near Salinas Grandes, to protest against the projects for large-scale lithium mining.⁴³¹ With these two strategies, and fundamentally after the Supreme Court ruling, the mining company decided to put production into a halt, at least until the time of writing this article.

Assessment of the Practice

Argentina does not have a specific federal regulatory framework for the exploitation of lithium. The national mining regime (Law 24,196) completely deregulated the mining sector, granting companies great benefits for the extraction and processing of minerals.⁴³² This law eliminated all municipal taxes, establishing royalties at 3 per cent of the pithead price.⁴³³

On top of a weak federal regulatory framework, the federal Constitution gave provinces control over natural resources and authority to regulate the extraction and processing of oil and minerals. The federal government keeps a minimum jurisdiction to regulate extractive industries, mainly in relation to environmental protection and the participation of indigenous communities in the management of natural resources located in their territories.⁴³⁴

A similar legal framework at the federal level cannot explain variation in conflicts and stability of production sites at the community level. The recognition of indigenous rights at the federal level opened up the opportunity for those communities to demand them being respected, but not all communities have been able to do that.

Variation in the provincial legal frameworks that regulate the role of the provincial state in the production process and the recognition of rights to indigenous communities living in production sites may help explaining some of these differences.

There is variation in the role of the provincial state in the production process. The provincial state controls lithium extraction and processing in Jujuy; while production in Salta and Catamarca depends on private companies.

A second important difference among producing provinces is that Jujuy recognized rights to indigenous communities living in production sites, including the legal recognition as indigenous communities and their communal property rights, constituting these groups into legal actors which have to be consulted before any intervention in their territories. Salta and Catamarca denied these rights to indigenous groups in the province, challenging federal regulations on the matter.

⁴³⁰ Fornillo, 'La energía del litio en Argentina y Bolivia', above, 193-194.

⁴³¹ Florencia Puente and Melisa Argento, 'Conflictos territoriales y construcción identitaria en los salares del noroeste argentino' in Bruno Fornillo (ed), *Geopolítica del Litio: Industria, Ciencia y Energía en Argentina* (CLACSO and El Colectivo 2015) 119.

⁴³² Nacif (2014), quoted in Puente and Argento, 'Conflictos territoriales y construcción identitaria', above, 122.

⁴³³ Marchegiani, Höglund Hellgren and Gómez, 'Lithium Extraction in Argentina', above, 10.

⁴³⁴ Puente and Argento, 'Conflictos territoriales y construcción identitaria en los salares del noroeste argentino', above, 123.



Despite these different provincial legal frameworks, there have been protests and conflicts within the same province. That is particularly the case in Jujuy (less so in Catamarca). There were some negotiations in Salar de Olaroz and the Susques community; there has been mobilizations, protests, and conflict in Salinas Grandes and Laguna Guayatayoc.

Federal regulations and variations in provincial legal frameworks in Catamarca, Jujuy, and Salta, cannot explain the different results in terms of stability of production and the existence of conflicts with local indigenous communities within the same provinces.

Possible explanations of these differences within provinces have to include local level variables. Some of the possible local level factors which can account for variations in local resistance and conflict can be, first, the capacity of companies to coopt local leaders and key community members, particularly when communities are more divided in relation to mining. Some companies sought to exploit those divisions, isolating local leaders more radically opposed to mining. A second factor, is that local governments can prevent and manage conflict, promoting consensus, or they can decide to be absent in the process. A third element, particularly relevant when the previous ones are absent, may be the capacity of local communities to organize and articulate at the municipal level and to seek help and legal assistance from provincial, national, and international actors and organizations. When production sites are close to urban communities, local organizations are more likely to be organized. The opposite is the case when production sites are in more isolated rural areas with dispersed populations. The urban and rural divide plays a role in the organizational capacity of local communities. The capacity of local communities to organize can help explaining protests, roadblocks, and the occupation of salt flats; their capacity to seek help and legal assistance, may account for their ability to file cases at the provincial and national level judicial systems.

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14. People's Participation in Local Decision-Making in India

14.1 The System of Local Government in India

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Types of Local Governments

In India, institutions of local government exist at two levels, local *panchayats* or councils in the rural areas and municipalities in the urban areas. At the rural level, *Panchayati Raj* Institutions (PRIs) consist of three levels: *gram panchayats*, *panchayat samitis* and *zilla parishads*.

A *gram panchayat* can be translated as village council or jury as it is the only grassroots-level institution of PRIs' formalized local self-governance system in India at the village or small-town level. It consists of an elected *sarpanch* (head) and five to twelve elected members. The *gram panchayats* are responsible for the creation of annual development plans, the budget for construction, repairs and maintenance of community assets, *khadi* and village industries⁴³⁵, adult and non-formal education, public health, poverty alleviation, education, cultural activities, rural housing and electrification, promoting agriculture, social welfare and public distribution scheme.

At the intermediate level, the *panchayat samitis* (block panchayats) operate. They work at the *tehsil* or *taluka* level⁴³⁶ known as development block and provide a crucial link of

⁴³⁵ Village and *khadi* industries are based on the concept of *Swadeshi* wherein the use of labour is central and the use of capital is limited, underlying the concept of self-reliance in the economy. These industries rely on local raw materials and local production at small scale.

⁴³⁶ There are two constitutional amendments, 73rd and 74th passed in 1992 which provide a whole scenario of the different levels of local governments at rural and urban level. The 73rd amendment states a three-tier system of *panchayati raj* at the village *panchayat* (*gram*), block (intermediate) level (*panchayat samiti*) and district levels (*zilla parishad*) for a population of more than 20 *lakh* (2 million). *Gram* or village *panchayat* consists of *gram sabha* and members of the village *panchayat* directly elected by the people and headed by the *pradhan* (elected head) village council (*gram sabha*) consist of all the members of the village. Each *gram panchayat* is assisted by four committees that is *samata samiti* (committee for welfare of women and children, scheduled caste and tribes and other backward classes) *vikas samiti* (committee for development in agriculture), *shiksha samiti* (education) and *lokhit* committee (public health and public works). In between *gram panchayat* and *zilla panchayat* is *panchayat samiti* (committee) which forms the main chain of communication between the two. The next level of local government is *zilla parishad*, consisting of all the elected representatives of *gram panchayat* and elected representatives from territorial constituencies in the panchayat, members of legislative assembly and legislative council

The 74th Amendment consists of three bodies of urban governments – *nagar panchayat* which is primarily constituted when the village transitions from rural to urban, municipal council for smaller urban areas, municipal corporations for larger urban areas. Municipal committees are also assisted by ward committees which makes a two-tier system.



communication between *gram panchayat* and district administration. They are also known as *mandal parishad*, *mandal panchayat* and *taluka panchayat* and are primarily made of four-member ex officio bodies bringing together all *sarpanchas* of the development block, the members of parliament (MPs) and MLAs (members of legislative assembly) of the area, and sub-divisional officer (SDOs).⁴³⁷ The functions of the *panchayat samitis* are agricultural and land improvement, establishment of primary health centers and primary schools, water and sanitation, village infrastructure (construction of roads etc.), establishment of cooperative societies, water and irrigation management, promotion of animal husbandry, dairy and poultry, social welfare, social activities, technical training, poverty alleviation, promotion and development of cottage and skill industries.

The third level is the *zilla parishad* (district council). *Zilla parishad* or the district council is an elected body consisting of members from state legislatures and the Parliament as explained later. The ex officio chief executive officer of the *zilla parishad* is the additional deputy commissioner who is either from the Indian Administrative Services (IAS) or Provincial Civil Services (PCS) appointed in the state. The *zilla parishad* consists of mainly elected members from demarcated constituencies, the chairpersons of *panchayat samitis*, MPs and MLAs. The member of the *zilla parishad* also acts as chairperson of the *parishads* (councils) that fall in their constituencies from which they are elected for a term of five years. The functions of the *zilla parishad* are planning and administration of development projects for the district, delivery of services and facilities to the village, promotion of agricultural projects such as training new techniques of farming, horticulture, rural housing, electrification, animal husbandry and dairy, promotion of small-scale industries, health and hygiene, education and social welfare. In all the levels of local governments, there are reserved seats for women, scheduled caste, scheduled tribes and other backward classes.

All the institutions of local self-government operate under the principle of democratic decentralization. The rationale of democratic decentralization was to create PRIs in a multi-level framework of governance which are autonomous, democratic and financially strong. It was a step away from a top-down approach to local governance in order to provide self-administration to people in the rural areas. The twenty-nine functions and responsibilities of the PRIs which have been stated above are all enshrined in the Indian Constitution in the Article 243G. The functions are listed in the eleventh Schedule of the Constitution.

At the urban level, there are three types of local bodies, the *nagar nigam* (municipal corporation), *nagar palika* (municipality) and *nagar panchayat* (town *panchayat*). The status of an area decides the provision and implementation of urban local bodies. For an area transitioning from rural to urban, a city council is required. In small urban areas a municipality

⁴³⁷ The districts in a state are divided into sub-divisions and the sub-divisional officer (SDOs) oversees these divisions. The SDO is responsible for the administration of these divisions in the districts. There can be two kinds of roles. One in which they are in charge of office work and another, in which they are not bound in an office but are overseeing a range of works such as communicating with people, overlooking implementation of government schemes.



is required and in large urban areas a municipal corporation.⁴³⁸ The functions and powers of urban local bodies vary from state to state. Municipal corporations work and directly interact with the state governments. The head of the corporation is the mayor and the principal executive officer is the municipal commissioner. Municipalities interact with the respective state government through the district collector. The head of the municipality is the president elected by the members of the *palika*. The state government appoints officers such as health or sanitation Inspectors to provide assistance to the president. City councils have a chairman and ward members. The functions assigned to urban local bodies are urban planning and management, provision of health services, education, water management, waste disposal and sanitation, public infrastructure, birth and death registrations, poverty alleviation and delivery of social services.

Legal Status of Local Governments

To realize the goals of democratic decentralization, the government amended the Constitution and passed the 73rd and 74th Amendment Act in 1992. The important aspects of the act were the three-tier system of *panchayati raj* for all states exceeding the population of two millions, the holding every five years of *Panchayat* elections, the reservation of seats for women, scheduled castes and scheduled tribes, the appointment of a state finance commission to make recommendations in cognizance with the financial powers of the panchayat and the establishment of district planning committees (DPCs) to prepare development plans for the district as a whole. It also foresaw the establishment of a state election commission to help state governments conducting periodic elections to the PRIs. Similarly, for urban local governments, the 74th Amendment provides a three-tier structure of governance with the municipal wards as the territorial constituencies forming the basic unit of urban local governance.

The scope of powers and functions enshrined in the Constitution envision PRIs to function as institutions of local self-government and to operationalize the devolution of powers which is central to the principle of democratic decentralization. The scope and powers entrusted to PRIs base themselves in the ideals of economic development and social justice. In accordance with the constitutional amendment, the state governments repealed the then existing acts. The 73rd Amendment Act was further extended to the scheduled areas and areas predominantly occupied with tribal population. It was extended through the provisions of *Panchayat Extension to Scheduled Areas Act, 1996*.

For the urban local bodies, 74th Amendment Act was adopted in 1992 enjoining the government of the day to ensure continuity of the municipalities through a periodic five-year election. Similar to the *Panchayati Raj System*, the urban local bodies have a three-tier system, including the above-mentioned municipal corporations, municipalities and town *panchayats*.

⁴³⁸ Transitioning areas are defined based on how fast a town is developing due to industrialization or agricultural growth or secondary services. The criteria of population and the level of administrative functions is considered too, as big cities such as Delhi, Mumbai and others will have a municipal corporation and smaller towns will have municipalities.



The composition of these councils is decided by state governments respectively. There are reservations of seats for women, scheduled castes, scheduled tribes and other backward classes.

(A) Symmetry of the Local Government System

The rural and urban government bodies do not have exactly similar scopes of responsibilities. The former are more entrusted with tasks of being regulators, administrators and providers of various services at the local level. The latter have two sets of parts to play. One, the municipal corporation must deliberate on matters related to budget, taxation, pricing of services and others, and two, the municipal commissioner is the executive head and exercises control on various departments such as finance, health etc. For example, the urban local bodies have to look at the jurisdictional domain of various urban areas, their judicial powers, implementation of policies and plans as per the 74th Constitutional Amendment. Despite their differences regarding modes of functioning and the devolution of the powers and authority, both rural and urban local bodies aim at enabling people's participation as a sign of democratic citizenship.

Political and Social Context in India

India has a multiparty parliamentary system of democracy with representatives at the local, state and national levels contesting elections and participating in democratic decision-making process. Both national and state level political parties are involved in the local level governance through their elected representatives in both rural and urban forms of local government. Local government in India is a state subject, however, the central government holds a supervisory role to guide, encourage, engage and assist the states to promote local government and development. Political participation in *panchayati raj* elections has a long tradition of great leaders like Jawaharlal Nehru, Sardar Vallabhbhai Patel and Subhash Chand Bose who took active leadership in municipal politics. Thus, politics at local government provides a gateway to national level politics and thereby initiates an active involvement of national and regional parties. The presence of national, state and regional parties at the level of local government maintains a strong party presence which has its bearing on national and state level politics. Political parties are the essence of parliamentary democracy and their role in local governments strengthens the roots of democratic decentralization. According to the World Bank report, in India 65.97 per cent live in rural areas⁴³⁹ and 34.03 per cent of the population lives in urban areas.⁴⁴⁰

Local governments have had a tremendous effect in the realization of democracy at the grassroots and at the level of municipalities in the urban areas. Conducting elections at the lowest tier of government has added to the vibrant political culture of India. The trickling down

⁴³⁹ 'Rural Population (% of Total Population)' (*The World Bank*, 2018) <<https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS>>.

⁴⁴⁰ 'India - Urban Population (% Of Total)' (*Trading Economics*, 2020) <<https://tradingeconomics.com/india/urban-population-percent-of-total-wb-data.html>>.



of democratic decentralization and power has entrenched the roots of democracy, however, its substantive realization has many hurdles to cross.

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14.2 People's Participation in Local Decision-Making in India: An Introduction

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In the context of urban local government, community participation started around the early 1970s when the Urban Basic Service Program was launched by the central government with assistance from UNICEF.⁴⁴¹ Community participation was ensured for the implementation of projects and reduction of operational costs. There are various programs which involve people's participation. In rural local governance, *gram sabha* ensures public participation in terms of budgetary discussion and other infrastructural and service needs of the people. Urban local governance also makes people's participation an important aspect for service delivery. But people's participation in deliberative decision-making can be more clearly seen in rural than urban local governance through *gram sabhas* in every village.

The setting up of *gram sabha* at village level has strengthened the people's direct involvement in their affairs. *Gram sabha* is the lowest level in the hierarchy of rural self-government and has been set up in each village to discuss the grievances of the people. The *gram sabha* consists of all members of the village who are eligible to vote in elections. *Gram sabha* is empowered to look after all the developmental issues of a village and has a binding duty to discuss them in meetings to obtain consensus of its members. *Gram sabha* is recognized as the assembly of *panchayati raj*. All the members of the *panchayats* at the village intermediate and district levels are elected directly by the people, and this gives way to representative democracy.

Most states have constituted social audit units (SAU) under *gram sabha* to audit various schemes like the Mahatma Gandhi National Rural Employment Guarantee Act of 2005 (MGNREGA), the Mid-Day Meal Scheme, the public distribution system, or the *Pradhan Mantri Awas Yojana* for the housing purposes.

In the first meeting of the *gram sabha* generally following issues are discussed.

- the annual statement of accounts;
- the report on the administration of the preceding financial year;
- the development and other programs proposed for the financial year;
- the last audit report.

In the meeting held in the last quarter of the year, the following issues are generally discussed:

- the statement of expenditure incurred during the year;
- the physical and financial programs taken during the year;
- proposals for any changes in the program;
- budget of the *panchayat* and tax proposals of the *panchayat*.

Rural people's participation can be further seen in the Water Users Associations, Joint Forest Management, Watershed Association, Village Education Committee. Urban local governance

⁴⁴¹ Shri H Ramachandran, 'Vision 2020. Governance and People's Participation' (2020)
<https://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/bkpap2020/15_bg2020.pdf>.



ensures people's participation in Resident Welfare Associations (RWAs) or Neighborhood User Groups (NUGs). Both urban and rural participation can be seen in Self-Help Groups (SHGs) - Micro Credit.

A number of programs that clearly bring out the interesting relationship between rural-urban dynamics are listed below:

- The 73rd Amendment Act has ensured the participation of people in development activities. People can participate in the local decision-making, monitoring and implementation of plans and rural development projects through *gram sabhas* and *panchayats*.
- The *gram sabha* through their elected representatives ensures a vivid participation for people in their various community development programs such as water and irrigation, roads, schools etc.
- Non-governmental organizations and civil society groups play an important role in the facilitation of participation by people for various developmental projects as well as rights-based acts such Mahatma Gandhi National Rural Employment Guarantee Act of 2005 popularly known as MGNREGA.
- In MGNREGA, social audit over all the works covered under the act plays a powerful role for rural transformation and development. Moreover, it ensures steady participation of people and accountability on the side of the local government.
- Along with the Right to Information Act (RTI) of 2005, transparency and accountability have been ensured by the government to facilitate people's participation in the process of governance and decision-making.

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14.3 Sanitation Development

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Relevance of the Practice

Swachh Bharat Abhiyan (Clean India Mission) has been selected as a relevant practice here because it caters to the public health through sanitation and hygiene of both the rural and urban population across India. This program, apart from people's participation, also ensures people's responsibilities and devolution of power at grass root levels. It targets issues such as solid waste management, open defecation, and sanitation etc.

Description of the Practice

Sanitation is part of the Directive Principles of State Policy under the Indian Constitution. Article 47 directs the state to raise the level of nutrition and the standard of living and to improve public health as among its primary duties. The mission is aimed at progressing towards target 6.2 of the Sustainable Development Goals Number 6 established by the United Nations in 2015.

The mission was split into two: rural and urban. In rural areas 'SBM – *Gramin*' was financed and monitored through the Ministry of Drinking Water and Sanitation; whereas 'SBM – urban' was overseen by the Ministry of Housing and Urban Affairs. As part of the campaign, volunteers, known as *Swachhagrahis*, or 'Ambassadors of Cleanliness', promoted indoor plumbing and community approaches to sanitation (CAS) at the village level. Other activities included national real-time monitoring and updates from non-governmental organizations (NGOs) such as The Ugly Indian, Waste Warriors, and SWaCH Pune (Solid Waste Collection and Handling). Urban Solid Waste Management starts from each household level by segregation of domestic waste as degradable and non-degradable. Responsibility at individual level is achieved by penal actions in the form of fines. In this regard, the urban local bodies (ULBs) can enact their own bylaws to penalize those who do not segregate their domestic waste.

Swachh Bharat Mission for urban and rural areas focuses on issues like the elimination of open defecation, conversion of unsanitary toilets into flush toilets, eradication of manual scavenging, managing municipal solid waste management, and bringing about a behavioral change among people regarding health sanitary practices. Furthermore, this mission also ensures that technology will be used on a large scale to convert waste into usable energy, and large scale community toilets will be built and provided at affordable costs to the users.

The practice of Open Defecation in rural areas can be abolished only through systemic changes through both institutional and individual initiatives. In this regard, the *gram sabhas* play a



pivotal role through awareness and explaining the benefits of using toilets. In this way the *gram sabhas* perform the last mile service in delivery of central government policies.

Assessment of the Practice

Swachh Survekshan is an annual survey of cleanliness, hygiene and sanitation in cities and towns across India. It was launched as part of the *Swachh Bharat Abhiyan*, which aimed to make India clean and free of open defecation by 2nd October 2019. The first survey was undertaken in 2016 and covered 73 cities; by 2020 the survey had grown to cover 4242 cities and was said to be the largest cleanliness survey in the world. In a bid to scale up the coverage of the ranking exercise and encourage towns and cities to actively implement mission initiatives in a timely and innovative manner, Ministry of Housing and Urban Affairs (MoHUA) is now in the process of conducting the sixth edition of the survey to rank all cities under *Swachh Bharat Mission-Urban* (SBM-U) with Quality Council of India (QCI) as its implementation partner.

The objective of the survey is to encourage large scale citizen participation, ensure sustainability of initiatives taken towards garbage free and open defecation free cities, provide credible outcomes which would be validated by third party certification, institutionalize existing systems through online processes and create awareness amongst all sections of society about the importance of working together towards making towns and cities more habitable and sustainable. Additionally, the survey also intends to foster a spirit of healthy competition amongst towns and cities to improve their service delivery to citizens and move towards creating cleaner cities.

MoHUA& QCI will conduct intensive virtual interactions with States and ULBs to familiarize them with various facets of the survey such as survey methodology, survey process and indicators, amongst others, while also clarifying their expectations from the survey.

Swachh Survekshan, commissioned by the Ministry of Urban Development and carried out by the Quality Council of India, is an extensive sanitation survey across several hundred cities to check the progress and impact of *Swachh Bharat Abhiyan* and to foster a spirit of competition among the cities. The performance of each city is evaluated on the following parameters:

- municipal solid waste, sweeping, collection and transportation;
- municipal solid waste, processing, and disposal of solid waste;
- open defecation free and toilets;
- capacity building and eLearning;
- provision of public toilets and community toilets;
- information, education and communication, and behavior change.

In *Swachh Bharat Abhiyan*, the outcomes have surpassed the targets through community participation, robust implementation of policies by the local governments. For example, the



construction of individual household latrines (IHHL) has achieved 105 per cent and community and public toilets has achieved 117 per cent.

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15. People's Participation in Local Decision-Making in Australia

15.1 The System of Local Government in Australia

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Types of Local Governments

Australia is a federation with three levels of government: the Commonwealth (federal/national), states and territories; and local government. Local government is established through the separate constitutions of each state and one territory. Therefore, although councils perform similar functions, there are effectively seven different governance systems across the country.

The size of councils in Australia varies dramatically. The largest is Brisbane City Council in Queensland which serves a community of just over one million people, covers an area of 133,809 ha⁴⁴² and has an operating budget of over AUD 3 billion.⁴⁴³ In stark contrast, Sandstone Shire Council, in Western Australia, has a population of 81 residents living in an area covering 3,266,650 ha,⁴⁴⁴ comparable to the size of Belgium at 3,300,000 ha.⁴⁴⁵ Sandstone's expenditure in 2020 was AUD 5.6 million.⁴⁴⁶

Reflecting the country's British administrative heritage, local governments across Australia are typically referred to as a 'council', 'city' or 'municipality', 'shire' or 'town' depending on factors such as their size, location, or history. 'County councils' also exist as incorporations of, and controlled by, two or more local governments; established to deliver services usually across rural areas.

Currently there 537 local governments in Australia. This has been reduced from its peak of 1,000 due to ongoing structural reform aimed primarily at improving efficiency and effectiveness. Reduction has mostly been obtained through the process of amalgamation.

Despite often being strongly resisted by local communities and councils, amalgamations have been a significant policy in most Australian jurisdictions over the last two decades. Opposition to amalgamations has been based on numerous factors, such as concerns about loss of local identity and scepticism about purported efficiency gains. Both arguments were central to opposition to the most recent round of council large scale mergers that took place in New South Wales in 2016. At that time the state government pushed a highly controversial program

⁴⁴² Information retrieved from the Australian Bureau of Statistics (2019).

⁴⁴³ Information retrieved from Brisbane City Council (2020).

⁴⁴⁴ Information retrieved from the Australian Bureau of Statistics (2019).

⁴⁴⁵ Information retrieved from World Bank (2015).

⁴⁴⁶ Information retrieved from Shire of Sandstone (2020).



that was only partially finished, and ultimately abandoned, after community and council resistance derailed the process in a number of locations.

Local government in Australia has traditionally performed a regulatory role, including planning and building approvals, dog and cat management, and food and health inspections. Whilst they tend to have a narrower remit than in many other comparable countries, they also play an important role in community infrastructure such as the provision of local roads and waste management. In recent decades many councils have also extended their economic and community services to include childcare, youth programs, libraries and sport and recreation facilities, and community health activities.

Legal Status of Local Government

Local government is currently not formally recognised in the Australian Constitution. Whilst there has been attempts to amend this, including two referendums, its legal status remains dependent on state legislation. Many of its powers and responsibilities are subordinate to state and national governments, and there is often significant overlap of policy and programs.

These structural arrangements place limits on local government service delivery responsibilities and earnings. Local governments raise revenue from a range of sources including user charges, fines, developer contributions and income from properties, with utilities, waste and recycling services representing the most significant portion of own-revenue raised. However, the only form of tax they can charge is rates. Larger councils have significant income earning capacity and are able to generate around 80 per cent of their income, including waste and recycling charges. In contrast, much smaller councils are increasingly dependent on state and federal government grants.

Commonwealth grants have played a significant role in funding local government since the mid-1970s. However, the historic interpretation of the Australian Constitution was such that funds can only go *via* the state authorities. In this context, funding from the Commonwealth for local government purposes is 'tied', meaning that the state and territories do not have any discretion in how it is to be used. This arrangement was made more complex by a 2009 High Court of Australia decision (*Pape v Commissioner of Taxation*) regarding the Commonwealth's powers to authorise one-off payments to taxpayers. That decision was seen by many to limit the Commonwealth's ability to directly fund local government and remains contentious.

(A)Symmetry of the Local Government System

Australian local governments (councils) are led by elected officials. Generally, elected members act as formal decision-makers for strategic plans, policies and budgets prepared by the executive leadership staff of a council. The nature of these plans is often set out in state and territory legislation.

One form of elected official is the councillor. In addition to their strategic decision-making duties, councillors are also responsible for appointing and overseeing the performance of the



general manager/chief executive officer in accordance with an employment contract. This has become a contentious issue in several locations, with some local governments experiencing a high turnover rate amongst their chief executives. This has created numerous concerns, ranging from claims of councillors excessively interfering in operations, to perceived tenure uncertainty making it difficult to attract quality staff.

Another form of elected official is the mayor. The mayor is typically a ceremonial figure and in most cases is chosen from within the cohort of councillors to act on a rotational basis. There are, however, some differences across the country. For example, mayors in Queensland (and now increasingly in other jurisdictions) are mostly directly elected and have wide powers to prepare major policies and budgets.

Voting in local government elections is compulsory in all locations, excluding South Australia, Tasmania and Western Australia. Councillors are usually members of a political party and local government elections are party political, with the major political parties being represented and generally holding a majority. This is particularly the case within metropolitan areas. In fact, local government is often seen as a training ground for political aspirants. In rural areas, candidates are more likely to run independently, although they may be a member of a political party on a personal level.

Political and Social Context in Australia

The geography of Australia, and its cultural, social and economic history, present specific challenges to local government. This has led to councils lacking a uniform capacity to deliver services.

Rural and regional Australia is facing wide-ranging challenges including an ageing local population, poor infrastructure, limited education and employment opportunities, the drift of young people to urban centres, and more. In many rural towns, local councils provide a significant role as a major employer and service provider within the community therefore their sustainability is central to community wellbeing. This is less likely to be the case in a metropolitan location. Therefore, the role of local government within the community varies greatly, depending on a number of external factors.

The Australian Local Government Association (ALGA), the peak body for councils, identified 5 priority areas in its 2020-23 Strategic Plan which provide a useful guide to issues of contemporary importance to the sector. These are: financial sustainability; roads and infrastructure funding; waste; community resilience and climate change.

The Commonwealth has supported local government through a series of grants programs, as previously mentioned. Much of that funding is for infrastructure. For example, the current main initiatives focus on roads (AUD 7.3b between 2000 and 2019) and regional and community infrastructure. However, in 2016 the total value of Commonwealth grants equated to just 7 per cent of the amount spent by local government nationally. In its 2019 national election proposals, ALGA called for further funding for these programs in addition to health and wellbeing, digital, and Indigenous community funding.



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15.2 People's Participation in Local Decision-Making in Australia: An Introduction

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There are increasing efforts across local government in Australia to directly involve residents in local decision-making. This could be undertaken through a range of consultative and deliberative processes, particularly with regard to determining budget allocations, service levels and long-term community strategic planning. In many cases consultation is required under legislation and a recent survey of councils in Victoria and New South Wales revealed that, for many, consultation was still seen as primarily a compliance activity. However, practice is gradually changing and more councils are building the capacity to conduct meaningful engagement with their communities on a range of issues.

For example, community satisfaction surveys have become a common tool to ascertain what residents expect in terms of service delivery and performance. These surveys vary in their implementation but in general they target service users through feedback surveys. In addition, councils may carry other activities to canvas the community's thoughts, such as setting up stalls in shopping centres or engaging external agencies to carry out wider resident surveys. This has helped local governments to identify gaps between expectations and performance and by highlighting where performance improvement is needed. Increasingly, the findings of these surveys form the basis of local government annual reports and are being fed into the major whole-of-organisation service delivery review processes. These reviews, in varying forms, are generally required by the various Acts which govern local government across Australia.

Other engagement mechanisms are also increasingly used including focus groups and deliberative tools such as citizen's juries. For example, from August to November 2019, the City of Sydney in NSW convened a citizens jury of 50 members of the community. The jury considered, and made recommendations on, concepts that should be introduced by 2050 in order to facilitate the realisation of the communities' vision for the city. This included strategic objectives such as the improved involvement and representation of the First Peoples of Australia in community decision-making.

For many small councils, capability and resource limitations are impacting on their ability to actively engage their communities and further innovation is required.

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15.3 Innovative Approaches to Citizen Participation

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Relevance of the Practice

While there are many examples of Australian local governments involving citizens in decision-making through processes like citizen's juries and participatory budgeting, there is little research which looks at the effectiveness of these activities. Many case studies have been documented but little work has been done to follow up the engagement process to determine the impacts (both positive and negative) on the decisions taken.

Description of the Practice

Local Governments in Australia have a track record of developing and implementing innovative approaches to citizen participation in decision-making. In Melbourne a citizen's jury was held to help council shape the future of the city. In New South Wales (NSW), Canada Bay Council carried out an extensive participatory budgeting exercise with its residents to inform the development of its budget. In addition to these activities, local government reform processes are strengthening requirements for community engagement in the strategic planning process. The Integrated Planning and Reporting framework was established in NSW in 2009 requiring extensive community engagement in the development of the long term community strategic plan. In Western Australia (WA) similar requirements were introduced in 2011.

Assessment of the Practice

Little is known about the impact of stronger requirements for community engagement on the quality of the decisions made. Whether the community and councillors are more supportive of these decisions; how a council reconciles opposing views during engagement activities; and, if citizens should be given the opportunity to deliberate and come to mutual agreements, or whether the final decision left up to councillors or staff when there are contrasting ideas, are all points worth further examination.

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16. People's Participation in Local Decision-Making in Malaysia

16.1 The System of Local Government in Malaysia

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Types of Local Governments

Under the Federal Constitution of Malaysia 1957, there are three levels of government: federal, state and local. Local government is designated under Schedule 9 as a state matter. Nonetheless, local government is governed by uniform legislation in the form of the Local Government Act 1976 (LGA) and other statutes such as the Street, Drainage and Building Act 1974, and the Town and Country Planning Act 1976 (TCPA). It should be noted that this uniformity only applies to the 11 states of West (otherwise known as 'Peninsular') Malaysia, and not to the East Malaysian states of Sabah and Sarawak on the Island of Borneo, which have different legal systems from that of West Malaysia, as well as different legal and administrative history, statute laws generally, and extent of state autonomy compared to the states of West Malaysia.⁴⁴⁷ Accordingly in this report, to avoid laborious double coverage and potentially confusing, varied responses on each issue, this report is confined to West Malaysia, although federal statistics necessarily apply to Malaysia as a whole, and cannot usually be broken down.

The historical development and the present structure of local government are set out in detail in report section 4. Malaysia has three types of local governments, namely, city councils (18), municipal councils (38), and district councils (94). Apart from these three types of local council, there are six special-purpose local governments designed as 'development authorities'.⁴⁴⁸ There is only one level of local government, and local councils are accordingly not placed under higher-level authorities other than the state and federal governments, and there are no intermediate organisations of any kind.

These types of council are somewhat differently structured but perform the same functions. District councils, which cover rural areas, are the most recently created, and it is only since the 1976 reforms that all rural areas in West Malaysia have become areas governed by local authorities.⁴⁴⁹ District councils will be seen in this report to be under-privileged compared to the two kinds of urban council, being relatively poorly endowed and empowered in practice compared to the other two types of local government. This is in spite of the fact that their

⁴⁴⁷ Local government in Sabah is governed by the Local Government Ordinance 1961, and the equivalent legislation in Sarawak is the Local Authority Ordinance 1948, the Kuching Municipal Ordinances 1988, and the City of Kuching North Ordinance 1988.

⁴⁴⁸ See below, Section 3 on the (A)Symmetry of the Local Government System.

⁴⁴⁹ For more detail on the 1976 reforms, see the introduction to the Structure of Local Government in Malaysia, report section 4.1.



functions are exactly the same, albeit applied to smaller populations. Accordingly, it is difficult to differentiate between rural and urban local government in the absence of any clear markers and a lack of literature encountered in this project that is devoted to district councils as opposed to all councils. To take just one example, the issue of practice regarding public-private partnerships is distinguished⁴⁵⁰ between states that are part of the federal government's consortia arrangements and states that are not; there is no distinction between urban and rural councils. The urban-rural divide in terms of treatment is a deep and historic one in Malaysian local government, and is of course a very symptomatic of countries like Malaysia that have been in the throes of rapid development and the intense urbanization that goes with it. Despite the fact that, as we shall see, local governments exercise a wide range of powers, a number of factors inhibit the autonomy of local governments. These factors will be examined further in this report, especially in report section 5 on inter-governmental relations (IGR).

First, local government elections are not required by the Constitution, and have been suspended since 1965, so that there is no local *self-government*, and no *right* as such to local self-government.

Secondly, as a consequence of this, local councillors are appointed by the state governments, and appointments are usually, although not always, made on the basis of party allegiance to the party in power at the state level; this does not seem to depend on whether that party is in government or in opposition at the federal level. Accordingly, local government is stitched into the patronage-based, clientelist system that characterizes Malaysian politics, rendering it especially unlikely that local councillors will decide against the desires of the state government.⁴⁵¹ This factor is critical.

Thirdly, state governments have powers under the LGA, Section 103, to give directions of a general character to local governments; this power is expanded even further on occasion in practice to directions of a specific character.

Fourthly, policy on local government is coordinated amongst the various states by the National Local Government Council, a federal body set up under Article 95A of the Constitution, which gives much power to the federal government to control the operation of local government despite it being a state matter.

Fifthly, as is that case in most countries, it is universally acknowledged that local government finance faces considerable challenges, except in some wealthier areas such as Penang and Selangor. Local government finance is discussed further in report section 4 on local government structure.

Taken together, these five factors restrict considerably the freedom of operation of local governments. Under report section 5 on IGR the report introduced as an example the 'SPICE' episode, set out in detail in a recent book by a former Penang councillor, Lim Mah Hui. In this episode the state government went beyond its powers, in making decisions regarding a

⁴⁵⁰ See report section 3.2. on Urban Cleansing and Privatisation.

⁴⁵¹ Lim Mah Hui, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020).



contract to build a new conference centre, that were properly within the jurisdiction of the local government.⁴⁵²

Legal Status of Local Governments

List II of the Federal Constitution's Ninth Schedule recognises local government as function of the state governments, but, acting under a provision in the Constitution (Article 76) for effecting uniformity amongst the states, Parliament passed the LGA in 1976, and this statute governs local government in West Malaysia. Accordingly, the local government system is legally and constitutionally entrenched, even though there are no elections.

Local government authorities are legal persons in the form of bodies corporate and may sue or be sued in their own rights as well as being subject to judicial review under administrative law with respect to their acts and decisions. In a recent example, a district council was held to have exceeded its powers by amending a valuation list and charging rates to a company not included in the original list.⁴⁵³ Powers not specifically allocated to the federal power under the Constitution lie with the states; however, local government powers have to be specifically granted by statute and they are subject to the overriding principle that local authorities cannot act *ultra vires*, that is, beyond the powers they are given by statute. Local government powers nonetheless include any powers that are *reasonably incidental* to the statutory powers they enjoy. This is specified in the LGA, but is also a well-known principle in common law systems.⁴⁵⁴

(A) Symmetry of the Local Government System

Local government is the lowest level of Malaysia's multi-layered system of government, employing only 7 per cent of all public employees. Nonetheless, local government functions such as development control, public housing, roads and transport, parks and public places, and public nuisances are extremely important aspects of both urban and rural living and the environment.⁴⁵⁵ The three types of local authority represent a basically symmetrical system, all local authorities performing the same functions. They are all under state control, except for the Federal Territory of Kuala Lumpur, which is under federal jurisdiction. There are six special-purpose development authorities focused on development in specific areas at the local level, which are under federal, not state, control. These are the Federal Territories of Putrajaya and Labuan, Pengeran and Johor Tenggara Local Authorities in Johor, the Tioman Development

⁴⁵² *ibid.*

⁴⁵³ *Majlis Daerah Hulu Selangor v United Plantations Bhd* [2021] MLJU 1205, Federal Court. For a striking recent example of judicial review, see *Perbadanan Pengurusan Trellises & others v Datuk Bandar Kuala Lumpur & others* [2021] 2 CLJ 808, Court of Appeal. This case is discussed in detail in report section 6 on people's participation in local decision-making. And for the juristic nature of local authorities, see LGA, Sec 13.

⁴⁵⁴ LGA, Sec 101(hh); see Andrew Harding, 'Planning, Environment and Development: A Comparison of Planning Law in Malaysia and England' (2003) 5 *Environmental Law Review* 231.

⁴⁵⁵ Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/Bloomsbury, forthcoming 2022) Chapter 5.



Authority in Pahang, and the Kulim Hi-Tech Industrial Park Local Authority in Kedah. The Iskandar Regional Development Authority is also discussed under report section 4 on local government structure, but this authority acts only in a facilitative way and does not exercise statutory powers over specific local government functions in its area.

Political and Social Context in Malaysia

Currently more than two thirds of Malaysians live in urban areas, and these (municipal and city councils) correspond to most of Malaysia's 'local government areas', that is, those areas (now encompassing all of Malaysia's territory) that have local authorities as defined by the LGA, Section 3. Over the last four decades Malaysia's developmental state under the 'Vision 2020' policy has instrumentally recreated the country as an industrialised one, transforming it from a largely agricultural society into an urban and suburban one.⁴⁵⁶

Rural areas are under the authority of district councils, which are still administered with respect to local functions by something resembling the colonial system of district officers.⁴⁵⁷ District officers are appointed by, and are responsible to, either the state government or the federal government, depending on the state in which the authority lies. The district officers are chairs of the district councils, which are advised by various committees of specialists. The districts, that is, rural areas, have never at any point had representative local government. Nonetheless, the district councils perform equivalent functions to those of municipal and city councils. They are also under-funded compared to urban authorities. This is typical facet of uneven development in many countries. As Singaravelloo reports,

'Financial strength is proportional to the size of the local authority. Larger local authorities have a larger population and economic base that provides the revenue needed to finance their activities. Smaller local authorities, however, especially district councils, have smaller populations and economic activities that can only contribute a small amount to their revenue. Examples of local authorities with a critical population size in 2010 were Majlis Daerah Lenggong (13,378), Majlis Daerah Pakan (Sarawak) (15,139), Majlis Daerah Pengkalan Hulu (15,878), Majlis Daerah Kuala Penyu (Sabah) (18,958), Majlis Daerah Jelebu (26,608), Majlis Daerah Labis (32,540), Majlis Daerah Cameron Highlands (34,510). The smaller revenue base is not even sufficient to provide the basic services that local authorities are assigned to deliver.'⁴⁵⁸

The National Physical Plan and the National Urbanisation Plan⁴⁵⁹ emphasize urbanization, which is seen as Malaysia's major priority and problem. This indicates that rural areas are of

⁴⁵⁶ Andrew Harding, 'Law and Development in Malaysia: A Vision Beyond 2020?' in Salim Ali Farrar and Paul Subramaniam (eds), *Law and Justice in Malaysia: 2020 and Beyond* (Thomson Reuters 2021).

⁴⁵⁷ Jagdish Sidhu, *Administration in the Federated Malay States* (Oxford University Press 1980).

⁴⁵⁸ Kuppaswamy Singaravelloo, 'Local Government and Intergovernmental Relations' in Noore Alam Siddiquee (ed), *Public Management and Governance in Malaysia: Trends and Transformations* (Routledge 2013) 211.

⁴⁵⁹ *ibid.* 214.



low political concern. It is suggested that any reintroduction of local government elections and any revisiting of state and local government powers should embrace district as well as urban councils, and address squarely the needs of rural communities.⁴⁶⁰

Local councils consist of between eight and 24 persons who are appointed by the state governments from amongst prominent citizens resident in the locality for terms of three years.⁴⁶¹ Councillors have therefore tended to reflect the interests of the political party or parties in power at the state level; in West Malaysia at least, political parties operate at the national level and there are no purely local parties, although obviously some parties are perceived as being stronger in some specific areas or originated therefrom (e.g. Parti Gerakan is associated with Penang). With regard to Kuala Lumpur, since it is a federal territory, the *Datuk Bandar* (mayor) is appointed by the federal government for a period of five years, and the *Dewan Bandaraya Kuala Lumpur* (Kuala Lumpur City Council) is placed under the Prime Minister's Department.⁴⁶²

Reforms to the local government system, especially regarding elections in some urban areas, were promised by the Pakatan Harapan (PH) government, which left office on 1 March 2020. The present Perikatan Nasional (PN) government has not stated any intention in this regard, but meanwhile the country has been under emergency rule (from 12 January to 1 August 2021) due to the Covid-19 pandemic. Under the Emergency (Essential Powers) Act 2021, all elections were suspended; this ordinance has now been revoked.⁴⁶³

Despite the stability enforced by the Malaysian Government's largely successful efforts to improve the economic standing and opportunities of the majority Malay/Muslim population (around 60 per cent of the population of 32 million), there still exists a strong ethnic social division which in recent years has tended increasingly to be expressed via religious affiliation (Muslim and non-Muslim).⁴⁶⁴ Under the Constitution, Article 160, a Malay is defined in terms of adhering to Islam as well as using the Malay language and Malay customs. This ethnic factor has had a considerable impact on local government, as successive governments have declined to reintroduce local elections in spite of strong demands, especially in mixed urban areas, for local democracy.⁴⁶⁵ The often-stated reason is that local democracy is likely to inflame inter-ethnic tensions.⁴⁶⁶ Nonetheless, the 14th general election in May 2018 was conducted entirely without violent incident anywhere in Malaysia, indicating a level of political maturity that belies the fear of ethnic violence, most evident in the tragic events of 13 May 1969 (see below), reemerging.

⁴⁶⁰ The most recent proposals in this regard, by the PH government in July 2018, mentioned only reintroducing local elections in some densely-populated urban areas; in any event these were not acted upon. See, further, Danesh Prakash Chacko, *Reintroduction of Local Government Elections in Malaysia* (Bersih & Adil Network Sdn Bhd. 2021).

⁴⁶¹ LGA, Secs 3 and 13.

⁴⁶² Federal Capital Act 1960, Secs 4 and 7.

⁴⁶³ Emergency (Essential Powers) Ordinance 2021, Secs 12-13.

⁴⁶⁴ Dian AH Shah, *Constitutions, Politics and Religion in Asia: Indonesia, Malaysia and Sri Lanka* (Cambridge University Press 2017) 10.

⁴⁶⁵ Mah Hui, *Local Democracy Denied?*, above.

⁴⁶⁶ This issue is discussed in detail in report section 6 on people's participation in local decision-making in Malaysia.



Since significant changes in the law and socio-economic policy in 1971, spurred by the 13 May incident, the majority community (styled *bumiputera*) community, comprising Malays and natives of Sabah and Sarawak, have benefited from special quotas in certain areas such as education and employment opportunities.⁴⁶⁷ This system has impacted local government in various ways discussed later in this report.

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⁴⁶⁷ There is vast literature on this issue but see, e.g., Lee Hwok-Aun, *Affirmative Action in Malaysia and South Africa: Preference for Parity* (Routledge 2021); Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Hart/ Bloomsbury, forthcoming 2022) Chapter 3.



16.2 People's Participation in Local Decision-Making in Malaysia: An Introduction

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Elections or Appointments?

Obviously, local elections are the main form of public participation in local government in that the voters may vote in councillors who will represent their views. The abolition of local elections in Malaysia has sparked persistent debate ever since 1965 with regard to their possible reintroduction.⁴⁶⁸ The argument for reintroduction is the argument for local self-government, that is, that democracy is fundamental, and that local government, reflecting the principle that local electors know their situation better than metropolitan decision-makers, will answer the needs of local people best if it is accountable to them and represents their interests as paramount. The argument against reintroduction is that Malaysia does not need three levels of elected government, that the cost of holding elections is better expended elsewhere, and that local politics leads to ethnic divisions that are destabilising. The cost of holding elections across all local authorities has been estimated at RM 308 million (Euro 62 million).⁴⁶⁹ While this is not a very large sum, many feel that with the shortfall in public finances due to corruption and the pandemic's impact on the economy, now is not the right time to reintroduce local elections, even if it were, in general terms, warranted.

It is also a point of disagreement whether the appointment system or holding elections leads to greater efficiency. One recent councillor argues that, during the period of democratic local government in the 1950s and 1960s Ipoh City Council was well known for its efficiency; this was noted as a fact by the Nahappan Report.⁴⁷⁰ As we have seen earlier in the case of the SPICE controversy in Penang⁴⁷¹ and will see in the matter of the 'floating city' controversy in Johor Bahru, the appointment system can certainly ensure that decisions are made speedily, due to fewer objections or discussion, but this does not mean the right decisions are being made or are being made in a cost-effective manner.

As for the appointment system, although there are cases of councillors appointed for a three-year term because they are persons of experience or distinction, as envisaged by the Local Government Act 1976 (LGA), Section 10(2), and these councillors do act as a public voice of

⁴⁶⁸ Danesh Prakash Chacko, *Reintroduction of Local Government Elections in Malaysia* (Bersih & Adil Network Sdn Bhd. 2021).

⁴⁶⁹ Azril Annuar, 'Zuraida: Third Vote in Malaysia Would Cost RM 2m per Local Council, RM 308m for All', (*Malay Mail*, 14 July 2020) <<https://www.malaymail.com/news/malaysia/2020/07/14/zuraida-third-vote-in-malaysiawould-cost-rm2m-per-local-council-rm308m-for/1884291>>. The estimate is based on a figure of RM 2 million per council, i.e. the estimate now would, one assumes, be RM 312 million for 156 councils.

⁴⁷⁰ Lim Mah Hui, *Local Democracy Denied? A Personal Journey into Local Government in Malaysia* (SIRDC 2020) 23.

⁴⁷¹ For more detail, see the SPICE Controversy in report section 5 on intergovernmental relations of local governments in Malaysia.



some kind in the council's deliberations,⁴⁷² the overwhelming majority are appointed because of party affiliation; they are dismissed by one commentator as 'yes-men and apple polishers'.⁴⁷³ Moreover, even these 'independent' councillors, it should be noted, were appointed only after opposition wins in some states in 2008.

The fact is that as a result of the appointment system, most Malaysians have no idea who their local councillors are, and tend to raise local government concerns with their federal member of parliament or state assemblyman, who are more familiar to them, but of course have no jurisdiction over local government matters.⁴⁷⁴

Civil Liberties, Freedom of Information, and Local Government

For all this, elections, if reintroduced, would by no means be the only avenue for public participation in local decision-making. Although there are relevant statutory provisions affording opportunities for public participation in specific statutory contexts,⁴⁷⁵ the most important avenue for the expression of views on local government matters is simply exercise of the fundamental political liberties of freedom of speech, assembly, and association, guaranteed, although also in some respects subject to statutory restrictions, by Article 10 of the Federal Constitution.⁴⁷⁶ Civil-society-organised protests relating to local government decisions, relating especially to matters affecting development and the environment, are quite common, and have sometimes been effective, due to extensive mobilisation that is not usually present in the exercise of statutory rights of participation, which are generally restricted in terms of who has standing to participate. One notable instance of this is the notorious Penang Hill project that would have blighted an environmentally precious and historic area of Penang; this project was suppressed as a result of extensive, well-informed and well-coordinated protests by a coalition of civil-society organisations.⁴⁷⁷ The recent case of Kiara Green in Kuala Lumpur is also adverted to below, a matter in which local residents' associations managed to have a planning decision by the *Datuk Bandar* (mayor) of Kuala Lumpur quashed by the courts. In this case the issue was an extensive development involving 52-story serviced-apartment blocks, car parks, and low-cost housing in a designated green-lung park and recreational area that is also used by migratory birds, and is the only place in Kuala Lumpur where rare hornbills are to be found. A coalition of residents' associations took concerted action to have the decision struck down. The matter is still before the courts at the time of writing, as the mayor appealed the Court of Appeal's swingeing and highly critical decision to the Federal Court, which heard arguments on 14 June 2021.

⁴⁷² The author benefitted from an interview with one such former Ipoh councillor, Mr Chan Kok Keong, a local lawyer, in April 2021. Mr Chan had questioned the cost-benefit of privatisation arrangements by the city council during his three-year term in office.

⁴⁷³ Goh Ban Lee, *Counselling the Councillors* (FOMCA 2007), cited in Mah Hui, *Local Democracy Denied?*, above, 22.

⁴⁷⁴ Mah Hui, *Local Democracy Denied?*, above, 22.

⁴⁷⁵ See below.

⁴⁷⁶ Andrew Harding, 'Practical Human Rights, NGOs and the Environment in Malaysia' in Michael Anderson and Alan Boyle (eds), *Human Rights Approaches to Environmental Protection* (Clarendon Press 1998).

⁴⁷⁷ Ainul Jaria Mydin, 'Access to Public Participation in the Land Planning and Environmental Decision-Making Process in Malaysia' (2011) 1 *International Journal of Humanities and Social Science* 148.



This situation and further progress in public participation depends on the breadth of use of civil liberties, and here the role of the judiciary is critical in protecting those liberties and allowing standing, where appropriate, to bring an action against the relevant authorities.

The real problem, however, is a lack of information about projects until they are well advanced. For example, in the Kiara Green matter residents only discovered after commencing proceedings that the project involved a joint venture that included the decision-maker (the mayor) on the planning application; that the development had in fact been approved by the mayor; and that their objections had never been considered. In Harding and Azmi Sharom's case study on Petaling Jaya referred to in the local government practice on structure plans,⁴⁷⁸ it is recorded that 'the residents of Damansara Jaya for example only found out about a massive road-building project which would change the nature of their area when they saw surveyors working by the roadside'.⁴⁷⁹ In another instance, Kampong Kerinchi district in Kuala Lumpur and its thoroughfares were arbitrarily renamed without any public consultation, and, following protests, the local member of parliament was instrumental in getting the authorities to recant and revert to the previous name in a 'renaming ceremony' in 2019.⁴⁸⁰

It may be observed that this kind of ambushing of the public by development proposals is a typical rather than rare occurrence. There is no general freedom of information legislation that would require divulging of local government papers. Meetings of a full council, normally held monthly, are required by the LGA, Section 23, to be open to the public and the press 'unless the local authority by resolution otherwise decides', and in practice they do so decide. Committee meetings are not subject to this provision unless the committee in question so resolves. Public witnessing of council and committee meetings is therefore unusual rather than the norm. Even where meetings are public, the public is not allowed to speak. Thus there actually is no regular method for members of the public to ask questions. Without information, citizens' freedom of expression, even if not restricted, may well come too late to be effective.

The difficulties with information are well illustrated by a series of cases, brought against all three levels of government, that arose in Johor Bahru concerning an ambitious 'floating city' project, which was proposed in the early 1990s but virtually abandoned in 2003. A Johor Bahru resident and objector to the project, attempting to flush out information, first of all obtained a declaration that the Ministry of Science, Technology and Environment was obliged to produce to him the environmental impact assessment report on the project.⁴⁸¹ However, he failed to establish *locus standi* to compel the state government to produce their agreement with the developers because the state government was not obliged to consult taxpayers before entering

⁴⁷⁸ For more detail, see report section 6.2. on Public Consultation in the Drafting of Structure/Local Plans in the report section on people's participation in local decision-making in Malaysia.

⁴⁷⁹ Andrew Harding and Azmi Sharom, 'Access to Environmental Justice in Malaysia (Kuala Lumpur)' in Andrew Harding (ed), *Access to Environmental Justice: A Comparative Study* (Kluwer 2007).

⁴⁸⁰ "'Bangsar South" Officially Reverts to Kg Kerinchi in Win for Identity, Tradition' (*Malay Mail*, 19 January 2019) <<https://www.malaymail.com/news/malaysia/2019/01/19/bangsar-south-officially-reverts-to-kg-kerinchi-in-win-for-identity-traditi/1714191>>.

⁴⁸¹ *Abdul Razak Ahmad v Ketua Pengarah, Kementerian Sains, Teknologi dan Alam Sekitar*, [1994] 2 CLJ 363, High Court of Malaya. See, however, *Kajing Tubek & Ors v Ekran Bhd & Ors*. [1996]2 MLJ 388 and on appeal to Court of Appeal, see *Ketua Pengarah Jabatan Alam Sekitar v Kajing Tubek* [1997] 3 MLJ 23, where the opposite result was reached in the well-known 'Bakun Dam' controversy.



into the agreement, and because the plaintiff had suffered no special damage over and above that suffered by other taxpayers and residents.⁴⁸² A similar result occurred when he attempted to establish the illegality of the planning permission itself, granted by the city council. It was held that no legal right or interest of his had been affected; he had not suffered any special damage; and was not an adjoining owner.⁴⁸³ Commenting that '[t]o give locus standi to a ratepayer like the plaintiff would open the floodgate [sic] and this would in turn stifle development in the country' the judge described the plaintiff as a 'trouble-shooter [sic – sc. 'trouble-maker']', a maverick of a sort out to stir trouble.⁴⁸⁴ That the project was ultimately found defective and abandoned only highlights the need for accountability for planning decisions, as do the Penang Hill and Kiara Green episodes.⁴⁸⁵

Clearly, much depends on the civil society. Civil society organisations' (CSOs') experiences with local authorities have been varied. When dealing with relatively 'safe' issues, like the design of a recreational area, the response has been positive. However, in more contentious matters there have been some serious complaints. Complaints about procedure include very short notice for meetings and bias in favour of the developers. This is obvious in the way complainants are treated compared to the way developers are treated by planning officials.⁴⁸⁶

Planning Process and Public Participation

Planning laws provide some specific avenues for public participation in local-authority plans and development-control decisions. As is typical of most planning systems, Malaysian planning law provides for two levels of plans: structure plans formulated by the state government; and local plans, consistent with the structure plan, formulated by local authorities.⁴⁸⁷ The process for these plans is broadly similar, and is discussed in the local government practice on public participation.⁴⁸⁸ As is recorded there, there are some problems with this process from the aspect of public participation.

Apart from the drafting of plans, another method of securing public participation through planning law lies in the process of applications for planning permission. No development can take place without planning permission,⁴⁸⁹ and in considering applications the local planning authority (LPA) must take into account structure and local plans as well as any objections raised by owners of adjoining land.⁴⁹⁰ There is scope therefore for the LPA to reject a planning application on the basis of public concerns. The conditions that may be placed on the planning permission can also be used to satisfy objections; furthermore, the LPA may regulate the manner

⁴⁸² *Abdul Razak Ahmad v Kerajaan Negeri Johor* [1994] 2 MLJ 297.

⁴⁸³ *Abdul Razak Ahmad v Majlis Bandaraya Johor Baru* [1995] 2 MLJ 287, [1995] 2 AMR 1174.

⁴⁸⁴ *ibid.* [1186].

⁴⁸⁵ 'JB Waterfront City Project to be Scaled Down' (*The Star*, 9 January 2003)

<<https://www.thestar.com.my/news/nation/2003/01/09/jb-waterfront-city-project--to-be--scaled-down>>.

⁴⁸⁶ This passage is based on Harding and Sharom, 'Access to Environmental Justice in Malaysia (Kuala Lumpur)'.

⁴⁸⁷ Under the TCPA, Section 6B, there is also a provision for a 'national physical plan', designed to embody 'strategic policies for the purpose of determining the general directions and trends of the physical development of the nation'. This plan must be revisited every five years.

⁴⁸⁸ For more detail, see report section 6.2. on Public Consultation in the Drafting of Structure/Local Plans in the report section on people's participation in local decision-making in Malaysia.

⁴⁸⁹ TCPA, Sec 20.

⁴⁹⁰ Sec 21(6). See above for discussion of standing to object.



in which the development is to be carried out, limiting any adverse impacts of the construction works, for example.⁴⁹¹ The LPA also has powers to revoke or modify permission that has already been granted, if it is felt that it is in the public interest to do so and if the state planning committee approves.⁴⁹²

However, the most important way of participating directly in official decisions is via the right of local residents and adjoining neighbours to voice their complaints over projects that affect them. Strictly speaking, rights of objection are legally vested only in adjoining owners, but, as we shall see, local communities do nonetheless find ways of voicing their concerns.

The Town and Country Planning Act 1976 (TCPA), Section 21, although providing for a right of objection by adjoining owners, does so only where 'the proposed development is located in an area in respect of which no local plan exists for the time being'. The LPA is required to serve notice in writing on the owners of the neighbouring lands, informing them of their right to object to the application and to state their grounds of objection within 21 days of the date of service of the notice. Such owners complying with Section 21 can then also demand a hearing of their objections. Given that much of Peninsular Malaysia is in fact covered by a local plan, the section has no effect in such areas, severely limiting even this already narrow right of public participation. In the Federal Territory of Kuala Lumpur no notice whatsoever of a planning application to adjoining owners is required.⁴⁹³ This was, however, not recognised by the courts in the case of *Datin Azizah bte Abdul Ghani*,⁴⁹⁴ and the duty to inform adjoining owners remained in spite of the statutory silence on the matter. Under the Federal Territory Planning Act 1982, Section 22, the mayor must take into account 'material considerations' in making his decision on a planning application. The case holds that such considerations include objections to the proposed development. (Under the TCPA, Section 22, the LPA must consider any objections as part of its duty to 'take into consideration such matters as are in its opinion expedient or necessary for proper planning'.) Thus public participation is in effect either provided for by, or implied into, the statute. This has become even more significant following the *Kiara Green* case in the Court of Appeal in 2021.⁴⁹⁵ In that case the court struck down the mayor's decision on the ground that the decision involved a conflict of interest, the mayor himself being a party to the relevant joint-venture contract, and that there was no evidence that the residents' concerns had in fact been taken into account. For good measure, the court added that the mayor was also in breach of his implied duty to give reasons, at the relevant time, for his decision.

The legal position set out in the *Kiara Green* case changes at a stroke the entire situation of public participation in several respects. It is to be hoped that the Federal Court will affirm this very important decision.

⁴⁹¹ Sec 22(5)(b)(ii). And see *Tropiland Sdn Bhd v Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16.

⁴⁹² Sec 25(1)(2).

⁴⁹³ Federal Territory (Planning) Act 1982, Secs 21-2.

⁴⁹⁴ *Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur and others* [1992] 2 MLJ 393.

⁴⁹⁵ *Perbadangan Pengurusan Trellises and others v Datuk Bandar Kuala Lumpur and others* [2021] 2 CLJ 808. A further appeal was heard in the Federal Court on 14 June 2021.



Finally, it should be noted that this expansion of public participation is much needed when the definition of a 'neighbour' under the TCPA 1976, Section 21, is very limited, meaning ultimately that very few individuals or groups have standing to attend the hearing. It includes only:

- registered owners of lands adjoining the land to which the application relates;
- the registered owners of land which would be adjoining but for being separated by any road, lane, drain, or reserve land not wider than twenty meters; and
- registered owners of land inside a cul-de-sac, within 200 metres from a proposed development within the same cul-de-sac and sharing the same access road.

These limited rights of objection have made it difficult for people to protest against projects which have environmental repercussions wider than the immediate neighbourhood. *Kiara Green* broadens the scope of participation considerably, while also, correspondingly, defining the scope of exercise of discretionary planning powers and rendering them in effect accountable to the public. If affirmed, this case has potential far beyond planning matters to other local government functions, and to render restrictive standing rules and rules as to notice of decisions essentially irrelevant.

Finally, we may note that the extent of public participation is ultimately dependent on the civil society, which is an urban phenomenon. It is no accident that the major instances discussed have been in the Kuala Lumpur conurbation, Johor Bahru and Penang, which are Malaysia's three largest conurbations. Rural areas do not have what are in reality advantages enjoyed by middle-class urbanites. Even at the point where the Pakatan Harapan (PH) government in 2018 appeared to be intending to reintroduce local government elections, they planned to do so only for some urban areas, where there is most resentment at the lack of real democracy. Rural dwellers are generally left out of consideration when it comes to virtually every aspect of local government. They do not have developed political participation compared to urbanites, and are thrown back on the old but persistent system of patronage and clientelism to preserve their interests. When it comes to residents' opposition to big projects, there are examples of objections to damaging extractive exercises such as the Lynas Rare Earth Project in Pahang. However, the objections are led by urban NGOs and intellectuals, not by rural dwellers who severely lack political agency and are more likely to support such projects as creating jobs etc.

References to Scientific and Non-Scientific Publications

Harding A and Sharom A, 'Access to Environmental Justice in Malaysia (Kuala Lumpur)' in Andrew Harding (ed), *Access to Environmental Justice: A Comparative Study* (Kluwer 2007)

Mydin AJ, 'Access to Public Participation in the Land Planning and Environmental Decision-Making Process in Malaysia' (2011) 1 *International Journal of Humanities and Social Science* 148



16.3 Public Consultation in the Drafting of Structure/Local Plans

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Relevance of the Practice

There are three inter-connected levels of decision-making concerning development coming within the Town and Country Planning Act 1976 (TCPA). State governments draw up structure plans; local authorities draw up local plans consistent therewith;⁴⁹⁶ and local authorities decide on particular planning applications, which should also be consistent with the structure and local plans.⁴⁹⁷ The issue considered here is, to what extent is public participation possible in the second of these stages, given the importance of development decisions to the public? The process for drawing up local plans is identical to that for drawing up structure plans, as far as public participation is concerned, and is prescribed in the TCPA and the Town and Country Planning (Structure and Local Plans) Rules 1985.⁴⁹⁸ The structure plan forms the policy basis for development in the local authorities' areas. The local authorities are also empowered to (and usually in practice do) prepare a more detailed local plan for their areas, or parts thereof.

The following case study of local government practice on local plans⁴⁹⁹ relates to the drafting of the structure plan for the large, mainly middle-class Kuala Lumpur suburb of Petaling Jaya. Field-work on this case study was undertaken in the mid-1990s, but, revisiting the subject in 2007, the authors concluded that their findings were still valid.⁵⁰⁰

Description of the Practice

The process is governed by the TCPA, Section 9, which requires the state planning director, when preparing the draft structure plan, to take such steps as will in his opinion secure that publicity is given in the state to the report of the survey which he is required to conduct (under the TCPA 1976, Section 7), and to the matters that he proposes to include in the plan; and that persons who may be expected to desire an opportunity of making representations to him are made aware that they are entitled to, and are given, an opportunity of doing so. He is also required to consider every representation made within the prescribed period of one month. Further, as soon as practicable after the draft structure plan has been submitted to the

⁴⁹⁶ TCPA 1976, Sec 10.

⁴⁹⁷ *ibid.* Sec 229(1).

⁴⁹⁸ Made under the TCPA 1976, Secs 17, 58; and see Sec 9.

⁴⁹⁹ Andrew Harding and Azmi Sharom, 'Access to Environmental Justice in Malaysia (Kuala Lumpur)' in Andrew Harding (ed), *Access to Environmental Justice: A Comparative Study* (Kluwer 2007).

⁵⁰⁰ Ainul Jaria Mydin's study published in 2011 also confirms the continued validity of the findings. See Ainul Jaria Mydin, 'Access to Public Participation in the Land Planning and Environmental Decision-Making Process in Malaysia' (2011) 1 *International Journal of Humanities and Social Science* 148.



planning committee, he is required to publish, in three issues of at least two local newspapers, one of which is in the national language (Malay), a notice stating that copies of the plan are available for inspection at his office and at such other places as he may determine and the time within which objections to the plan may be made to the committee.

As illustrated by the experience of the Petaling Jaya (PJ) residents' associations during the process for drafting the PJ structure plan, the public-participation process leaves much to be desired. First, there is a lack of efficacious publicity. As we have seen, advertisements are placed in newspapers, but these are small and easily missed. Second, there is a shortage of time given to the public to prepare their objections and queries. In the PJ example, there were only 30 days to prepare. Furthermore, there was very little useful information about the plan that was provided for public scrutiny before a public meeting with the state government and Majlis Perbandaran Petaling Jaya (the local council). Thus it was difficult to participate constructively and in an informed manner. On the surface there does seem to be some effort by local authorities to ensure fair play. For example, the public is allowed to scrutinise any new development plans and there are public exhibitions whenever changes are to be made. However, these complex plans can only be viewed and not copied, making careful scrutiny extremely difficult. And there have been reports that the public exhibitions are ineffective because there is little cooperation by the officials there, who tend to be reticent in answering questions.

Assessment of the Practice

Although the TCPA and the rules made thereunder require public consultation, they are silent as to the extent to which the views of the public should be considered. It would appear that, although there is a right to object to a plan, there is no guarantee that input from the public will be absorbed into the final plan. This is the constant source of frustration in public participation exercises, which can appear to be a box-checking process rather than an exercise in democracy. At least, however, based on the *Kiara Green* case,⁵⁰¹ there must henceforth be evidence of genuine consideration of the view expressed by the public. Of course, the process cannot be bound by public inputs, which might in any case contradict each other, but the only protection against unreasonable rejection of public views, apart from litigation, is that the state planning director is obliged to state his consideration of the representations and the state planning committee is empowered under the TCPA to reject the plan and require further action to be taken. Give the knock-on effect of structure plans on local plans and planning decisions, any mistakes made at this stage will be binding on the other two processes, and cannot be corrected.

The suggestion here is that there are two keys to successful public participation. The first is freedom of information (this is not so much a problem in the case of plans, but as we have seen it is a problem elsewhere). The solution would be to pass freedom of information

⁵⁰¹ *Perbadangan Pengurusan Trellises and others v Datuk Bandar Kuala Lumpur and others* [2021] 2 CLJ 808. For more detail on the case, see the introduction to People's Participation in Local Decision-Making in Malaysia, report section 6.1.



legislation applying to all public authorities and embodying an extensive right to receive information.⁵⁰² The second key is the giving of articulated reasons for decisions, which is also required by the *Kiara Green* decision. This principle is within the powers of the judiciary to enforce as a general principle of administrative law. From an urban-rural lens it is worth noting that the resources to use litigation as described above are confined to urban areas (e.g. NGOs, academics, the legal profession), and are in any case only now being developed and receiving judicial attention.

References to Scientific and Non-Scientific Publications

Harding A and Sharom A, 'Access to Environmental Justice in Malaysia (Kuala Lumpur)' in Andrew Harding (ed), *Access to Environmental Justice: A Comparative Study* (Kluwer 2007)

Mydin AJ, 'Access to Public Participation in the Land Planning and Environmental Decision-Making Process in Malaysia' (2011) 1 *International Journal of Humanities and Social Science* 148

⁵⁰² Currently, there is no right to information in Malaysia, however, many are campaigning for such a right to be enshrined in statute law.



17. People's Participation in Local Decision-Making in Canada

17.1 The System of Local Government in Canada: An Introduction

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Types of Local Governments

Canadian federalism divides governing responsibilities among three levels of government: federal, provincial, and local. However, the Canadian Constitution gives the provinces sole jurisdiction over municipalities, which results in significant inter-provincial variation among local government systems. While the federal government in recent years began to provide money through joint federal-provincial programs for services that are ultimately delivered by municipalities (primarily hard infrastructure), there is typically no direct federal policy or regulatory involvement with the municipal level of government.⁵⁰⁴ One side effect of this lack of federal involvement is that it is difficult to determine how many local governments there actually are in Canada. A comprehensive survey of available data from numerous sources, conducted in June 2021 by researchers at Western University,⁵⁰⁵ indicates that there were 3,533 local governments in Canada as of 2020. This is a significant decrease from the total of 4,432 in 1995, which reflects the results of a large-scale wave of provincial imposed consolidations in several provinces around the turn of the millennium. Despite this consolidation, most municipalities in Canada are small and rural. A report based on the 2016 census finds that only 723 had a population of 5,000 or greater. By contrast, 24 municipalities had over 200,000 residents, while three municipalities (Toronto, Montreal and Calgary) had over 1 million inhabitants. Toronto is Canada's largest municipality, with a population of 2.9

⁵⁰³ Acknowledgements: Data regarding number of municipalities in Canada, as well as the analysis of rural-urban demographic and economic differences in Ontario, were compiled and produced by Amanda Gutzke at Western University. Our sincere thanks for her excellent work.

⁵⁰⁴ Erin Tolley and William R Young, 'Municipalities, the Constitution, and the Canadian Federal System' (Government of Canada 2001) <<http://publications.gc.ca/Collection-R/LoPBdP/BP/bp276-e.htm#Municipalities>> accessed 25 July 2019.

⁵⁰⁵ These data were collected and analyzed as part of another research project, led by Zack Taylor and Martin Horak.



million as of July 2018.⁵⁰⁶ Just as the country's 10 provinces and three territories⁵⁰⁷ vary in population size, so too do their municipal populations. Ontario tends to have larger municipalities as a result of its history of amalgamations imposed by the province, many of which took place in the 1990s.⁵⁰⁸ Ontario currently has 444 municipalities.

In some cases, urban municipalities have distinct status under provincial law. For example, Vancouver, Winnipeg, Montreal, and Saint John are Charter Cities, which means that they are governed by their own piece of legislation – or 'Charter' – rather than being subject to the broad, province-wide legislation that governs the activity of other municipalities.⁵⁰⁹ The City of Toronto is likewise governed by stand-alone provincial legislation. However, in general the degree to which these charters grant powers and resources over and above those of other municipalities is limited.

Table 3: Types of municipalities in Canada's four most populous provinces.⁵¹⁰

Province	Types of Municipality
Ontario	Village
	Township
	Town
	Municipality
	City
	County
	Regional Municipality
Quebec	Village
	Township
	United Township
	Town

⁵⁰⁶ 'Municipalities in Canada with the Largest and Fastest Growing Populations between 2011 and 2016' (*Statistics Canada*, 8 February 2017) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016001/98-200-x2016001-eng.cfm>> accessed 1 August 2019; 'Municipalities in Canada with Population Decreases between 2011 and 2016' (*Statistics Canada*, 8 February 2017) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016002/98-200-x2016002-eng.cfm>> accessed 1 August 2019; 'Toronto at a Glance' (*City of Toronto*, undated) <<https://www.toronto.ca/city-government/data-research-maps/toronto-at-a-glance/>> accessed 1 August 2019.

⁵⁰⁷ Canada's three territories (Nunavut, the Northwest Territories, and Yukon) are located in the far north. Despite their large geographical size, they have very small populations, totaling only about 110,000 in all three territories, which is less than the population of the smallest province (Prince Edward Island, 150,000 inhabitants).

⁵⁰⁸ Andrew Sancton, *Canadian Local Government: An Urban Perspective* (2nd edn, OUP 2015) 150, 152.

⁵⁰⁹ 'Power of Canadian Cities- The Legal Framework' (*City of Toronto*) <https://www.toronto.ca/ext/digital_comm/inquiry/inquiry_site/cd/gg/add_pdf/77/Governance/Electronic_Documents/Other_CDN_Jurisdictions/Powers_of_Canadian_Cities.pdf> accessed 25 July 2019; John Stefaniuk, 'Municipal Powers and their Limits' (TDS Law) <<https://www.tdslaw.com/site-content/uploads/municipal-powers-and-their-limits-2.pdf>> accessed 25 July 2019.

⁵¹⁰ Sancton, *Canadian Local Government*, above, 7-8; 'Types of Municipalities in Alberta' (*Government of Alberta*, undated) <<https://www.alberta.ca/types-of-municipalities-in-alberta.aspx>> accessed 25 July 2019.



	Municipality City Parish Regional Government Metropolitan Community Regional County Municipality
British Columbia	Village Town District Municipality City
Alberta	Summer Village Village Town City Specialized Municipality Municipal District Improvement District Metis Settlement Special Areas

Generally, Canadian municipalities are responsible for providing physical services including water supply, waste management, local infrastructure management, sewage treatment, planning and development services, libraries, parks and recreation, local police, and parking.⁵¹¹ These local government tasks are administered through general purpose municipalities (variously called cities, towns, villages, etc., depending on size), sometimes in conjunction with special purpose bodies. The table above compares the largest four provinces by population to illustrate variation in the legal types of municipalities. In addition to these, there are numerous local government bodies that do not have municipal status – such as British Columbia’s regional districts, which are multi-purpose service federations of municipal governments.

In some provinces, including Ontario, Quebec and Alberta, there is a single tier of local government in some areas, and two tiers of local government in other areas. Upper-tier governments in Ontario, for example, are either called counties or regional municipalities, with the latter typically found in large urban areas. Upper-tier municipalities are comprised of the lower-tier governments within their boundaries. They provide region-wide services like arterial

⁵¹¹ ‘The Three Levels of Government’ (*Parliament of Canada*, undated)
 <https://lop.parl.ca/about/parliament/education/ourcountryourparliament/html_booklet/three-levels-government-e.html> accessed 25 July 2019.



roads; transit; policing; sewer and water systems; waste disposal; region-wide land use planning and development; and health and social services.⁵¹²

Legal Status of Local Governments

Canada's Constitution specifies the terms of Canadian federalism. It assigns responsibility for local governments to the provinces. This means that the provincial governments have full jurisdiction over the local governments in their territory. Section 92 of the Constitution Act of 1867 specifies the powers of the provinces and Section 92(8) gives each provincial legislature the power to make laws for the municipal institutions under its jurisdiction. Municipalities are often referred to as 'creatures of the province' because they rely on the provinces for their legal existence.⁵¹³

There is significant variation among the provinces in terms of the structure of municipal legislation. Historically, provincial legislation has tended to lay out every power granted to its municipalities; if a specific power is not listed, municipalities do not possess that power. However, in recent years this has shifted, and most provinces now have legislation, such as that implemented in Alberta in 1995 and Ontario in 2001, which grants municipalities the same powers as a 'natural person' unless specifically excluded by the legislation. This gives municipalities the same rights as businesses to enter into contracts, own property, and make investments. Moreover, British Columbia's provincial government sets only broad legislation within which municipalities have the authority and flexibility to respond to each community's unique and changing needs. The Government of British Columbia views municipalities as autonomous and accountable to their democratically elected municipal councils.⁵¹⁴

Both urban and rural municipalities in all Canadian provinces have some legal authority to act in the following functions: fire protection; animal control; roads; traffic control; solid waste collection and disposal (except in Prince Edward Island); land use planning and regulation; building regulation; economic development; tourism promotion; public libraries parks and recreation; cultural facilities; licensing of businesses; emergency planning and preparedness; rural fences and drainage; regulation and/or provision of cemeteries; airports (excluding major airports formerly operated by the federal government); and weed control and regulation of cosmetic pesticides.

Additionally, the following functions are typically delivered by urban municipalities: public transit; regulation of taxis; water purification and distribution; sewage collection and treatment; downtown revitalization; and regulation of noise. Generally, urban municipalities

⁵¹² 'Ontario Municipalities' (AMO, undated) <<https://www.amo.on.ca/AMO-Content/Municipal-101/Ontario-Municipalities.aspx>> accessed 25 July 2019.

⁵¹³ Tolley and Young, 'Municipalities and the Constitution', above; Sancton, *Canadian Local Government*, above, 27.

⁵¹⁴ For a comprehensive overview of Canadian municipal legislation, see Zack Taylor and Alec Dobson, 'Power and Purpose: Canadian Municipal Law in Transition' (2020) 47 IMFG Papers on Municipal Finance and Governance; 'Municipalities in British Columbia' (*British Columbia*, 2019) <<https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/systems/municipalities>> accessed 25 July 2019.



are also responsible for policing, although in some provinces special purpose bodies take care of this function. The exception is Newfoundland and Labrador, where policing is taken care of by the Royal Newfoundland Constabulary. Moreover, the Royal Canadian Mounted Police (RCMP) (or a provincial police force, as in the case in Quebec and Ontario) enters into contracts with some urban municipalities to provide policing, and it is typical for the RCMP or provincial police to provide policing in rural areas.

Ontario is unique in that the province mandates that its municipalities deliver certain social services. This includes income and employment assistance through the Ontario Works program and subsidized childcare with provincial oversight and financial assistance. Additionally, Ontario municipalities are required to provide subsidized social housing, with limited financial assistance from the province. Municipalities in other parts of the country do not have the same statutory responsibility to provide these social services.⁵¹⁵

(A) Symmetry of the Local Government System

The fact that the provinces have under the Canadian Constitution sole jurisdiction over municipalities gives rise to considerable inter-provincial variation. Although municipal powers and responsibilities thus vary by province, common core functions include planning, regulating, protecting, and providing infrastructure services for the built environment.⁵¹⁶

In some cases, there is also asymmetry within provinces in terms of how local government is structured, as different laws may exist for urban and rural municipalities. As noted above, several of Canada's largest urban municipalities are governed by charters that outline specific institutional arrangements for that municipality, and/or grant it additional powers and revenue sources. Toronto, for example, was granted charter status in 2007, giving it additional revenue raising tools beyond the property taxes and provincial transfers that most municipalities rely on. However, it should be noted that Charter Cities do not have additional constitutional protections. A municipal charter can be changed by the province at any time. Indeed, there is much disagreement surrounding the utility of granting cities such additional powers, as such powers have typically been limited and are often not fully used.⁵¹⁷

General municipal statutes and special charters are not the only laws that apply to municipalities. Indeed, since provincial governments set parameters for municipal action in a multitude of policy fields, ranging from planning and environmental services to policing and housing, the cope of municipal action is shaped by dozens, if not hundreds of different statutes in each province.⁵¹⁸ In addition, in some provinces, provincial governments may enact laws that apply only to particular municipalities or groups of municipalities – that is, single

⁵¹⁵ Sancton, *Canadian Local Government*, above, 22-23.

⁵¹⁶ Taylor and Dobson, 'Power and Purpose: Canadian Municipal Law in Transition', above.

⁵¹⁷ Harry Kitchen, 'Is Charter City Status a Solution for Financing City Services in Canada – Or is that a Myth?' (University of Calgary School of Public Policy SPP Research Paper 9-2, 2016) <https://www.policyschool.ca/wp-content/uploads/2016/03/charter-city-status-kitchen_0.pdf> accessed 26 July 2019.

⁵¹⁸ *ibid* 8.



municipalities can apply to their provincial government to request private statutes as a remedy for a particular local problem for there is no other legal recourse.⁵¹⁹

Political and Social Context in Canada

All Canadian municipalities are governed by a democratically elected council.⁵²⁰ Ward systems are commonly used, especially in large municipalities; Vancouver is Canada's only large city where councillors are elected at-large. With the exception of the City of Vancouver and larger municipalities in the Province of Quebec, local government is non-partisan. The provinces of British Columbia and Quebec are the only two provinces that have legislation that allows for the existence of political parties at the local level.⁵²¹ The fact that local government tends to be non-partisan, and that provincial party systems also tend to be quite distinct from the federal party system, means that the broader political context within which municipalities operate is marked by only weak political links among levels of government. This lack of vertical political integration, together with the weak legal status of local governments, made them the target of politically expedient decentralization in the fiscally lean 1990s. At that time, structural fiscal pressure on the welfare state produced a cascading decentralization of policy and fiscal responsibility through the Canadian federation, and municipalities had to cope with the imposition of unfunded or partly funded policy mandates from the provincial level. The result was intergovernmentally induced fiscal stress at the local level, which has only in recent years begun to be mitigated by increasing fiscal transfers.

Many scholars suggest that local governments, with their weak legal status, are primarily 'policy takers', rather than 'policy-makers', in the Canadian context.⁵²² There are certainly cases where Canadian municipalities do make policy independently of the provinces. To a significant extent, their ability to do so depends on their population size and their local property tax base. Since rural municipalities have both a small population and a weak property tax base, their autonomous policy-making capacity tends to be very limited. For both reasons, there is thus a policy capacity divide among Canadian municipalities that closely mirrors the rural/urban divide.

Like many post-industrial countries, Canada is highly urbanized. Almost 72 per cent of the population lives in urban areas with over 100,000 people, and more than a third of all Canadians live in the three largest urban areas (Toronto, Montreal and Vancouver).⁵²³ The Canadian population is thus concentrated primarily in a handful of large urban areas, whose

⁵¹⁹ Sancton, *Canadian Local Government*, above, 31.

⁵²⁰ However, upper-tier governments in two-tier systems (e.g., Greater Vancouver and Ontario's regional municipalities) sometimes have indirectly elected councils composed of representatives of lower-tier municipalities.

⁵²¹ Sancton, *Canadian Local Government*, above, 173, 180, 186, 188.

⁵²² *ibid* 251.

⁵²³ Calculated from Statistics Canada Census 2016 data reports.



population is growing quickly. By contrast, the population of rural Canada is (in most regions) growing much more slowly,⁵²⁴ and rural areas are on average older, whiter and poorer.

Table 4: Selected Demographic and Economic Indicators in Ontario, by Type of Census Division.⁵²⁵

	Metropolitan	Mixed	Non-Metropolitan
Population change (2011-2016)	+ 5.57%	+ 4.54%	+ 0.92%
Visible minority population (2016)	43.5%	13.5%	2.6%
Average household income (2016)	\$78,477	\$73,258	\$65,748

An analysis of 2016 census data conducted for this report paints a picture of the demographic and economic contrasts between rural and urban areas in Ontario, Canada’s largest province by population (table above). The data are divided into three kinds of census divisions (CDs) – metropolitan CDs, which are located in urban areas with more than 100,000 people; non-metropolitan CDs, which are fully outside settlements with more than 100,000 people; and mixed CDs, which include a combination metro and non-metro areas. As is clear from the table, non-metropolitan – that is, rural and smaller-town – CDs grew much more slowly in population than others between 2011 and 2016; they were also much whiter, with only 2.6 per cent of the population identifying as visible minority, as opposed to 43.5 per cent in metropolitan CDs; and they were poorer, with an average household income that was only 83.7 per cent of the metropolitan average. These demographic differences, which reflect an economic base that has increasingly transitioned towards post-industrial urban productive sectors, set the context for the distinct governance challenges faced by rural and urban local governments in Canada in recent years.

For some time now, rural areas in the urban periphery of large cities in Canada have experienced some out-migration of urban residents facing high housing prices in the city. It appears that the Covid-19 pandemic has rapidly intensified this trend, to the extent that may fundamentally change the rural-urban dynamic in the longer run. Of course, it is too early to tell if the trend will be sustained. There is not even reliable data on the scale of the out-migration over the course of the pandemic yet. However, it was notable that *all* the experts and practitioners interviewed for this research noted this out-migration as a major development and a source of significant challenge, as well as potential opportunity, for rural areas. Interviewees all agreed that the structural driver of the out-migration is the very high cost of housing in large urban centers, most notably Toronto and Vancouver. With the Covid-19 pandemic entrenching work-at-home possibilities for white collar professionals, and

⁵²⁴ Between 2001 and 2016, the rural Canadian population grew by 5.5%, while the overall national population grew by 16.9%. Even this modest rural growth, however, is largely concentrated near urban areas. See Federation of Canadian Municipalities, ‘Rural Challenges, National Opportunity: Shaping the Future of Rural Canada’ (2019).

⁵²⁵ All data are calculated from Statistics Canada 2016 census of the population data tables.



simultaneously enhancing the appeal of low-density rural living, this structural trend has rapidly acquired more force.

Speaking about dynamics in the Toronto area, one policy analyst said: ‘Especially with the last year, housing has just moved out of the [Toronto area] and it's encroaching on a lot of these different communities. People who would have loved to have lived in downtown Toronto, but simply can't afford to are buying homes in Oxford County’ – about 150km from Toronto.⁵²⁶ While the experts interviewed for this project all focused on the Ontario context, media reports suggest similar dynamics surrounding other large urban centres.

This influx of new residents and money brings some benefits to rural areas, such as more budget money for municipalities that rely heavily on property taxes and development fees. As one interviewee noted, ‘from a property tax perspective, from a development perspective, it's pretty significant, (...) you go to some of these places, there's a lot of nice new playgrounds and parks and stuff like that. If you go to Innisfil [a rural community one hour north of Toronto], they built one of the nicest libraries I've ever seen. It's like a monument, incredible. And they're like, “yeah, that's development dollars”’.⁵²⁷

The other side of that same coin, of course, is that housing affordability is quickly becoming a major problem in rural communities that are relatively near to urban centres. ‘This notion that affordability is only an urban issue, it really needs to dissipate’, said one respondent. Those households that cash out of hot urban property markets have been driving up housing prices in rural areas at an unprecedented rate, especially since the beginning the Covid-19 pandemic. One interviewee noted that median house prices went up 40 per cent or more during 2020 in many rural communities that are within a two-hour drive of the Toronto area.⁵²⁸ Another challenge that comes with the influx of what one interviewee called ‘rural gentrifiers’⁵²⁹ is that they tend to want more municipal services in communities that have long provided just the basics, putting upward pressure on property taxes.⁵³⁰

Most respondents also noted that the new urban out-migration is leading to cultural and lifestyle tensions in rural areas that are experiencing high rates of influx. ‘It's gonna be a little bit like it was after the Second World War, when a lot of European immigrants showed up in these communities,’ said one interviewee. ‘They haven't seen that kind of change in a generation in two generations really, and they may have a lot of people coming to town that don't look like them, don't engage in the same economic activities that they're used to, that have different expectations. And they may want to set up cricket pitches, not baseball diamonds’.⁵³¹ Another respondent noted of the new arrivals from urban areas: ‘You know, they need to have a big box store, they want some things from you know from the supermarket and

⁵²⁶ Interview with local government expert, Rural Ontario Institute (20 July 2021)..

⁵²⁷ Interview with local government expert, York University (10 July 2021)..

⁵²⁸ Interview with local government expert, Guelph University (28 July 2021).

⁵²⁹ *ibid.*

⁵³⁰ Interview with local government expert and consultant, Toronto (13 June 2021).

⁵³¹ *ibid.*



stuff, and [long-time residents] are complaining that all these weird products are showing up in the supermarket right like avocados and (...) gluten-free food'.⁵³²

It is far too early to tell how extensive this out-migration to rural areas will ultimately be, and whether it will continue after the Covid-19 pandemic. However, it appears that a significant shift in rural-urban dynamics is underway in the parts of rural Canada that are relatively close to major metropolitan centres, with possibly far-reaching knock-on effects on rural governance issues.

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Tolley E and Young WR, 'Municipalities, the Constitution, and the Canadian Federal System' (Government of Canada 2001)

⁵³² Interview with local government expert, York University (10 July 2021).



17.2 People's Participation in Local Decision-Making in Canada: An Introduction

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Public participation in local politics and decision-making in Canadian municipalities is somewhat paradoxical. On the one hand, local government structures and processes are very open to public involvement at many stages of decision-making. On the other hand, participation of all kinds tends to be dominated by property owners, and electoral engagement tends to be low. These features of the participation system, which exist across both rural and urban municipalities, are to a significant extent a function of the particular structures of local government in Canada. In this introductory section, we will in turn examine both electoral and non-electoral public participation at the local level.

As in many other parts of the world, electoral participation at the local level in Canada is lower than at other levels of government. Indeed, a recent study found that average voter turnout in Canadian local elections in recent years was less than 37 per cent – compared to over 50 per cent in provincial elections and over 60 per cent in federal elections.⁵³³ As previously noted, most Canadian municipalities have non-partisan systems of political representation, the exception being many urban municipalities in Quebec, and a few large cities in British Columbia. Without the policy cues that might be provided to voters by the party affiliation of candidates, Canadian municipal elections are often – in policy terms at least – ‘low-information’ events in which most voters do not know much about the concrete positions of candidates, and tend to vote based on name recognition.⁵³⁴ This in turn contributes to a remarkably high incumbency advantage. A recent study of a historical database of elections in four large urban municipalities found that incumbency increases the probability of an individual winning an election by more than 30 per cent.⁵³⁵ Interestingly – and in contrast to the emphasis of the academic literature on incumbency cited above – some of the experts interviewed for this research noted that in the small town and rural context, the high frequency of incumbent re-election and even acclamation may be less a function of voter behaviour, and more a symptom of a lack of willing candidates for office. As one former civil servant put it: ‘There's quite a few places in rural Northern Ontario for example where, you know, people just aren't running. And they're even – they don't really have enough people to meet their quorum, and sometimes it's people that don't want to do it anymore but they're doing it because they feel like they have to, so, you know, that's not good’.⁵³⁶

⁵³³ Sandra Breux, Jérôme Couture and Royce Koop, ‘Turnout in Local Elections: Evidence from Canadian Cities, 2004–2014’ (2017) 50 *Canadian Journal of Political Science* 699.

⁵³⁴ Laura B Stephenson, R Michael McGregor and Aaron A Moore, ‘Sins of the Brother: Partisanship and Accountability in Toronto, 2014’ in Sandra Breux and Jérôme Couture (eds), *Accountability and Responsiveness at the Municipal Level: Views from Canada* (McGill-Queen's University Press 2018).

⁵³⁵ Jack Lucas, ‘The Size and Sources of Municipal Incumbency Advantage in Canada’ (2021) 57 *Urban Affairs Review* 373, 373.

⁵³⁶ Interview with local government expert and consultant, Toronto (13 June 2021).



Low overall electoral engagement notwithstanding, some residents – specifically, homeowners – are much more politically engaged at the local level than others. Not only do homeowners vote in local elections at a much greater rate than non-homeowners,⁵³⁷ but they tend to dominate participation opportunities between elections. A growing academic literature on ‘homevoters’ in Canada and the United States largely attributes this owner-renter participation gap to homeowner motivation. Since owned housing is many families’ greatest investment and local government decisions about land use have an obvious impact on the value of that investment; and since local government is largely funded by property taxes, which are paid directly by homeowners but not by renters; homeowners are more motivated than renters to participate in local politics.⁵³⁸

In terms of non-electoral participation, Canadian local governments are quite open to participation opportunities in council decision processes. Not only are councils non-partisan, but they meet in public and provide regular opportunities for individual residents and delegations to present during proceedings. Such open proceedings have long been the norm in Canadian municipal government. They were reinforced by the so-called ‘reform’ movement of the early 1970s, when citizens’ groups rose up against modernist planning and development initiatives, and they have become deeply entrenched in provincial legislation that structures municipal decision-making processes. In addition, provincial planning legislation in many provinces mandates extensive public consultation during planning, zoning and development permitting processes, a legacy of reforms enacted after a wave of protest against technocratic planning in the 1960s and early 1970s.⁵³⁹ By contrast, instruments of direct democracy are very rare at the local level in Canada, and mechanisms of deliberative decision-making such as citizens’ assemblies or participatory budgeting processes are likewise uncommon.

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⁵³⁹ Andrew Sancton, *Canadian Local Government: An Urban Perspective* (2nd edn, OUP 2015) 222–223.



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17.3 Adopting Ranked-Choice Voting in London, Ontario

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Relevance of the Practice

Persistent low voter turnout and high incumbency re-election rates in Canadian municipalities⁵⁴⁰ have led to various proposals for electoral reform, including encouraging the emergence of local political parties, reducing the size of large city councils, and introducing internet-based voting.⁵⁴¹ In the Province of Ontario, some civic associations – mostly based in Toronto, the province’s largest city – began lobbying the provincial government a few years ago to allow municipalities to adopt ranked choice voting (also known as ranked ballots). The proposed ranked choice system retains the nonpartisan, ward-based electoral system that is most common in Ontario municipalities,⁵⁴² but allows voters to indicate their first, second and third choice of candidate for mayor and councillor. If no candidate receives a majority of the first-choice votes, the candidate with the least number of first choice votes is eliminated and the second-choice votes on those ballots are redistributed. This process continues until one candidate has more than 50 per cent of the votes. Proponents of this system argue (among other things) that it reduces ‘vote splitting’ between similar candidates; it encourages civil campaign discourse since second-choice votes matter to candidates; and it gives voters more meaningful choices.⁵⁴³

Description of the Practice

In 2016, the Ontario provincial government amended the Municipal Elections Act to allow municipalities to run ranked choice elections. While a number of municipalities seriously considered adopting the new system, only London, a city of about 400,000 residents, actually adopted it for the 2018 elections.⁵⁴⁴ London’s city council had experienced an unusual generational turnover in the 2014 elections and had many young councillors who were enthusiastic about electoral reform. Even though the city’s Clerk (who is responsible for running elections) recommended against adopting the new system for the 2018 elections on

⁵⁴⁰ See the Introduction to People’s Participation in Local Decision-Making in Canada, report section 6.1.

⁵⁴¹ Aaron A Moore, ‘The Potential and Consequences of Municipal Election Reform’ (Institute on Municipal Finance and Governance 2017).

⁵⁴² A few Ontario municipalities elect their city councillors at-large rather than in wards.

⁵⁴³ Cathy Saunders, ‘Ranked Ballot Election Model’ (Corporate Services Committee, City of London, 24 January 2017) <<https://publondon.escribemeetings.com/filestream.ashx?DocumentId=29238>>.

⁵⁴⁴ Much to the disappointment of Toronto electoral reform activists, Toronto’s city council decided not to adopt ranked ballots after having earlier signaled that it supported the reform.



the grounds of cost and complexity, the council approved the change in 2017,⁵⁴⁵ making it the only municipality in all of Canada to move away from a simple majoritarian electoral system.

In October 2018, at the same time that London ran its first ranked-choice election, two other medium-sized Ontario cities (Kingston and Cambridge) held referenda on ranked choice voting, and residents approved its use in the next (2022) municipal elections in both cases. The stage appeared to be set for the spread of ranked choice systems among Ontario municipalities – at least large urban ones; no one has seriously considered introducing ranked choice voting in small rural municipalities, where there are rarely many competitors for elected positions. Since local government institutions in Canada are fully under the legal control of provincial governments and have no constitutional status,⁵⁴⁶ however, the provincial government could just as easily revoke municipalities' option to use ranked choice voting as it approved it in the first place. The 2018 provincial election brought to power a Conservative government that was skeptical of electoral reform at any level of government, and in October 2020, it eliminated the ranked choice option for municipal elections as part of Covid-19 recovery legislation, arguing that '[n]ow is not the time for municipalities to experiment with costly changes to how municipal elections are conducted'.⁵⁴⁷ As a result, Ontario's ranked choice voting experiment has abruptly come to a halt for the foreseeable future.

Assessment of the Practice

The fact that ranked choice voting was implemented in only one municipality for one election limits our ability to draw broader insights about the merits of the practice. Indeed, it is likely that its full impact on electoral turnout, campaign dynamics and electoral outcomes would only become apparent after several electoral cycles. Available evidence from London's 2018 election is mixed. On the positive side, the election was implemented smoothly with only a modest (and largely one-off) increase in administrative costs, and about 70 per cent of those who voted ranked more than one candidate, showing widespread interest among voters in the new system.⁵⁴⁸ However, voter turnout did not increase compared to the previous election (in fact, there was a decrease of about 3 per cent); negative campaigning remained an unfortunate feature of the election season; and all candidates leading after the first round of vote counting ultimately won their seats, suggesting that ranking in and of itself did not produce significantly different electoral outcomes. Whether this apparent lack of impact on electoral turnout and dynamics would endure, or whether the new system would have emergent effects after more than one electoral cycle, is something that we cannot know. We do know, however, that the fate of ranked balloting in Ontario is another illustration of the enduring tendency of the provincial government to intervene unilaterally in municipal affairs,

⁵⁴⁵ Charlotte Kurs, 'Administering a Ranked-Choice Voting Election: Lessons from London, Ontario' (publications 4, Centre for Urban Policy and Local Governance 2020).

⁵⁴⁶ See report section 1 on the System of Local Government in Canada.

⁵⁴⁷ Sofia Rodriguez, 'Ontario Moves to Axe Ranked Ballots from Municipal Elections' *CBC News* (20 October 2020).

⁵⁴⁸ Kurs, 'Administering a Ranked-Choice Voting Election', above.



a condition that ultimately exacerbates the deficiencies of democratic representation and participation in local government.

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