

PUBLIC PARTICIPATION AS A STRENGTHENING FACTOR OF LOCAL SELF-GOVERNMENT: A LOOK AT INTERNATIONAL EXPERIENCE

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The last decades have seen growing importance attached to mechanisms and institutions of local self-government worldwide.

The concept of local self-government is not new: there are countless examples of political structures that can be defined as local self-government since ancient history, from the Greek city states through the “*comuni*” of medieval Italy to the Swiss cantons. Many traditional structures that still exist, such as the *mahalla* in Central Asia, also fit into this category.

There is, however, a new impetus towards the practice of local self-government. In spite of the enormous historical, political and economic differences between countries and regions, communities and the civil society increasingly value such institutions, calling for governments and international organisations to support their establishment and functioning.

The reasons for this development are too numerous and too complex to be analysed in a short presentation such as this. But one of them is certainly the **increasing need for ownership of government decisions by local communities**, in parallel with a growing interest in the role of the civil society as a partner to the government. As a consequence, the **principle of public participation in decision-making** is finding numerous expressions at the local level.

This presentation will provide an overview of the principle of public participation, the most common ways to realise it in the life of local communities and the fundamental reasons why its implementation reinforces local governance, and as a consequence, political and social stability.

Public participation: a principle, a right and a process

- ***The principle of public participation***

Before describing the principle and practices of public participation, it is necessary to have a brief look at the basic concept of **local government**. There is such a wide variety of local government systems and patterns that a thorough analysis is simply impossible. However, in order to better frame the object of this presentation, it is appropriate to focus on two basic aspects of local government: the **size** and the **jurisdiction**. Local self-government refers to the smallest political and administrative government units, in other words –the bottom of the government pyramid. In order to be defined as local self-government, such units must have a **general mandate or jurisdiction**, and not be set up to perform a specific function or provide a specific service –this regardless to the extent of their powers¹. Public participation occurs when such powers include mechanism and

¹ A recent research published on behalf of the United Nations elaborates on the main characteristics of local governments in a context of decentralisation. According to this work, local governments must be 1) established by legislation; 2) located within clearly demarcated borders within which there is a sense of community; 3) governed by elected officials; 4) authorised to make and enforce local regulations; 5) authorised to collect taxes; 6) empowered to manage their budgets and to hire their own employees (Cohen J.M, Petersen S.B., “*Administrative Decentralisation: Strategies for Developing Countries*, p.18).

In my opinion this gives a comprehensive definition of local self-government, however as public participation can take place even in the absence of one or more of these characteristics, I am using a more minimalistic definition for the purposes of this presentation.

regulations for people's direct involvement in the process leading to the adoption of economic, social and political decisions that fall within the jurisdiction of these institutions. It is important here to **differentiate public participation from the right to elect local authorities**. In an ideal democracy, elections at all levels are the most important tool for citizens to influence the decision-making process. However, since elections are held at regular intervals on the basis of programs that are determined at the time of elections, there is a risk of losing touch with changing and evolving needs. Therefore, it is essential to develop mechanism for regular interaction between elected representatives and their constituencies. This is the role of public participation: it does not replace elections and the decision-making power that is vested to government authorities. Instead, it supports a better realisation of this power, as it allows for a continuous and more accurate assessment of community needs and creates a stronger sense of ownership.

Public participation is at the same time a political principle, which is progressively acquiring the status of a right, a practice, and a process. The principle of public participation stems from the fundamental human rights of **freedom of opinions and assembly**, and holds that **those who are affected by a decision have the right to be involved in the process leading to its adoption**.

There are three basic components of this principle: **participation**, which implies the creation of adequate mechanisms and procedures; **access to information**, to enable awareness on government policies, plans, initiatives that citizens need or wish to influence; **access to justice**, as a guarantee for an adequate realisation of the other two components.

- **Public participation in international law**

While public participation is a legally significant notion, the principle is still emerging as a binding norm of international law and it has only just began to be broadly implemented in the practice. As a consequence, even if there is not a legal or political document dedicated exclusively to public participation in international law, this principle is enshrined in a growing number of international documents.

As noted above, the principle of public participation stems from fundamental human rights, and its roots can be found in some universal human rights instruments. The **Universal Declaration on Human Rights** makes reference to the "*right to take part in the government.....directly or through freely chosen representatives*", adding that "*the will of the people shall be the basis of the authority of governments*"². The Universal Declaration also establishes the right of access to information, stating that "*Everyone has the right to seek, receive and impart information and ideas through any media and regardless of frontiers*"³. These principles are repeated in the **International Covenant on Civil and Political Rights**⁴.

The principle of public participation appears also in a series of sectorial international treaties and declarations, particularly concerning the environment and sustainable development. To quote but a few⁵, the **Convention on Biological Diversity** specifically mentions participation by women at "*all levels of policymaking and implementation*" and public participation in environmental impact assessments⁶. The **Convention on Climate Change**⁷ also includes the latter provision, as well as requiring Parties to "*promote and cooperate in education, training and public awareness [...] and [to] encourage the widest participation including that of non-governmental organisations.*" According to this Convention, it is the duty of the State to "*promote and facilitate*" public

² Art. 21, Universal Declaration on Human Rights, <http://www.un.org/en/documents/udhr/>

³ Art. 19, Universal Declaration on Human Rights, <http://www.un.org/en/documents/udhr/>

⁴ Art. 19, 21, 22 and 25, International Covenant on Civil and Political Rights, http://www.unhcr.ch/html/menu3/b/a_ccpr.htm

⁵ For a comprehensive, although non-exhaustive list of international instruments enshrining the principle of public participation see Annex I.

⁶ <http://www.cbd.int/convention/text/default.shtml>

⁷ Art. 4 (1) (I) and art. 6 (a) (iii), UN Framework Convention on Climate Change, http://unfccc.int/essential_background/convention/items/6036.php

participation to address climate change. The **Convention to Combat Desertification**⁸ is even more explicit, as it specifically notes:

- i) the importance of participation from women and youth at all levels;
- ii) that decision-making is to involve local communities;
- iii) the role of non-governmental organisations in facilitating and promoting awareness.

Article 10(f) describes how national action programmes must “*provide for effective participation at the local, national and regional levels of non-governmental organisations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organisations, in policy planning, decision-making, and implementation and review of national action programmes*”.

Public participation is also conceived as a necessary mean for achieving sustainable development. The **UN Declaration on the Right to Development**⁹ makes public participation a central objective in development when it states that improvement of the well-being of the entire population will be based on “*active, free and meaningful participation*” and that “*every human and all peoples are entitled to participate in [and] contribute to.....development*”.

Other UN documents include the **Rio Declaration on Environment and Development**¹⁰, whose 10th principle states that “*environmental issues are best handled with participation of all concerned citizens, at the relevant level*” and includes a clear reference to access to information and access to justice as strictly connected with public participation.

The most comprehensive international instrument is the **UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, or Aarhus Convention**¹¹. This treaty focuses on environmental matters, but it contains the most complete legal expression of the principle of public participation in all its components. In my opinion, the Aarhus Convention provides the best approach to follow when designing public participation strategies, legislation and mechanisms at the national, sub-national and local level.

To conclude, there are some regional instruments dedicated specifically to public participation, although none of them has a legal status: the Council of Europe and the European Commission have adopted respectively a code of good practice and minimum standards on public participation¹², while an African Charter for Participation in Development was adopted in 1990¹³.

- ***Public participation at the local level: key principles and aspects***

In the practice, public participation is a process by which government institutions consult with the public in order to incorporate their concerns, needs and values into government decisions. This requires the establishment of guidelines and practices that enable the public to contribute to political, economic, social and other decisions using a variety of methods such as public hearings, advisory committees, public councils, focus groups, questionnaires and interviews that help identifying and addressing public concerns. The general objective of public participation consist of

⁸ Convention to Combat Desertification, <http://www.unccd.int/en/about-the-convention/Pages/Text-overview.aspx>

⁹ <http://www.un.org/documents/ga/res/41/a41r128.htm>

¹⁰ <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

¹¹ UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (www.unece.org/env/pp/treatytext.html): articles 6-8 cover public participation.

¹² Council of Europe's Code of Good Practice for Civil Participation in the Decision-making Process (http://www.coe.int/t/ngo/code_good_prac_en.asp); General principles and minimum standards for consultation of interested parties by the European Commission (ec.europa.eu/governance/docs/comm_standards_en.pdf)

¹³ <http://repository.uneca.org/handle/10855/5673>

reconciling the interests of state institutions and different social groups through consultations¹⁴.

As indicated above, there is a large variety of public participation mechanisms, although these often share common features¹⁵. Rather than trying to classify this enormous wealth of experience, it is more practical to define the principles, criteria and basic rules that are necessary to ensure an effective public participation at the local level, and provide a short overview of the most common tools.

In this respect, it is possible to identify five principles that in my opinion should characterise public participation mechanisms and institutions:

- **Effectiveness / Rule of Law:** this criterion refers to the legal and institutional framework for public participation. Its correct implementation can be measured by the ease with which the public can get informed, actually participate, and seek judicial remedies when necessary.
- **Inclusiveness** has two aspects: first, the ability to include all relevant groups of a given community, including vulnerable groups; the second refers to the approach of local authorities.
- **Flexibility**, which consists of the possibility to use the widest possible array of tools and methodologies for public participation.
- **Independence** refers to the status of institutions created to facilitate public participation with respect to government authorities.
- **Transparency** refers to the possibility citizens have to know the regulations, mechanisms and institutions for public participation.

These principles could be seen as “minimum standards” and are to some extent interconnected.

• **Effectiveness (Rule of Law)**

The role of the legislation in providing a regulatory framework is essential to guarantee the effectiveness of any public participation mechanism. In the international practice, public participation is regulated in different ways: by constitutions or constitutional laws, ordinary laws, by-laws and administrative codes, special normative acts, internal regulation of state bodies, policy documents. In the majority of the cases, public participation mechanisms are established by laws or acts, having the force of law, in combination with by-laws and administrative regulations.

These acts should always include not only generic “principle” provisions but also clear rules and mechanisms to regulate the implementation of the principle in the everyday life of the communities. There are two essential components that should be always included in any regulatory framework:

- **Phased interaction:** the involvement of the public should be coordinated with the whole decision making process. In other words, the public should not be allowed to discuss only a finalized proposal, but should be involved in all the phases of its preparation. This principle is included in the European Union and Council of Europe’s documents on public participation.
- **Obligation to reply:** government authorities have a duty to take into account public opinion expressed through the relevant mechanism and provide explanations on whatever decisions they take on the issue at stake. Therefore, the legal framework must include provisions and

¹⁴ V.N. Rudenko, Consultative public councils: organisation and activity (В. Н. Руденко, Консультативные общественные советы: особенности организации и деятельности) (<http://www.politex.info/content/view/271/30/>)

¹⁵ For a non-exhaustive list over 100 mechanisms, see Rowe and Frewer, A Typology of Public Engagement Mechanisms, 2005.

mechanisms to ensure such accountability –the most obvious being the obligation to reply formally and within a deadline. This is where access to justice plays a role, although analyzing it is outside the scope of this presentation. It is possible, however, to foresee non-judicial ways of settling cases when local authorities do not respect the will of communities in violation of public participation provisions, such as mediation and arbitration. An interesting and often quoted example comes from Bolivia: if local authorities decide not to follow recommendations of the so-called Oversight Committees on the use of the local budget, the Committees can initiate a formal procedure, as a result of which local authorities may be called to explain their decision to the Parliament¹⁶.

From the legal point of view, it is important to understand that public participation does not require only a dedicated legal act. Legislation on non-governmental organizations, on freedom of assembly, on freedom of and access to information and on access to justice is essential to ensure proper implementation of the principle of public participation. If creating civil society groups or organizing public meetings is difficult, if disclosure of information is excessively restricted, and if there are no legal remedies when the principle of public participation is violated by authorities, the effectiveness of public participation mechanisms will be seriously reduced. Therefore, governments should adopt strategies to implement public participation, where in addition to creating dedicated legislation they should review, and where necessary amend, other relevant laws in order to create the ground for public participation to be effective.

- **Inclusiveness**

The nature of public participation brings us to another basic principle –inclusiveness.

There are different aspects to this principle: the first consist of advancing the right to participation in the context of equality and group rights, in order to ensure equal and full participation of all groups in society –i.e. women, religious or ethnic minorities, vulnerable or disadvantaged groups such as the poor or disabled people¹⁷.

The second aspect concern the authorities approach. If an issue is controversial, a mere procedural, “box-ticking” implementation of public participation may not be enough to find a solution. The fact that “the people have been heard” is not alone enough to call a consultation process participatory – particularly when the authorities decide to proceed in spite of objections by a significant part of the community. There may be cases when a decision is not welcome by local communities, but is required by larger (regional or national) interests, such as infrastructure (roads, railways, dams) or when any decision will have a negative impact on one or another group (for example, shutting factories to reduce pollution, leads to loss of jobs, while keeping them open damages public health). In such cases, the legislation often does not provide enough guidance to make such “value” choices. Therefore, an inclusive and flexible approach can be the key to build consensus around whatever decision the authorities will eventually take.

- **Flexibility**

Strictly connected with inclusiveness is the possibility to use different tools or methodologies, particularly when the initiative comes from the public itself. For example, it should be possible to form initiative or similar informal groups without necessarily having to go through the inevitable administrative and financial burdens that regulate the creation of permanent non-governmental organisations; and local authorities should also have a choice on which methodology to use when

¹⁶ http://pdf.usaid.gov/pdf_docs/pnaby243.pdf and http://www.oas.org/juridico/spanish/blv_res16.pdf¹⁷For example, the UN Convention on the Rights of Persons with Disabilities includes provisions related to their full participation in public life, see www.un.org/disabilities/convention/conventionfull.shtml.

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consulting with the public. Such choice should be left entirely to the discretion of the community and its local government, and based only on the requirements of the issue at stake¹⁸.

- **Independence**

Public participation is primarily a form of permanent representation of the interests of the civil society to the government. Given this characteristic, public participation is often implemented via the creation of specific permanent bodies or committees, whose members are elected or nominated by civil society organisations. Such institutions, known in the area former Soviet Union as **public councils** should in principle retain full independence from the government authorities, although they are often attached to government agencies and include government officials with coordination functions. However, public councils are also a “communication and dialogue channel” between the civil society and the government: as a consequence, even if civil society representation should in principle prevail, a government’s stake can be foreseen. In the most common practices, the government nominates or approves part of the public council members, and government representatives sit in public councils as observers or in a “liaison” role. In some cases, government officials are responsible for the organisation of the work of the public council. In any case, the mechanism of formation of community councils play a key role¹⁹.

Another mechanism, that can be combined or merged with a public council, consists of establishing **contact or focal points** within government institutions, i.e. dedicated offices tasked with facilitating the implementation of public participation procedures and more in general, responsible for relationship with the public. Such offices would also be responsible for providing information on government activities and plans. Even if they would be an integral part of the local government structure, focal/contact point must be able to execute their tasks independently and according only to the relevant legislation.

- **Transparency**

The mechanisms, procedures and tools available to the public as well as the regulations concerning public participation must be visible and accessible by all stakeholders and the general public. Effective public participation depends on access to understandable, accurate and complete information about government operations and decision making. Hence laws regarding public participation often deal with the rights of access to information and freedom of information. International law is very clear on this connection: for example, both the Aarhus Convention and the Rio Declaration draw a close link between access to information and public participation. The Rio Declaration states among the rest that: “...*each individual shall have appropriate access to information [concerning the environment] that is held by public authorities States shall facilitate and encourage public awareness and participation by making information widely available*”²⁰.

- ***Main tools for public participation***

Public participation varies from simply sharing information to active engagement of citizens in the development and management of projects and services. Tools to build participation range from stakeholder’s consultations and public hearings to community watchdog groups and public-private partnerships. The common thread that runs through the various tools is the commitment of the local

¹⁸ Here we can see how these principles are interconnected: flexibility means the use of different tools that work better if the authorities have an inclusive approach to public participation, if the law does not create obstacles to their use and if they are known by the public.

¹⁹ Among the numerous examples available in the former Soviet space, one is the Public Council of the city of Saratov, which has a general mandate to discuss any issue relevant for the municipality and is open to any NGO legally registered within its territory, see Decree of the Head of the Administration of the city of Saratov no. 603, 25 July 2007 / Постановление главы администрации города Саратова, 25 июля 2007 г. N. 603 (www.saratovmer.ru/oksovet/13713)

²⁰ Principle 10 of the Rio Declaration, <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

government to share information and engage in an open dialogue. The views of the citizens must not only be heard but also reflected in decisions, thus making authorities responsive and accountable to communities.

In the previous paragraph I described two institutional arrangements to facilitate public participation: public councils and dedicated focal points. There are however a number of tools that can be used regardless to the institutional arrangement in place. As noted above, there is a wealth of experience and best practices available, therefore I will limit myself to a few, most commonly used tools.

- ***Study circles***

A study circle, also called a dialogue circle or a dialogue to action, is a restricted group of people chosen on the basis of their professional background. This approach involves organising discussion through a series of stages where participants discuss alternative views to specific issues, and exchange ideas and experiences with local administrations. A study circle meets regularly over a certain period of times (weeks or months) and usually produces two or more alternative views to an issue that will be discussed in a larger circle. Thus a study circle is a sort of expert working group, where the diverse experience and professional background of participants is used to better define problems and propose solutions. As such, a study circle is a good tool to develop or assess long-term plans.

- ***Citizen Advisory Boards***

These are groups of citizens formed to deal with specific issues, in order to provide local authorities with relevant information and recommendations. They can be formed by initiative of local authorities or by request of citizens themselves. Like study circles, they also focus on specific issues, but use a wider range of methods including research, testimonies, questionnaires and interviews. They can be permanent or temporary and often acquire a quasi-institutional status, with the local authorities setting rules for their functioning and providing administrative support. Participation is usually informal and voluntary.

- ***Contract committees***

A less frequently used tool, contract committees can be formed when the local government has the authority to award contracts for delivery of services, be it infrastructure construction or maintenance, healthcare, etc. Contract committees are tasked with oversight of the whole cycle of government contracts, from procurement to implementation.

- ***Public Hearings***

Probably the most commonly used tool, public hearings are open gatherings of citizens and officials, where the former can express their opinion and make their proposals on government decisions. Public hearings provide any interested individual with the possibility to influence decision-making and are critical to the establishment of open and democratic practices in local government administration. The responsibility of their organisations rests with government authorities, although citizens can call for them.

- ***Public Watchdog Groups***

These are community-based organisations or initiative groups whose key role is civic activism and dissemination of information related to government initiatives. Such groups have no formal relationship with government entities. They monitor local government issues and policies, correspond with media and government authorities, attend public hearings where they speak for or against public policy proposals or formulate their own.

- ***Participatory Budgeting***

Participatory budgeting is a decision-making process through which citizens play a direct role in deciding how and where community resources should be spent. These programs create opportunities for engaging, educating, and empowering citizens, which can foster a more vibrant civil society. This methodology has become a real innovation in municipal finance, local democracy and social development. It has been adopted by a wide range of cities, mostly in Latin America where it started by the late 1980s²¹.

Conclusion

The existence of local self-government structures combined with local civil society organisations creates the basis for the pluralism that is central to sustainable democratic development. **Public participation connects these two elements** and, by allowing local communities to manage their own affairs, enables better responses to people's needs and priorities.

Public participation is essential to **build consensus and social accord**. Effective public participation encourages citizens to be more engaged in the decision-making processes that have an impact on their community. Thus citizens can advance their understanding on how government works and acquire the capacity to influence its decisions. Communities that participate actively in the adoption of any decision affecting them will also support their implementation; and an informed public is more likely to understand decisions, thus contributing to local, and subsequently country's stability.

Public participation is also important for government transparency and accountability. In fact public participation mechanisms cannot function without transparency, considering also their close connection with access to information. In addition, they create a duty to "report to the public", thus enhancing government accountability.

Therefore, the impact of public participation goes beyond the mere decision-making procedures; the transparency it requires and the accountability it stimulates also contribute to counter bad governance and corruption; to foster positive, trust-based attitudes; to contain social, economic and political conflicts and to manage them within an orderly framework, thus helping to contain extremist trends.

Hence an effective implementation of the right to public participation can play a very important role in securing the essential link between democracy, on the one hand, and governance and stability on the other.

²¹ It is estimated that around 250 cities are currently applying the participatory budgeting methodology, see http://ww2.unhabitat.org/campaigns/governance/activities_7.asp.9