The Emerging Right to Directly Participate in Local Governance

Enhancing the Social Inclusion of Minorities and the Politically Alienated

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ABSTRACT

Democracy is in crisis and the crisis is in ‘representative’ democracy. Citizens are disenchanted, disengaged, politically alienated and socially excluded. They aspire to directly participate in their own governance. Taking part in public affairs by voting in elections or being a member of a political party or a candidate for public office are central elements of participation. However, participating in cyclical elections is only a small part of political participation; participation in public affairs is an ongoing process.

Much of the criticism of representative government is that it fails to enable greater direct civic participation. Across Europe there is a recognition that representative democracy must be supplemented by tools of participatory democracy and the implementation of mechanisms of participatory democracy is increasing. The recognition of the importance of civil participation in government and its increasing implementation has led to the emergence of a normative right to directly participate in local governance.

Where tools of participatory democracy have been implemented at the local level there has been a demonstrable increase in social inclusion and empowerment. Despite the demonstrated potential of participatory democracy to enhance social inclusion, European states and institutions have ignored the potential of direct participation to supplement representative democracy in minority bodies. Tools of participatory democracy also have the potential to facilitate dialogue between minorities and majorities and assist in the integration process.

The implementation of participatory democracy in minority and mixed bodies, established at the local level, have the potential to enhance the social inclusion of both minorities and the politically alienated segments of the majority population, and foster integration.
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Finally, I would also like to acknowledge the understanding and support of my children, Gabriel and Hanna, and, for everything, my life-partner Seung Hee Han.
Anti-Plagiarism Declaration

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<tr>
<td>ACFC</td>
<td>Advisory Committee on the Framework Convention for the Protection of National Minorities</td>
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<td>CBP</td>
<td>Common Basic Principle</td>
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<td>CLRA</td>
<td>Congress of Local and Regional Authorities of the Council of Europe</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CoM</td>
<td>Council of Ministers of the Council of Europe</td>
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<td>CoR</td>
<td>Committee of Regions of the European Union</td>
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<td>EC</td>
<td>European Commission of the European Union</td>
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<td>ECHR</td>
<td>European Convention on Human Rights and Fundamental Freedoms</td>
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<td>ECTHR</td>
<td>European Court of Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>FCNM</td>
<td>Framework Convention for the Protection of National Minorities</td>
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<td>FRA</td>
<td>Fundamental Rights Agency of the European Union</td>
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<td>HCNM</td>
<td>High Commissioner on National Minorities</td>
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<td>HRC</td>
<td>Human Rights Council of the United Nations</td>
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<td>HRCN</td>
<td>Human Rights City Network</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>MLG</td>
<td>Charter for Multi-Level Governance in Europe</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OHCHR</td>
<td>The Office of the United Nations High Commissioner for Human Rights</td>
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<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<td>OSCE</td>
<td>Organization for Security Co-operation in Europe</td>
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<tr>
<td>PACE</td>
<td>Parliamentary Assembly of the Council of Europe</td>
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<td>PB</td>
<td>Participatory Budget or Budgeting</td>
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<td>TEU</td>
<td>Treaty on the European Union</td>
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<td>TFEU</td>
<td>Treaty on the Functioning of the European Union</td>
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<td>UCLG</td>
<td>United Cities and Local Governments</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNECE</td>
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INTRODUCTION

Representative democracy has been the subject of extensive criticism for a generation and trust in politicians, democratic governance, political institutions and existing democratic processes has been progressively declining for decades. Voter turnout has also been steadily falling. Elected assemblies are decreasingly representative and representative democracy does not represent the general interest. Today, according to the Parliamentary Assembly of the Council of Europe (PACE), there is a ‘crisis of democracy’ and a ‘crisis in representation.’ This crisis in democracy is manifested by ‘political disenchantment, indifference to political affairs [and] high abstention rates.’ A significant segment of the population feel that political processes do not work for them and their purported ‘representatives’ are not representative. They are politically alienated and socially excluded.

It is the delegation of decision-making power to purported representatives that has led to the political alienation of a significant segment of society. The lack of opportunities to directly participate in public affairs and the decision-making processes of government authorities ‘has further deepened people’s distrust in democratic institutions and the quality

5 PACE, Res. 1746, ‘Democracy in Europe: crisis and perspectives’ (2010)1, at ¶¶1, 2.5 (a reference to ¶ or ‘¶’ is a reference to a paragraph number or paragraph numbers, respectively).
6 Sommermann, supra note 2, at 5.
7 Claudia Chwalisz, The Populist Signal: Why Politics and Democracy Need to Change (2015), at 12 (‘Large swathes of voters no longer feel that traditional politics represents or works for them.’).
8 Ibid.
of the democracy they live in and increased their feeling of powerlessness and frustration.\textsuperscript{9} The demise of trust in representative democracy undermines community cohesion.\textsuperscript{10}

This distrust in political institutions and the decrease in civic participation are, at least partly, responsible for the rise of populism and the concomitant rise in the popularity of ‘far-right’ parties in Europe.\textsuperscript{11} ‘A deep sense of political alienation is a fertile breeding ground for populists.’\textsuperscript{12} The ‘rise of populist parties [i]s a product of disillusionment with political parties and elections, of people feeling like they do not have a voice in the decisions being taken by those who are meant to represent them.’\textsuperscript{13} The decline in civic participation has likewise left many people feeling alienated from mainstream society and excluded from political processes. ‘[P]eople divorced from community, occupation and association, are first and foremost among the supporters of extremism.’\textsuperscript{14} Alienation, powerlessness and frustration, and a poorly functioning political system, result in social exclusion.

There is no doubt that taking part in public affairs by voting in elections or by being a member of a political party or a candidate for public office are central elements of participation. However, participating in cyclical elections is only a small part of political participation; participation in public affairs is an ongoing process. Much of the criticism of representative government is that it fails to enable greater direct civic participation. Individual participation in governance has been subsumed by representative democracy and is limited to dialogue with representatives and voting in periodic, cyclical elections.

\begin{itemize}
  \item \textsuperscript{9} PACE, Res. 1746, \emph{supra} note 5, at ¶1.2.
  \item \textsuperscript{10} Chwalisz, \emph{supra} note 7, at 12.
  \item \textsuperscript{11} ‘Europe’, unless otherwise specified, refers to the Member States of the Council of Europe, collectively.
  \item \textsuperscript{13} Chwalisz, \emph{supra} note 7, at 4.
\end{itemize}
To reduce political alienation and social exclusion, and empower their communities, and, more importantly, interact with each other, people aspire to participate in governance by methods other than voting in periodic elections, particularly at the local level.\textsuperscript{15} PACE has recognized that ‘representation can no longer be the only expression of democracy.’\textsuperscript{16} There is an increased awareness that representative democracy must be supplemented with ‘more sustained forms of interaction between citizens and the authorities.’\textsuperscript{17} The developing awareness of the importance of direct participation in government has led to the increasing use of mechanisms of participatory democracy across Europe, and the world.

Social inclusion is a fundamental aim of Europe’s minority protection framework. Minority participation in public life is considered an important aspect of social inclusion. The implementation of the right to ‘effective’ participation of minorities in public life is mandated by the Council of Europe (‘CoE’) in the Framework Convention for the Protection of National Minorities (‘FCNM’).\textsuperscript{18} However, in implementing this right European governments have predominantly relied on potentially flawed representative mechanisms, which alone provide only limited participation. Supplementing minority representation with tools of participatory democracy, particularly at the local level, will enhance the social inclusion of minorities and improve the effectiveness of their participation.

While the social inclusion of minorities is of fundamental importance to their effective participation, it is also a necessary element of integration. Diversity and integration are both goals of a liberal democratic society. Even though some suggest that multiculturalism is in ‘retreat,’\textsuperscript{19} and others such as (then) British Prime Minister David

\begin{flushleft}
\footnotesize
\begin{enumerate}
\item PACE, Res. 1746, \textit{supra} note 5, at ¶2.
\item \textit{Ibid.}, at ¶2.1.
\item Framework Convention for the Protection of National Minorities (ETS No. 157) and Explanatory Report, H (95) 10.
\item See Will Kymlicka, \textit{Multicultural Odysseys} (2007), at 123.
\end{enumerate}
\end{flushleft}
Cameron, (still) German Chancellor Angela Merkel and (then) French President Nicolas Sarkozy go further, declaring, in 2010 and 2011, that ‘multiculturalism is dead,’ diversity and integration remain the dominant policies of the CoE, the Organization for Security and Co-operation in Europe (‘OSCE’), and the European Union (‘EU’). European institutions have recognized the importance of dialogue in fostering integration. Dialogue between minorities and majorities is most effective when it is direct and without intermediaries (such as representatives).

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This thesis examines, addresses and analyses the nature, endorsement and implementation of mechanisms of participatory democracy (such as participatory budgeting, consultative processes and e-democracy), particularly in Europe. The thesis examines whether the increasing implementation and endorsement of these mechanisms have precipitated a normative individual right to directly participate in governance, particularly at the local level. As importantly, this thesis also endeavours to address whether mechanisms of participatory democracy enhance the social inclusion and effective participation of both minorities and the politically alienated segment of the majority population. Finally, the thesis considers the potential of locally implemented participatory democracy to supplement representative democracy and enhance participation and social inclusion, and thereby support the implementation of Europe’s integration and diversity policies.

The methodology undertaken in preparing this thesis involved desktop research, the collation and review of a plethora of material addressing issues of governance, in particular local governance; social inclusion, empowerment and political alienation; minority protection; and European and international law (both treaty-based and customary). The material reviewed includes primary reference texts, international and European legal

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instruments, academic texts, and journal articles. The relevant legal instruments, directives, recommendations, comments, policy documents and other pertinent publications of international and European bodies were considered, in particular those of the UN (particularly the Human Rights Council), the EU (primarily the European Commission (‘EC’), the Fundamental Rights Agency (‘FRA’), and the Committee of Regions (‘CoR’)); the CoE (notably the Advisory Council on the Framework Convention for the Protection of National Minorities (‘ACFC’) and the Congress of Local and Regional Authorities (‘Congress’ or ‘CLRA’), as well as the jurisprudence of the European Court of Human Rights); and the OSCE (specifically, the thematic reports of the High Commissioner on National Minorities (‘HCNM’)). Press releases and official speeches from these institutions were reviewed. Quantitative reports on the effect of the implementation of mechanisms of participatory democracy were analysed, including institutional studies from the World Bank, the municipal government umbrella organization ‘United Cities and Local Government’ (‘UCLG’), and other associations of local and municipal governance. A range of municipal and local government websites were also visited and analysed in relation to their adoption of mechanisms of participatory democracy.

In adopting this methodology, the thesis proceeds as follows:

Part I demonstrates that the mechanisms of participatory democracy such as participatory budgeting, consultative procedures and e-democracy enhance social inclusion. It also establishes that they are beneficial for civic participation (a virtue in itself), good governance (increased accountability and transparency, and a reduction in corruption), improved service delivery and the implementation of positive social outcomes; and they empower communities. The opportunity to directly participate in governance is also shown to decrease the alienation of the disempowered and disenchanted segments of society.

Part II demonstrates that the endorsement of direct participation in government by international institutions and instruments, together with the increase in utilizing mechanisms of participatory democracy, suggests a right to directly participate in governance is emerging as a global norm. While a right to directly participate in governance may be emerging at the international level, Part II also establishes that it has
crystallized in certain European states, at the local level, by virtue of the *Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority* (‘Additional Protocol to the Charter of Local Self-Government’),\(^21\) and, furthermore, a right to participate in local governance is emerging as a pan-European norm.

*Part III* concerns the minority right of *effective participation* and criticises the almost exclusive focus on constitutional and electoral mechanisms to implement the right. The thesis does not delimit or define ‘minorities’ and in addressing ‘minorities’, the thesis includes ‘ethnic or national’ minorities, ‘new’ minorities and indigenous peoples.\(^22\) In any event, participation in public affairs is vital for the inclusion and integration of all minorities, old or new, and indigenous peoples. Despite the increasing use of tools of participatory democracy to enhance mainstream civic participation, participatory democracy has largely been ignored in implementing the minority right to effective participation. *Part III* suggests that supplementing engineered electoral mechanisms intended to facilitate minority participation (without replacing them), with tools of participatory democracy at the local level will further the effective participation of minorities and their social inclusion.

*Part IV* draws *Parts I, II* and *III* together in the context of the dominant European policies of social inclusion and integration and argues that a fundamental proponent of both -- dialogue -- can be facilitated by mechanisms of participatory democracy utilized at the level closest to the people. It reiterates that local participatory democracy is enabled and facilitated by the international and European legal and normative framework. In facilitating intercommunity dialogue, in accordance with the existing legal framework, the social inclusion of minorities and the politically alienated will be improved.

\(^{21}\) Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority and Explanatory Report (2009), ETS No. 207.

Finally, this thesis concludes that a universal and regional right to direct participation in local governance is emerging as a norm in international law. In Europe, the EU has adopted mechanisms of participatory democracy and it is specifically included as an individual ‘right’ at the local government level by the Additional Protocol to the Charter of Local Self-Government. Direct participation in local governance enhances social inclusion. Mechanisms of participatory democracy, involving both members of minority and majority communities, utilized at the local level, can facilitate intercommunity dialogue thereby fostering integration. Thus, the thesis endorses mechanisms of participatory democracy and a right to participate in local governance as an important supplement to representative democracy that may assist in social inclusion, community empowerment and integration.

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This thesis focuses on the participation of individuals and minorities both in legislative and regulatory decision-making processes and in the overall policy-making process; includes involvement in both formal and informal settings. It does not focus on the participation of non-governmental organizations (‘NGOs’). This thesis also does not provide any in-depth analysis of the enabling environment for civic participation: the access to information, and the freedoms of expression and assembly. Instead, it focuses on the methods and mechanisms of participatory democracy and the legal framework for implementing those mechanisms.
PART I

IMPROVING DEMOCRATIC GOVERNANCE AND SOCIAL INCLUSION THROUGH PARTICIPATION

A. REPRESENTATIVE DEMOCRACY IS FLAWED AND PARTICIPATION IN GOVERNANCE ENHANCES SOCIAL INCLUSION

The reliance on representative democracy and referenda has left part of society alienated and excluded. Direct participation in governance enhances social inclusion. It also improves democratic governance. More importantly, it increases trust in government and democracy.

1. Representative Democracy and Referenda Do Not Facilitate Ongoing and Genuine Participation and Trust in Governance has Declined

There are abundant electoral mechanisms utilized in implementing ‘representative democracy,’ including first past-the-post voting, proportional representation, block voting, alternative preferential voting, a run-off system, party proportional systems, and single transferable and single non-transferable voting. Each of these electoral mechanisms are imperfect and the ‘representativeness’ of the elected candidates is potentially limited. For

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23 In a first past-the-post voting system, each voter in a constituency gets a single vote and whomever gets the most votes wins; with proportional representation, the proportion of winning representatives reflects the proportion of votes received; in block voting, each voter has as many votes as there are candidates and the candidates with the most votes win; with alternative preferential voting, voters rank candidates in order of preference, and if no candidate achieves an absolute majority of first-preferences, votes are reallocated from other candidates beginning with the candidate with the lowest number of first preferences until one candidate has more than 50 per cent of the votes; in a run-off system, if no candidate wins more than 50 per cent of the vote a second election is held between the first and second vote winners; with party proportional systems, voters vote for a party and the parties receive seats in proportion to their overall share of the vote; in single transferable voting, voters rank candidates in order of preference in multi-member constituencies and candidates must exceed a ‘quota’ of first-preference votes and, as in alternative voting, the votes of those who do not reach the quota are distributed in order of preference until other candidates reach the quota and all the seats are filled; and with single non-transferable voting, in electing candidates in a multi-member constituency, voters have only one vote and the candidates with the highest vote tallies take the seats, as in first-past-the-post voting. See, generally, European Commission for Democracy Through Law (Venice Commission), Report on Electoral Systems: Overview of Available Solutions and Selection Criteria, Study no. 250/2003, CDL-AD(2004)003.
instance, first-past-the post systems ‘are more likely to result in a two-party race or at least a concentration of seats in the hands of the leading two parties’ unlike proportional representation, which ‘tends towards a more faithful representation of the various political forces.’\textsuperscript{24} However, proportional representation results in the fragmentation of representative parties and often makes it near-impossible to form stable parliamentary majorities.\textsuperscript{25} One of the main criticisms of representative democracy ‘is that the general interest is not represented satisfactorily in practice.’\textsuperscript{26} Elected assemblies are perceived ‘as less and less representative.’\textsuperscript{27}

It is not only representative democracy that has been the subject of disparagement: direct participation facilitated by referenda has been criticised as ‘rudimentary’ and ‘most unfit to regulate increasingly complex issues, which often require specialized knowledge and can rarely be reduced to a “yes” or a “no.”’\textsuperscript{28} Referenda processes are also subject to exploitation by organized and mobilized interest groups that are not reflective of the general interest. Political parties have the best prospects of success in referenda, thereby generating outcomes that replicate purportedly representative institutions.\textsuperscript{29} Indeed, ‘empirical studies [have shown] that it is predominantly the male, well-educated middle class which participates in plebiscites.’\textsuperscript{30} Accordingly, democracy ‘requires more citizen involvement beyond the established elements of direct democracy that simply enable voters to decide between “yes” or “no”.’\textsuperscript{31}

\textsuperscript{24} \textit{Ibid}, at ¶17.
\textsuperscript{25} \textit{Ibid.}, at ¶15.
\textsuperscript{26} Sommermann, \textit{supra} note 2, at 10.
\textsuperscript{28} \textit{Ibid.}
\textsuperscript{29} \textit{Ibid.}
\textsuperscript{30} Kropp, \textit{supra} note 15, at 57.
\textsuperscript{31} Sommermann, \textit{supra} note 2, at 10.
Irrespective of the virtues and flaws of each electoral system, representative democracy and referenda as the sole means of participation are flawed resulting in the alienation of significant segments of the population.

2. Participation has Inherent Value, Enhances Social Inclusion and Increases Trust in Democracy

Participation in and of itself has intrinsic value and is a vital element of democratic governance.\(^{32}\) Civic participation empowers communities.\(^{33}\) It also reduces poverty and increases social inclusion\(^{34}\) by redirecting resources to the most vulnerable in society.\(^{35}\) Just as importantly, civic participation improves governance, accountability,\(^{36}\) transparency\(^{37}\) and, at the same time, reduces corruption. Citizen participation has resulted in improved governance,\(^{38}\) which has led the World Bank to endorse mechanisms of participatory democracy. The World Bank, perhaps surprisingly, supports participatory

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\(^{34}\) CoE, ‘Guidelines for civil participation in political decision making’ (Adopted by the CoM on 27 September 2017), CM(2017)83-final (‘CoE Guidelines for Civil Participation’), available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509dd, at Principle 1 (‘All voices, including those of the less privileged and most vulnerable, are heard and taken into account in decision-making, including over the allocation of resources.’)


\(^{37}\) Ibid.

\(^{38}\) Tim Campbell, The Quiet Revolution: Decentralization and the Rise of Political Participation in Latin American Cities (2003), at 98.
democracy, and participatory budgeting in particular, also because it improves ‘social inclusion, poverty reduction, and empowerment.'

The implementation of mechanisms of participatory democracy also changes the attitude and behaviour of citizen participants, elected officials, and civil servants. The attitudinal change of citizens potentially includes personal empowerment and support for democracy. Participants can also change their views of government and become more involved in the community. Politicians and civil servants, at the same, obtain an improved understanding of the needs of the community and may implement new and/or different projects as a result of that better understanding. Politicians, by simply participating in mechanisms of participatory democracy, will become more accessible to citizens, and civil servants will work more closely with them. Participatory democracy generally requires interaction directly with and between the population -- it encourages dialogue.

3. Participatory Democracy Aims to Increase the Number of Participants in Public Decision-Making, Facilitate Deliberation and Encourage Dialogue

All of the models falling within the umbrella of participatory democracy aim to increase the number of actors participating in the decision-making process. Participating in ‘government boards or councils, public debates and public opinion surveys’ are

39 Goldfrank, supra note 35, at 5 (quoting Social Development Team, Europe and Central Asia Region, World Bank ‘Participatory Budgeting Toolkit for Local Governments in Albania’ (2006)).
40 Early research focused on the attitudes of citizens who participate in PB [participatory budgeting], and found that PB participants feel empowered, support democracy, view the government as more effective, and better understand budget and government processes after participating.’ Wampler, McNulty and Touchton, supra note 36, at 1.
41 ‘Case-study evidence shows that PB participants increase their political participation beyond PB and join civil society groups.’ Ibid.
42 Ibid., at 2-3.
43 Ibid.
44 As well as ‘participatory democracy’, there a number of alternative models that increase participation in democratic governance including ‘associative democracy’ and ‘deliberative democracy,’ which all overlap within the umbrella of ‘participatory democracy.’ Tina Nabatchi and Matt Leighninger, Public Participation for 21st Century Democracy (2015).
‘essential aspects of participation.’\textsuperscript{45} Participation also includes actively taking part in charitable organizations or groups that advocate for or against certain causes.\textsuperscript{46} The participation of individuals, as well as civic groups and non-governmental organizations, in decision-making encourages dialogue, deliberation and debate.

Participatory democracy therefore demands the exchange of information and opinions among participants, before any decisions are made; and increased active engagement and deliberation in the decision-making process. ‘Participation and other forms of deliberation are in fact key elements of pluralism, as the latter clearly requires broad inclusion of the various segments of society far beyond the mere electoral or democratic rights.’\textsuperscript{47} Participatory democracy is a valuable \textit{addition} to representative democracy.

\section*{B. A MULTITUDE OF MODELS AND MECHANISMS HAVE BEEN UTILIZED TO INCREASE PARTICIPATION}

There are a plethora of participatory models that complement representative democracy and referenda.\textsuperscript{48} To assist states in the implementation of mechanisms of participatory democracy, the CoE has adopted ‘\textit{Guidelines for civil participation in political decision making}’ (‘CoE Guidelines for Civil Participation’).\textsuperscript{49} The CoE

\begin{flushleft}
\textsuperscript{45} Ramon Canal, \textit{Social Inclusion and Participatory Democracy, From the Conceptual Discussion to Local Action} (2010), at 18.
\textsuperscript{47} Palermo, \textit{supra} note 27, at 24. \textit{See also}, Kropp, \textit{supra} note 15, at 61.
\textsuperscript{48} ‘Direct’ democracy, that is referenda and recall votes, is sometimes conflated with participatory democracy. Here, ‘participatory democracy’ is used to refer to participation in a decision-making process, even though participation itself does not necessarily decide the issue in question unlike referenda and recall votes.
\end{flushleft}
Guidelines for Civil Participation reflect the ambit of theoretical approaches to participatory democracy and recognize that it may be implemented by a disparate array of mechanisms including participatory budgeting, consultation procedures, citizen juries, citizen conferences, deliberative polls, and town-hall meetings. These mechanisms are best utilized at the local level, and authorities throughout Europe, indeed the world, have adopted an array of mechanisms to enhance participation in local governance. Less than six months after the adoption of the CoE Guidelines for Civil Participation, the Committee of Ministers (‘CoM’) bolstered the Guidelines recommending ‘to Member States on the participation of citizens in local public life’ that they ‘ensure that the participation of citizens has a real impact on decision-making processes, that citizens are well informed about the impact of their participation and that they see tangible results.’ Mechanisms of participatory democracy have been widely implemented across Europe.

1. Participatory Budgeting

One of the most practised, and promoted, tools of participatory democracy is participatory budgeting. Participatory budgeting (or ‘PB’) involves citizens developing spending and saving proposals and ultimately determining, or at least influencing, the governmental authority’s budget or part of it. ‘[T]he essence of PB lies in collective deliberation and decision making on the allocation of a portion of a public budget,’ and

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50 CoE Guidelines for Civil Participation, supra note 34, at ¶22. Participatory democracy at the local level requires public authorities ‘to collect the views of individuals, NGOs and civil society at large on a specific policy or topic as part of an official procedure.’
51 Ibid., at ¶23.
potentially serves to deepen local democracy.55 Adopting participatory budgeting is seen as a mechanism to reduce corruption, enhance transparency and accountability, and most importantly, reduce poverty and social exclusion.56 Another benefit of participatory budgeting is enhanced service delivery. According to the World Bank Social Development Team:

The traditional budgeting process can often contribute to social exclusion and poverty due to elite capture, lobbies, and powerful interests. By increasing the voice of ordinary citizens and the most vulnerable groups, PB can potentially re-direct public investments towards basic services in poor neighborhoods. The social learning and civic mobilization mechanisms embedded in PB helps empower vulnerable groups to increase their voice in budget decisions.57

Participatory budgeting prioritises socially beneficial projects such as ‘healthcare centers, sewage lines, schools, wells, and other areas that contribute directly to well-being.’58

The oft-cited model of participatory budgeting is that of the Porto Alegre, Brazil. In 1999, the city of Porte Alegre adopted a participatory mechanism for determining the city’s budget, which involved neighbourhood meetings followed by a meeting of assembly delegates.59 Following the successful implementation of participatory budgeting in Porte Alegre a multitude of European cities and municipalities, including Paris and Madrid, adopted the mechanism in various guises. In Europe, the variants range from direct participation in decision-making regarding projects to ‘selective listening’ or ‘proximity

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56 Shah, supra note 33, at 1.
58 Ibid.
59 Kössler, supra note 54, at 302.
participation,’ which is ‘purely consultative’ and focuses on the provision of financial information and ensuring the budgetary process is transparent.60

For instance, direct citizen decision-making has been adopted in Seville, Spain, whereby the city is divided into zones, each with an open and self-regulating assembly. Citizens submit proposals which are reviewed by financial experts and elect delegates to the District or City Council. The proposals are then weighed according to their social benefits and the adopted proposals constitute the participatory budget.61 Likewise, in Flanders, Belgium, several municipalities have engaged in the practice of delegating at least part of the municipal budget to area committees.62 Germany, at the municipal level has adopted purely consultative mechanisms in regard to participatory budgeting, which focus on the provision of information, transparency and accountability.63

Paris and Madrid have allocated the largest amount to participatory budgeting: €100 million per year.64 In 2014, Paris dedicated €500 million to participatory budgets for the period 2014-2020.65 Both Paris and Madrid divide the participatory budget between projects benefiting the city overall and projects for each arrondissement or district.66

In Paris, specific participatory budgets were introduced for low-income neighbourhoods, as well as for public transport, youth and schools, and another is being considered for low-income housing.67 The general interest projects proposed by Parisians are put to the residents through Commissions, consisting of nine senior government ministers.

60 Edward Best, Maja Augustyn and Frank Lambermont, Direct and Participatory Democracy at Grassroots Level: Levers for forging EU citizenship and identity? (2011) at 87.
61 Ibid., at 86.
62 Ibid., at 24.
65 Ibid., at 182.
66 Ibid.
67 Ibid.
representatives and 10 citizens including a representative of the Parisian Youth Council and a representative of the Council of Students from Paris.\textsuperscript{68} The projects ultimately selected by Parisians demonstrate the positive social outcomes that can result from citizen participation.

The plight of the homeless is a major concern for Parisians and in 2015 one of the winning projects was a project to ‘[d]evelop support for people in precarious situations,’ and with a budget of €4,400,000, one of the project’s aims is ‘to renovate Paris baths and offer new services to people without resources and/or homeless.’\textsuperscript{69} A winning project from 2018 from the 14th Arrondissement proposed developing luggage storage services for the homeless and had a budget of €500,000.\textsuperscript{70} Parisians have also expressed solidarity with migrants and are concerned about their exclusion and, accordingly, one successful project with a budget of €5million is the construction of a refugee centre.\textsuperscript{71} The socially positive outcomes of participatory budgeting are not limited to projects with budgets exceeding a €100,000. The ‘Save lives - first aid initiation’ project of the 2018 participatory budget, intends to purchase simulation mannequins and a semi-automatic defibrillator for first aid

\textsuperscript{68} Ibid., at 186, 188.
training and has a budget of only €5,000. Other projects relate to health issues, urban farming, disability services, and the environment.

Like Paris, Madrid’s participatory budgeting program has resulted in funding socially beneficial projects and programs. For example, the Madrid participatory budgeting program is funding a study on the right to food in Madrid with the intention of creating a food bank to coordinate the collection, storage and delivery of food to families without resources; a project to directly provide economic resources to eradicate food poverty; and the funding of a municipal office for the promotion of personal autonomy and the independence of people with disabilities. More importantly, from a progressive social

73 See, e.g., City of Paris, Project No. 7, Prevent and heal: health priority for working-class neighbourhoods, Participatory Budget 2018, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=6477&portlet_id=158 (A winning project in 2018, with a budget of €3,700,000, proposes renovating city medical centres and increasing their capacity to provide consultation services in Paris’s working class neighbourhhoods.).
74 See, e.g., City of Paris, Project No. 25, Cultivate in the city, Participatory Budget 2015, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=1970&portlet_id=158 (The project intends to create a dozen new places of urban agriculture to encourage local production and ‘to create a dozen shared gardens to contribute to the strengthening of social bond between the inhabitants around collective projects.’).
75 See, e.g., City of Paris, 10th arrondissement, Project No. 25, Handicap: Make accessible to all the surroundings of public establishments, Participatory Budget 2016, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=2808&portlet_id=158 (The Project aims to provide assistance to the blind and visually impaired by the installation of guiding strips, the implementation of a specially designed ground marking, and the installation of sound identification equipment.).
76 See, eg., City of Paris, Project No. 70, From green to all floors, Participatory Budget 2015, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=2015&portlet_id=158 (‘This project proposes to vegetate more than 10,000 m² of roofs and terraces and thus accelerate the greening of the capital.’).
policy and inclusion viewpoint, ‘[t]he budget of each district is directly proportional to its number of inhabitants and inversely proportional to its per capita income.’

Participatory budgeting manifestly increases the number of actors participating in the decision-making process. Research also suggests that participatory budgeting participants increase their civic participation generally and ‘feel empowered, support democracy, view the government as more effective, and better understand budget and government processes.’ Participatory budgeting therefore enhances social inclusion.

2. Direct Decision-Making and Consultation Processes

Procedures enabling direct decision-making, in addition to participatory budgeting, are becoming more frequently adopted by local, municipal and regional authorities throughout Europe, and even by the EU itself. Citizens’ councils, assemblies and panels, advisory bodies, neighbourhood councils, opinion polls and petitions all have the potential to enable the community to directly decide on issues. They also enable direct consultation between citizens and local authorities.

Consultative processes are a mechanism for enhancing participation. According to the CoE:

80 City Council of Madrid, decide.madrid.es, Frequently asked questions about participatory budgets, available at: https://decide.madrid.es/mas-informacion/presupuestos-participativos?locale=en. In 2018 Madrid’s participatory budget was €100 million, with €30 million for the whole city and €70 million for the districts; ‘the participatory budgets consist of directly proposing expenditure projects for part of the municipal budget for the following year.’ Ibid.
81 For instance, the impact of participatory budgeting on civic participation is evident from the Portuguese municipality of Cascais where, in a city of 206,000 inhabitants, 58,567 people (28.3 percent of the population) voted in the budgeting processes. Cabannes, supra note 64, at 183. In Reykjavik, Iceland, there has been a steady increase in participation by all age-groups in the Better Reykjavik online deliberative and consultative portal. Participedia, Better Reykjavik: Iceland’s Online Participation Platform, available at https://participedia.net/case/5320.
82 Wampler, McNulty and Touchton, supra note 36, at 1.
Consultation may be carried out through various means and tools, such as meetings, public hearings, focus groups, surveys, questionnaires and digital tools.84

Consultation procedures ‘can promote more general perceptions of citizenship -- feelings of common identity, recognition of duties and rights, a sense of belonging -- which can help assure democratic legitimacy.’85 Thus, consultation procedures can also enhance inclusion.

a. Citizens’ Assemblies, Advisory Bodies, Town Hall Meetings and Neighbourhood Councils

Many local and municipal authorities formally facilitate citizens’ assemblies, advisory councils and neighbourhood councils, where residents are invited to meet, discuss and deliberate on public issues. Bulgaria has introduced binding citizens’ assemblies in municipalities with populations of up to 10,000 people.86 The assembly can be initiated by the local authority or by citizens if the initiative is supported by 2 percent of the municipalities’ population.87 Decisions of these citizens’ assemblies are binding when at least 25 per cent of the population eligible to vote participates.88

Advisory councils also involve citizens in dialogue, deliberation and debate on a specific topic or topics; and are intended to produce recommendations for the municipal authorities. In Sweden, ‘[b]y 2006, citizen advisory organisations existed in nearly all municipalities (97 per cent).’89 Belgium’s Wallonia and Flanders have facilitated advisory bodies at local level.90 Formalised neighbourhood councils can also suggest projects to local authorities on issues like traffic control, the local environment, playgrounds, and public lighting. For example, local ‘[n]on-binding, open-access, advisory mechanisms’ are

84 CoE Guidelines for Civil Participation, supra note 34, at 1.
85 Best, Augustyn and Lambermont, supra note 60, at 2.
87 Ibid., Art. 57(1)(3).
88 Ibid., Art. 60(1).
89 Best, Augustyn and Lambermont, supra note 60, at 78.
90 Ibid., at 24.
utilized at local level in Germany as a ‘way to seek popular consensus and contribution to local governance and spatial planning problems.’\textsuperscript{91} In particular, ‘[t]hey are regularly used in Bavaria for establishing citizens’ priorities and preferences in public policy.’\textsuperscript{92}

Each of these procedures increase the number of citizens involved in the decision-making process and facilitates dialogue, discussion and debate. They also require active participation. In doing so, they empower members of the community and enable social inclusion.

\textbf{b. Citizens’ Juries and Panels}

A ‘citizens’ jury’ is ‘[a] means for obtaining informed citizen input into policy decisions.’ A citizens’ jury is usually composed of a small number (10-15) randomly selected citizens whose opinion and views purportedly reflect the views and opinions of the populace.\textsuperscript{93} However, the small size of citizens’ juries provides only limited opportunity for direct participation.\textsuperscript{94} The use of online platforms provides the opportunity for citizens’ juries -- or panels -- to obtain input from a large portion of the population, thereby facilitating a far more substantial level of participation. The digipanel initiative in Eindhoven, the Netherlands, is an online citizens’ panel that randomly selects participants from a permanent pool of over 4,000 Eindhoven residents, reflecting the composition of the population. The pool is regularly consulted on public issues.\textsuperscript{95} For instance, after

\begin{flushright}
\textsuperscript{91} \textit{Ibid.}, at 42.
\textsuperscript{92} \textit{Ibid.}
\textsuperscript{93} Tom Wakeford, ‘Citizens Juries: a radical alternative for social research’, 37 \textit{Social Research Update: Citizens Juries} (2002), at 2 (‘Like a legal jury, the cornerstone of a citizens jury is the belief that once a small sample of a population have heard the evidence, their subsequent deliberations can fairly represent the conscience and intelligence of the community.’).
\textsuperscript{95} Michels and De Graaf, \textit{supra} note 4, at 10.
\end{flushright}
extensive fireworks use on New Year’s Eve, 2018, the *digipanel* surveyed 4,200 residents from the online pool to determine their views on a total, or partial, fireworks ban.96

Citizens’ juries and panels enable a purportedly representative portion of the population to directly participate in decision-making by providing their opinion on public issues.

c. *Citizen Petitions*

Citizen petitions provide a direct mechanism for participation in decision-making. They enable the populace to demand that an elected assembly address specific concerns or initiate a referendum. Perhaps the best-known citizens’ initiative is the EU Citizens’ Initiative (‘ECI’), which was established by Article 11(4) of the Treaty on European Union (‘TEU’).97 One million citizens or more of EU Member States ‘may take the initiative of inviting the EC, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.’98 After 5 years in existence, the EC has registered 47 initiatives and an estimated 8 million Europeans have provided support but there has only been 3 successful initiatives and the EC has only taken action on 2 of those.99 As a result of the difficulty in utilizing the ECI, its implementing regulations are presently being reviewed.100 Citizens initiatives are also utilized in a number of European states including Germany, the Czech Republic, Austria, the United Kingdom and Spain.

96 Reportedly, ‘[a]ccording to the municipality, the result is representative of the entire population.’ Vanda van der Kooi, ‘Eindhoven should not leave fireworks a ban on residents’, *Eindhoven’s Dagblad* 11 April 2019, available at: https://www.ed.nl/eindhoven/eindhoven-moet-vuurwerkverbod-niet-aan-wijkbe woners-overlaten-ac23ac74/.
98 Ibid.
100 Ibid.
Each of these mechanisms is potentially non-binding and non-decision-making. However, irrespective of their binding nature, they each facilitate dialogue, deliberation and/or debate, and increase participation in governance. In doing so, they enhance social inclusion.

3. Online Participation and E-Democracy

Internet and communications technology are now commonly used to facilitate participatory democracy (‘E-Democracy’). While online participatory procedures cannot substitute for in-person participation, online platforms are providing a vast array of mechanisms that enable direct participation in decision-making. The CoE has recognized that ‘e-tools, including Internet, social media sites and open data, can help mobilise voters, increase citizen participation in new and different ways to improve public service delivery, foster innovation and economic growth, and strengthen democracy.’ The EU has also adopted a number of online participatory mechanisms itself, with the aim of increasing participation. The EC has implemented a platform enabling public consultations where citizens of Member States ‘can express [their] views on the scope, priorities and added value of EU action for new initiatives, or evaluations of existing policies and laws.’ It has also adopted a hybrid in-person and online approach, ‘Citizen Dialogues,’ to its citizen consultations in regard to the White Paper on the Future of Europe. The EU has

101 See, infra, at Part IV. C.
103 ‘Increasing the participation of citizens and stakeholders in the law and policy-making is an important goal of the Commission’s better regulation agenda’, available at: https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/consultations_en.
funded projects for the development of web platforms and online tools for e-participation.\textsuperscript{107}

Web platforms provide mechanisms to comment on public issues, submit proposals, vote in surveys and opinion polls, lodge e-petitions, engage in virtual discussions and debate, and participate in decision-making.\textsuperscript{108} Various authorities at national and subnational level utilize online discussion forums to facilitate interaction among citizens and between citizens and government.\textsuperscript{109} The interaction among citizens enables dialogue and inclusion. And online communication between citizens and government representatives enables citizens to query and comment on governmental performance and increases accountability.\textsuperscript{110} Online information portals enable the efficient provision of information thereby enhancing transparency. The Estonian and the Madrid City governments are at the forefront of utilizing E-Democracy to enhance civic participation.

In Estonia, the State Chancellery’s website, www.osale.ee, provides a platform to enable citizens to review and comment on legislation, present ideas to the government, collect e-signatures in support of proposals and vote. For instance, in May 2019, debate, deliberation and voting was proceeding on a proposal to amend the Estonian penal code to increase the age of consent to sexual intercourse from 14 to 16 ‘with the aim of finding the

\begin{itemize}
\item \textsuperscript{107} For example, the EUTH, EMPATIA and STEP projects. EUTH has ‘developed an all-in-one digital and mobile participation toolbox, which can be embedded in the web presence of youth organisations or public administrations.’ EGovernment4U, available at: https://ec.europa.eu/futurium/en/egovernment4eu/webinar-lets-talk-about-e-participation. See also, Opin Toolbox for youth E-Participation projects, available at: https://www.euthproject.eu/. ‘The EMPATIA project was created to address . . . challenges by designing coherent participatory systems and tools to evaluate and optimize them.’ Final Report, EMPATIA Enabling Multichannel Participation Through ICT Adaptations’, available at: https://empatia-project.eu/the-project/. STEP is an ‘interactive platform enabling youth Societal and Political e-Participation in decision-making procedures concerning environmental issues’, available at: https://ec.europa.eu/futurium/en/egovernment4eu/webinar-lets-talk-about-e-participation.
\item \textsuperscript{108} See, United Kingdom Parliament, DirectGov, available at: https://petition.parliament.uk/.
\item \textsuperscript{110} Ibid.
\end{itemize}
best ways to protect children.'111 Some Estonian municipalities have also launched online platforms to enable discussion and deliberation.112

The most advanced use of e-participation tools is probably in Madrid, Spain. The City Council of Madrid has implemented the ‘madrid.decide.es’ website, which ‘is a citizen participation program with the goal of involving Madrid citizens in the decision-making process within local government.’113 It is clear that the madrid.decide.es platform has increased civic participation in the city.114 One branch of the platform is for participatory budgeting115 but other branches are ‘debates,’ ‘collaborative legislation,’ ‘proposals’, and voting. The debate branch provides an online ‘space for citizen discussions’ aimed at ‘anyone who can expose issues of their concerns’ and ‘want to share opinions with other people.’116 The ‘proposals’ branch provides an opportunity for neighbours and collectives to decide directly on the future of their city. Any proposal supported by 1 per cent of those registered on decide.madrid.es will be voted on in a citizens’ vote on the website.117 The City Council of Madrid can also submit questions to the website for direct decision. In 2017, the first citizens votes approved of two measures: ‘Madrid 100% sustainable,’ a proposal requiring the Council to commit to the plan ‘Sustainable City Madrid’ and to engage in a number of environmental actions aimed at improving Madrid’s

112 Best, Augustyn and Lambermont, supra note 60, at 60.
114 Ibid. (‘Here we can make the link between Decide Madrid and political participation such that since the introduction of the Decide system, political participation in Madrid has increased.’)
115 Ibid.
117 City Council of Madrid, ‘Proposals’, decide.madrid.es, available at: https://decide.madrid.es/proposals (‘In February 2017 the proposals ‘Madrid 100% sustainable’ and ‘Single ticket for public transport’ were approved.’).
sustainability118 (with 88,665 or 89.11 per cent approving the project);119 and ‘Single ticket for public transport,’ enabling public transport users to change the means of public transport without paying more, in a broad period of time120 (with 198,905 or 93.94 per cent supporting the project).121 Another innovative development on the decide.madrid.es platform is ‘collaborative legislation,’ whereby the City Council of Madrid utilizes the platform to ‘offer[] its citizens the opportunity to participate in the drafting and modification of regulations’ by contributing their opinions online as part of the consultation process regarding new ordinances, regulations and guidelines.122

Local governments in the United Kingdom and Slovenia also utilize E-Democracy tools such as e-forums, e-consultations, e-petitions and information portals.123 There are various online discussion sites available at national and local level for citizens to participate in decision-making in the Netherlands.124 In Italy’s region of Emilia-Romagna a website is utilized to coordinate and promote active participation.125

Conclusion to Part I

It is clear that the implementation of the participatory mechanisms outlined above increases civic participation and enhances debate and deliberation. Participatory budgeting enables direct civic participation in governance. Citizens participate in decision-making by

121 City Council of Madrid, ‘Results First Citizen Poll February 13-19, 2017’, decide.madrid.es, available at: https://decide.madrid.es/primera-votacion-ciudadana-resultados. (‘After the vote, the City Council took on more than a hundred environmental, mobility and sustainability measures in its municipal policies and actions to request the Madrid Transport Consortium to approve the intermodal ticket.’).
123 Best, Augustyn and Lambermont, supra note 60, at 73.
124 Ibid.
125 Ibid., at 52.
proposing projects and voting on them. It also has a demonstrated effect on civic participation generally. Participatory budgeting empowers communities and provides forums for interaction, which has the potential to reduce exclusion and alienation. Not only the participants benefit from participatory budgeting; the positive social outcomes resulting from participatory budgeting improve the social inclusion of the vulnerable members of society. Direct decision-making and consultation processes facilitate dialogue, discussion, deliberation and debate among citizens and between citizens and local authorities, without intermediaries. They also increase the number of citizens actively involved in the policy and decision-making process. In doing so, these processes also empower individuals and enhance social inclusion. E-Democracy similarly enables a large number of citizens to discuss, deliberate and debate policy proposals, and engage in decision-making, in an online forum, again enhancing social inclusion.

Participatory democracy enables individuals to play a role in their own governance -- a virtue in itself. In facilitating interaction and dialogue, these fora prevent, or at least limit, political alienation and social exclusion; at the same time, they augment social inclusion. Participatory democracy results in a more transparent and efficient governance with less corruption.126 According to the CoE, ‘participatory democracy . . . respects and recognises the role of all actors [and], can contribute to and complement representative and direct democracy, rendering democratic institutions more responsive, hence contributing to inclusive and stable societies.’127 These mechanisms do not replace but instead supplement traditional institutions of representative democracy. They enhance trust in government and increase civic participation -- both of which have been precipitously falling in Europe.

The recognition of the importance of participation in governance, particularly in local governance, is leading to the emergence of a ‘universal right to participate’ and a specific right to participate in local government in Europe.

126 2018 CoM Recommendation, supra note 52, at Preamble, ¶6.
127 Ibid. (emphasis added).
PART II
THE EMERGING RIGHT TO DIRECTLY PARTICIPATE IN LOCAL GOVERNANCE

In 1992, after the end of the Cold War and the collapse of the Soviet Union, in his seminal article, *The Emerging Right to Democratic Governance*, Thomas Franck asserted that international law was in the process of developing, through state practice and international instruments, ‘a normative entitlement to a participatory electoral process.’\(^{128}\) In the same year, Gregory H. Fox, in the *Yale Journal of International Law*, concluded that there was a ‘right to political participation in international law,’ based on international human rights conventions and the role of UN election monitoring.\(^{129}\) Whether or not this ‘right to democratic governance’ and ‘right to political participation’ is still emergent or is now entrenched in international law is subject to ongoing debate.\(^{130}\) In any event, this existing or emergent right to democratic governance is limited to participation in free, periodic and genuine elections. More than 25 years later, a normative right of direct participation in governance at the local level, particularly in Europe, is beginning to emerge.

A. THE EMERGENCE OF AN INDIVIDUAL RIGHT TO DIRECTLY PARTICIPATE IN PUBLIC AFFAIRS

1. The Universal Right to ‘Take Part’ In Public Affairs

International instruments recognize a right to ‘take part’ -- to participate -- in public affairs. The reference to ‘public affairs’ is a reference to all legislative, executive and


administrative functions at all levels of government. The Universal Declaration of Human Rights (‘UDHR’) provides that ‘[e]veryone has the right to take part in the government of his [or her] country, directly or through freely chosen representatives.’ Likewise, Article 25 of the International Covenant on Civil and Political Rights (‘ICCPR’) recognizes the right ‘[t]o take part in the conduct of public affairs, directly or through freely chosen representatives . . .’. Both the UDHR and the ICCPR refer to a right to either direct participation in public affairs or indirect participation ‘through freely chosen representatives.’ It is not up to the citizen to determine whether to exercise that right directly or indirectly but instead it is up to the constitutional or legal system of the state.

The UDHR and the ICCPR emphasise ‘the role of periodic and genuine elections in ensuring that everyone is able to participate in the public affairs of his or her country.’ Article 25(b) of the ICCPR, like Article 21(3) of the UDHR, provides that ‘every citizen shall have the right and the opportunity . . . [t]o vote and to be elected at genuine periodic elections.’ The only specifications on the nature of the elections are provided by Article


132 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) (‘UDHR’), at Art. 21(1).

133 International Covenant on Civil and Political Rights (1966), 999 UNTS 171 (‘ICCPR’), at Art. 25(a).

134 UDHR, supra note 132, at Art. 21(1); ICCPR, supra note 133, at Art. 25(a).


Surely, it cannot be the meaning of article 25(a) of the Covenant that every citizen may determine either to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional system of the state party to provide for the modalities of such participation.


137 The UDHR provides that ‘[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.’ UDHR, supra note 132, at Art. 21(3).
25(b) of the ICCPR,\textsuperscript{138} which requires the elections be ‘genuine’, ‘periodic’, ‘by universal and equal suffrage,’ and by ‘secret ballot.’\textsuperscript{139} The ICCPR does not specify or impose a mode of elections or any particular electoral system, or any other mode of participation.\textsuperscript{140}

It has been suggested that ‘[s]ince paragraph (b) requires genuine, periodic elections, paragraph (a) must contemplate additional means of influencing public policy.’\textsuperscript{141} The direct means of taking part in public affairs includes all of the mechanisms described in \textit{Part I}. However, the reference to ‘directly’ taking part in public affairs has been accorded a much more limited application, generally related to referenda. Accordingly, the interpretation and application of international human rights conventions have suggested that the ‘guarantee [of] the right to political participation’ is satisfied ‘primarily by requiring signatories to hold fair elections at regular intervals.’\textsuperscript{142} It is generally considered that ‘[d]ue to complexity of modern government, it is virtually impossible for any contemporary State Party to govern solely or even substantially via direct input from citizens.’\textsuperscript{143} Accordingly, governance in accordance with representative democracy is overwhelmingly accepted as the primary method of democratic governance and is the international norm.\textsuperscript{144}

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\textsuperscript{138} General Comment No. 25, \textit{supra} note 131, at ¶21.
\textsuperscript{139} Fox, \textit{supra} note 129, at 555.
\textsuperscript{141} Fox, \textit{supra} note 129, at 555.
\textsuperscript{142} \textit{Ibid.}, at 552.
\textsuperscript{143} \textit{Marshall v Can.}, \textit{supra} note 135, at ¶¶ 5.4-5.5 (‘It must be beyond dispute that the conduct of public affairs in a democratic state is the task of representatives of the people, elected for that purpose, and public officials appointed in accordance with the law.’); \textit{see also}, Joseph, \textit{supra} note 132, at [22.16].
\textsuperscript{144} Palermo, \textit{supra} note 27, at 33.
\end{flushright}
2. The Emerging Norm of Direct Participation in Public Affairs

Rules of customary international law are precipitated through ‘general practice accepted as law.’\textsuperscript{145} The two elements, general practice and \textit{opinio juris} are closely related.\textsuperscript{146}

Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it . . . The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.\textsuperscript{147}

Multilateral treaties, like the ICCPR, ‘may be considered as elements of state practice relevant for determining the existence of a rule of customary international law.’\textsuperscript{148} Almost 90 per cent of states have ratified the ICCPR, which is indicative of state practice and it is relevant for determining the existence of a rule of customary international law.\textsuperscript{149} As noted, Article 25 of the ICCPR has been satisfied by enabling voting in the election of representatives. However, as demonstrated in \textit{Part I}, states are increasingly providing an enabling environment to facilitate participatory democracy, and mechanisms of participatory democracy are being increasingly utilized around the world. The increasing implementation of a right to participatory democracy is indicative of the development of a global norm.

General Assembly declarations alone are merely recommendations but they can also be evidence of existing or emerging norms in international law,\textsuperscript{150} depending on ‘its content

\textsuperscript{145} Art. 38 of the Statute of the International Court of Justice.
\textsuperscript{147} \textit{North Sea Continental Shelf}, Judgment, I.C.J. Reports 1969, p. 3, ¶77.
\textsuperscript{149} UN OHCHR, Status of Ratification Interactive Dashboard, (updated as at 7 July 2019), available at http://indicators.ohchr.org/. There are 173 state parties and 6 signatories; and 18 states have taken 'no action.' China signed the ICCPR in 1998 but has not ratified it. Saudi Arabia has taken no action. \textit{Ibid.}
\textsuperscript{150} \textit{Chagos Archipelago Case}, supra note 146, at ¶151.
and the conditions of its adoption.”151 In 1999, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.152 The Declaration provides that ‘everyone has the right . . . to participation in government’ including ‘the right . . . to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals.’153 The content of the Declaration is of normative value because it refers to ‘the right’ to directly participate in government.154 The conditions of the Declaration’s adoption may also increase its normative value: the Declaration was adopted without a vote, and no state objected to it.155 However, its probative value is perhaps reduced by the nature of the vote: it was adopted in unison with 48 other resolutions.156 In any event, it is ‘evidence important to establishing the existence of a rule or the emergence of an opinio juris.’157

UN bodies, apart from the General Assembly, are also potentially relevant to the emergence or existence of a customary rule of international law. In a series of comments, recommendations and reports, UN bodies have recognized the importance of alternative means of civic participation in decision-making and policy development. The Human Rights Committee, in 1996, in its General Comment No. 25, ‘The Rights to participate in

151 Legality of the Use or Threat of Use of Nuclear Weapons (Advisory Opinion) [1996] I.C.J. Reports 12, 226, at ¶76.
153 Ibid., at Art. 8 (2).
154 The ICJ, in its Advisory Opinion in the Chagos Archipelago Case, held that the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) is of a ‘normative character’ in that ‘it affirms that “[a]ll peoples have the right to the self-determination.”’ Chagos Archipelago Case, supra note 146, at ¶153.
156 Ibid.
157 Nuclear Weapons Case, supra note 151, at ¶70; approved in Chagos Archipelago Case, supra note 146, at ¶151.
public affairs, voting rights and the right of equal access to public service’, noted that alternative methods of civic participation are included in the right to take part in public affairs.

Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government.

The Human Rights Council of the United Nations (‘HRC’) has recently engaged in a broad-ranging review of the right to participate in public affairs. It recognized that participation in public life is vital to social inclusion and recommended that ‘[f]ormal permanent structures should be developed to ensure that participation in decision-making processes is widely understood, accepted and routinely realized by both public authorities and rights holders.’ Indeed, the Office of the High Commissioner for Human Rights (‘OHCHR’) has even submitted to the HRC ‘Draft guidelines for States on the effective implementation of the right to participate in public affairs.’ The OHCHR recognized that a right to participate is not solely satisfied by participating in periodic cyclical elections but instead ‘should be recognized as a continuum that requires open and honest interaction between public authorities and all members of society’ and should be facilitated continuously.’ The UN has also recognized the importance of direct participation in the

158 General Comment No. 25, supra note 131, at ¶6, 8.
159 More recently, in 2013, the HRC adopted resolutions of a more generic nature on ‘equal political participation’ and reaffirmed ‘the obligation of States to take all appropriate measures to ensure that every citizen has an effective right and opportunity to participate in political and public affairs on an equal basis’ and urged ‘all States to ensure the full and effective participation of all citizens in political and public affairs on an equal basis.’ HRC Res. 24/8, 8 October 2013, at ¶4. This resolution was reaffirmed, two years later, in October 2015. HRC Res. 30/9, 12 October 2015, at ¶3, 4.
160 General Comment No. 25, supra note 131, at ¶6, 8 (emphasis added).
161 HRC Guidelines on Participation, supra note 136, at ¶3 (‘the Human Rights Council has dedicated increasing attention to the issue of equal participation in political and public affairs.’). See also HRC Res. 24/8, HRC Res. 27/24, HRC Res. 30/9, HRC Res. 27/29, HRC Res. 30/26 and HRC Res. 33/25.
162 Ibid., at ¶56.
163 Ibid.
164 Ibid., at ¶19(h).
Sustainable Development Goals: target 16.7 is to ‘ensure responsive, inclusive, participatory and representative decision-making at all levels.’165 ‘[A] series of resolutions may show the gradual evolution of the opinio juris required for the establishment of a new rule.’166

The increasing implementation of participatory democracy does not amount to a sufficiently ‘settled practice’ to satisfy the requirements of customary international law; primarily because states, while adopting mechanisms of participatory democracy, do not feel legally obliged to do so or that it is ‘a duty incumbent on them.’167 Accordingly, a rule of customary international law providing an individual right to directly participate in public affairs has not yet crystallized.168 Instead, the series of comments, recommendations and guidelines, and increasing state practice, demonstrate a ‘gradual evolution’ of a universal right to directly participate in public affairs: a right to directly participate in public affairs is emerging as a norm of customary international law.169

Although ‘a global consensus on a specific interpretation of democracy’ has not emerged in international law, ‘international practice has obviously coalesced into a widely shared understanding that democracy entails . . . more than the holding of elections at regular intervals.’170 There is an increasing recognition of the importance of the element of ‘participation’ in democratic governance. ‘[T]he main discourse on democracy today is

166 Nuclear Weapons Case, supra note 151, at ¶70.
167 Columbian-Peruvian Asylum Case, I.C.J. Reports 1950, 266, at 277.
168 Chagos Archipelago Case, supra note 146, at ¶148.
169 At the same time, there is perhaps a principle that states have an obligation towards developing and implementing tools of participatory democracy -- a principle of participatory ‘teleology’. The UN resolutions ‘recommend’ the implementation of participatory democracy and provide guidelines to do so. The resolutions emphasise the ‘process like character’ of implementing mechanisms of participatory democracy. These resolutions may indicate a ‘teleological’ view of participatory democracy, in that states have an obligation to progressively implement tools of participatory democracy. Niels Petersen, ‘The Principle of Democratic Teleology in International Law’, 34 Brooklyn Journal of International Law, (2008) 33. Petersen asserted that there ‘is no right to democratic governance in international law’ but ‘[i]nstead, States have an obligation to develop towards democracy.’ Ibid., at 36.
170 Pippan, supra note 148, at 33-34.
about how to *complement* representative democracy with more citizen involvement in political decision making.  

**B. EUROPE’S INSTITUTIONAL ENDORSEMENT OF DIRECT PARTICIPATION IN GOVERNANCE**

In Europe, *direct* participation in governance, as a supplement to representative democracy, is emerging as the accepted norm. Participatory democracy is endorsed by the EU, CoE and OSCE. It is rapidly becoming a normative entitlement, at least at the local government level, across Europe.

1. **The EU has Recognized the Importance of Democratic Participation and it is Becoming a Norm of EU Governance**

   Even though the EU is founded on the principle of representative democracy, it too has increasingly recognized a right to participate in public affairs, so much so that it is now a normative principle of the EU. In an effort to overcome, or at least reduce, the EU’s ‘democratic deficit,’ it recognized the importance of civic participation and has embraced the concept of participatory democracy.\(^{172}\) In 2001, in its white paper on European governance, the EC recognized participation ‘as one of the general principles of “good governance”’ and ‘stress[ed] the importance of “wide participation throughout the policy chain” in order to ensure “the quality, relevance and effectiveness of EU policies.”’\(^{173}\)

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\(^{172}\) The EU’s purported ‘democratic deficit’ is the ‘discrepancy between the pervasive effects of the regulatory power of the EU and the weak authorization of this power through the citizens of the Member States who are specifically affected by those regulations.’ R. Kies and P. Nanz, ‘Introduction’, in R. Kies and P. Nanz (eds.), *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations* (2013), 1, 14; see also, Ferri, *supra* note 46, at 335 n6. ‘The relative weakness of the EP [European Parliament] (the only directly legitimated European institution) within the Framework of the Union has been considered as the main cause of the EU’s democratic deficit.’ Lopez, *supra* note 32, at 123. This democratic deficit of the EU has been described as its ‘original sin.’ Ferri, *supra* note 46, at 334.

Now, ‘[f]or the first time at Treaty level participation in decision making beyond political representation is explicitly linked to democracy.’\textsuperscript{174} Article 10 of the TEU provides that ‘[t]he functioning of the Union shall be founded on representative democracy’ and ‘[c]itizens are directly represented at Union level in the European Parliament.’\textsuperscript{175} The TEU also specifically provides that ‘[e]very citizen shall have the right to participate in the democratic life of the Union.’\textsuperscript{176} The Treaty on the Functioning of the European Union (‘TFEU’) also recognizes the importance of participation: ‘[i]n order to promote good governance and ensure the participation of civil society, the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible.’\textsuperscript{177} Article 11 of the TEU specifically embraces participatory democracy providing ‘citizens and representative associations the opportunity to make known and publicly exchange their views,’ the EU ‘shall maintain an open, transparent and regular dialogue with representative associations and civil society’ and ‘the EC shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.’\textsuperscript{178} And it has also adopted the citizens’ initiative.\textsuperscript{179} Each of these mechanisms is non-binding and non-decision making. However, they enhance the participation of Europeans in the governance of the EU.\textsuperscript{180}

\textsuperscript{175} TEU, supra note 97, at Art. 10, See also, Roquette Frères v Council, Case C-138/79. See also, Lenaerts, K., ‘The Principle of Democracy in the Case Law of the European Court of Justice’, The International Law Quarterly, Vol. 62, No. 2 (April 2013) 271, at 282 (‘The consultation provided for in the third subparagraph of Article 43 (2), . . . reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly.’).
\textsuperscript{176} TEU, supra note 97, at Art. 10(3) (emphasis added).
\textsuperscript{177} Consolidated version of the Treaty of the Functioning on the European Union [2016] OJ C202/1 (‘TFEU’), at Art. 15 (1) (emphasis added). See also, Gamper, supra note 83, at 68.
\textsuperscript{178} TEU, supra note 97, at Art. 11(1)-(3) (emphasis added).
\textsuperscript{179} Ibid., at Art. 11(4).
\textsuperscript{180} ‘[W]hat matters in European politics ‘is not that the eventual decision can be formally attributed to the will of the citizenry, but rather that those who so wish be given a chance to express their views.’ Lopez, supra note 32, at 128, quoting R. Dehousse, ‘The Legitimacy of the European Governance: The Need for a Process-Based Approach’, Cahiers Européens de Sciences Po (2002), n.1, 26.
The EC had already adopted consultative practices to involve Europeans in its policy making process, such as the ‘Interactive Policy-Making Initiative’, which utilized the Internet to gather feedback and obtain ongoing and continuous access to the opinions of EU citizens, but Article 11(3) transforms the Commission’s consultative practices into a duty. Irrespective of the past consultative practices of the EC, Article 11 entrenches participatory democracy as a foundational principle of the EU.

The emerging norm of direct participation in decision-making is also reflected in the Aarhus Convention, which may serve as a model for incorporating citizen participation in decision-making. The EU and the UN Economic Commission for Europe (‘UNECE’) established the Aarhus Convention, which has been ratified by all of the EU’s Members States and the EU itself is a signatory. The Convention provides an individual right to participate in decisions relating to environmental matters. Pursuant to the Aarhus Convention, the signatories recognize that individuals have a duty ‘to protect and improve the environment for the benefit of present and future generations’ and to do so are ‘entitled to participate in decision-making . . . in environmental matters.’ Accordingly, the Aarhus Convention provides that ‘each Party shall guarantee the rights of . . . public participation in decision-making,’ and adopt ‘[p]rocedures for public participation [that] shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.’ More importantly, the Convention provides that ‘[e]ach Party shall ensure that in the decision due account is taken of the outcome of the public

182 Mendes, supra note 174, at *16.
184 Ibid., at Preamble.
185 Ibid., at Art. 1.
186 Ibid., at Art. 6(7).
participation," 187 which has been interpreted to require the relevant authorities to ‘seriously consider’ all public submissions. 188

The modes adopted by the EU referred to above provide for the enlargement of the number of actors in the democratic process (citizens and representative associations), enhance the exchange of ideas and information, and recognize the role of consultation in the preparatory phase of decision making. The EU has therefore adopted elements of participatory democracy and has embedded a legal framework for democratic participation in the governance of the EU.

2. The ECHR Does Not Include a Right to Direct Participation but PACE Endorses it as a ‘Human Right’, Increasing its Normative Value

The European Convention for the Protection of Human Rights and Fundamental Freedoms (‘ECHR’) did not initially provide a right to participation either directly or indirectly. 189 It was only in the First Protocol to the ECHR that a reference to elections is made; and, at the same time, unlike other international and regional instruments, it made no reference to a ‘right to take part’ or ‘participate’ in public affairs. 190 The right in the First Protocol to the ECHR is limited to indirect participation through elected representatives. Accordingly, the ECHR only recognizes a right to a ‘specific modus of democracy’,

187 Ibid., at Art. 6(8) (emphasis added).
188 See UNECE, ‘Findings and recommendations with regard to Communication ACCC/C/2008/24 concerning compliance by Spain’, ECE/MP.PP/C.1/2009/8/Add.1, 8 February 2011, at ¶¶99-101 (‘while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received’ and ‘a system where, as a routine, comments of the public were disregarded or not accepted on their merits, without any explanation, would not comply with the Convention.’). See also Jonas Ebbesson et al., UNECE, The Aarhus Convention: An Implementation Guide, (2d Ed. 2014), available at https://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf, at 155.
189 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (‘ECHR’), at Art. 2(1).
190 ECHR, Protocol No. 1, Art. 3.
namely elections.\textsuperscript{191} In choosing the modus of elections, the State is only limited to the requirement that they reflect the ‘free expression of the opinion of the people.’\textsuperscript{192}

Although the ECHR does not include a include a general right to participate in democratic governance, PACE has stated that ‘participatory democracy should be enhanced as a process in which all people, and not only nationals, are involved in the conduct of public affairs, at local, regional, national and European levels,’\textsuperscript{193} and therefore called for the inclusion of a right to participate in the ECHR:

The Assembly stresses that the right to participate in the conduct of public affairs, be it at local, regional, national or European levels, is a \textit{human right} and a fundamental political freedom, which should thus be embodied as such in the European Convention on Human Rights.\textsuperscript{194}

PACE has thus recognized that direct participation in governance is a human right. The COE in its ‘Handbook[s] on Transparency and Citizen Participation’ adopted the OECD \textit{Guiding Principles for Open and Inclusive Policy Making}.\textsuperscript{195} Article 2 of the OECD’s Guiding Principles acknowledge ‘[c]itizens “\textit{rights to information, consultation and public participation in policy making}.”’\textsuperscript{196} The OECD has also recognized that civic participation enhances trust in government. ‘Trust is an outcome of open government that can reinforce government performance in other aspects.’\textsuperscript{197}

The CoE has endorsed direct participation and has recognized it as a human right thereby increasing the normative value of participative democracy. Despite the absence of

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{191} Verstichel, \textit{supra} note 131, at 137.
\item \textsuperscript{192} Mathieu-Mohin and Clerfayt \textit{v. Belgium}, ECtHR, No. 9267/81, Judgment (2 March 1987), at ¶54.
\item \textsuperscript{193} PACE, Res. 1746, \textit{supra} note 5, at ¶2.2.
\item \textsuperscript{194} Ibid., at ¶3 (emphasis added).
\item \textsuperscript{195} ‘Partnership for Good Governance I’, available at: https://pjp-eu.coe.int/web/eap-pcf/home.
\item \textsuperscript{197} OECD Policy Brief No. 22, Expert meeting on ‘Building an open and innovative government for better policies and service delivery,’ Paris, 8-9 June 2010 Background document for session 1 (8 June, 16h-17h), available at: http://www.oecd.org/gov/46560128.pdf, at 5.
\end{itemize}
\end{footnotesize}
a right of direct participation in the ECHR, the CoE has adopted a legally binding instrument mandating the implementation of mechanisms of participatory democracy at the local level.

C. DIRECT PARTICIPATION AT THE LOCAL LEVEL IS EMERGING AS THE NORM ACROSS EUROPE

In Europe, direct participation in governance is a legal right at local government level in those states that have ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. It is otherwise developing as a normative entitlement at the local government level across Europe.

1. The European Right to Participate in Local Government

When the European Charter of Local Self-Government (‘Charter of Local Self-Government’) was adopted in 1985 it recognized ‘that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all Member States of the Council of Europe’ and ‘that it is at local level that this right can be most directly exercised.’\(^{198}\) However, the Charter of Local Self-Government then only provided that local governance ‘shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them.’\(^{199}\) Although the Charter did not limit ‘recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute,’ it did not specifically recognize or endorse a right to participation or any alternative to representative democracy at the local level.\(^{200}\)


\(^{199}\) Ibid., at Art. 3(2).

\(^{200}\) Ibid.
It was more than 20 years later that the CoE recognized a right to ‘participate’ in local government by way of an additional protocol to the Charter of Local Self-Government. The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority provides an individual legal right to participate in public affairs at the local level.\textsuperscript{201} It was precipitated by the desire of the Council of Ministers, to ‘enshrine[] in a pan-European legal instrument such as a convention,’ the ‘European culture of democratic participation of citizens in local public life [that] constitutes an essential feature in our common understanding of and commitment to 21st century democracy in our continent.’\textsuperscript{202}

The Preamble to the Additional Protocol to the Charter of Local Self-Government acknowledges that ‘the right to participate in the conduct of public affairs is one of the democratic principles that are shared by all Member States of the Council of Europe’ and ‘that the evolution in Member States has shown the pre-eminence importance of this principle [the right to participate] for local self-government.’\textsuperscript{203} Accordingly, the parties considered it ‘appropriate to supplement the Charter with provisions guaranteeing the right to participate in the affairs of a local authority.’\textsuperscript{204} Presently the Additional Protocol to the Charter of Local Self-Government has been ratified by 18 Member States of the CoE (with 5 additional signatories that have not yet ratified).\textsuperscript{205}

Article 1 establishes an individual right to participate in the affairs of a local authority.\textsuperscript{206} ‘The right to participate in the affairs of a local authority denotes the right to

\textsuperscript{201} Additional Protocol to the Charter of Local Self-Government, \textit{supra} note 21, at Art. 1(1). \textit{See also}, Explanatory Report to the Additional Protocol, \textit{ibid.}, at 3.
\textsuperscript{203} Additional Protocol to Additional Protocol to the Charter of Local Self-Government, \textit{supra} note 21, at Preamble.
\textsuperscript{204} \textit{Ibid.} (emphasis added).
\textsuperscript{206} Additional Protocol to the Charter of Local Self-Government, \textit{supra} note 21, at Art. 1(1). \textit{See also}, Explanatory Report to Additional Protocol, \textit{ibid.}, at 3 (‘The first paragraph sets out the main substantive provision and is cast in the form of an individual right.’).
seek to determine or to influence the exercise of a local authority’s powers and responsibilities.’\textsuperscript{207} According to the Explanatory Report:

\begin{quote}
The establishment of an \textit{individual right to participate} in the affairs of a local authority reflects a long-term societal development in European States. \textit{All countries}, in different ways and to differing degrees, have come to recognise the fundamental importance of citizens being engaged and involved in public life. Democratic institutions should not be designed and cannot be sustained without taking on board the fundamental role and place of citizen participation.\textsuperscript{208}
\end{quote}

In 2018, the CoM reaffirmed that ‘participation is at the very heart of the idea of democracy.’\textsuperscript{209}

The methods of implementation of the right to participate in local government are articulated in Article 2 of the Additional Protocol to the Charter of Local Self-Government and include ‘empowering local authorities to enable, promote and facilitate the exercise of the right to participate set out in this Protocol.’ The tools referred to in \textit{Part I}, namely participatory budgeting, consultation processes (such as citizens’ assemblies), and E-Democracy ‘enable, promote and facilitate the exercise of the right to participate’ in local government.\textsuperscript{210} As demonstrated in \textit{Part I}, local and regional authorities, to varying degrees, have implemented mechanisms of participatory democracy that accord with the Additional Protocol to the Charter of Local Self-Government, irrespective of whether they are a State Party or not.

\textsuperscript{207} \textit{Ibid.} Art. 1(2).
\textsuperscript{208} Charter of Local Self-Government, \textit{supra} note 198, at Exp. Rep. 3 (emphasis added).
\textsuperscript{209} 2018 CoM Recommendation, \textit{supra} note 52, at Preamble.
\textsuperscript{210} \textit{Ibid.}, Art. 2(i).
2. The Recognition of the Importance of Participation in Local Government by the EU and CoE Increases its Normative Value

The right to participate in local governance provided by the Additional Protocol to the Charter of Local Self-Government is buttressed by ‘soft’ law instruments of both the EU and the CoE. The EU has recognized the importance of citizen participation in its public affairs, and it has endorsed the value of participation in local governance. The EU’s Fundamental Rights Agency (‘FRA’) has promoted participation in local government as an important element of democracy. It has recognized that ‘[p]articipation of the community and individuals concerned is a cornerstone of a joined-up strategy for fundamental rights implementation.’ The CoR, in its advisory role to the EC, ‘encourages participation at all levels, from regional and local authorities to individual citizens.’ In 2009, the CoR issued a White Paper on Multi-Level Governance and one of its two ‘main strategic objectives’ was ‘encouraging participation in the European process.’ To do so, it recommended ‘establishing appropriate tools to support participatory democracy.’ In 2014, the CoR adopted the Charter for Multi-Level Governance in Europe (‘MLG Charter’). The signatories to the MLG Charter recognized that multilevel governance enables the development of participatory democracy ‘bringing the European Union closer

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211 See, e.g. supra at Part II, B. 2. See also, Benedek, Oberleitner and Starl, supra note 49, at 281.
213 The CoR was established as an advisory body to assist the European Parliament, the Council and the EC. TFEU, supra note 175, at Art. 300(3). Its members consist of ‘representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.’ Ibid.
216 Ibid., at 17.
to the citizens.\footnote{CoR, \textit{Charter for Multi-Level Governance in Europe} (20 February 2014), available at: https://portal.cor.europa.eu/mlgcharter/Pages/MLG-charter.aspx, at Preamble.} The parties to the MLG Charter ‘commit [them]selves to making multilevel governance a reality in day-to-day policy-making and delivery, including through innovative and digital solutions’ and ‘[t]o this end’ they will ‘promote citizen participation in the policy cycle.’\footnote{\textit{Ibid.}, at Preamble, Title II: Implementation and Delivery.} The MLG Charter is open to the signature of local and regional authorities in Europe and, presently, there are 220 signatories.\footnote{\textit{Ibid.} (As of 3 July 2019).}

In 2009, the CoE’s Reference Framework for Regional Democracy also noted ‘that the Congress [of Local and Regional Authorities] has on several occasions sought to promote stronger citizen participation in local and regional public life.’\footnote{CLRA, \textit{Council of Europe Reference Framework for Regional Democracy} (2009), available at https://edoc.coe.int/en/local-democracy/7645-regional-democracy-council-of-europe-reference-framework.html#, at 9.} The Reference Framework recognized that ‘good governance’ requires ‘a policy of citizen participation in the management of public affairs,’\footnote{\textit{Ibid.}} and provides a ‘veritable code of rights and duties of regional entities . . . [but] lacks as it does the binding force of the European Charter of Local Self-government.’\footnote{\textit{Ibid.}, at 6.} Pursuant to the 2018 CoM Recommendation, Member States of the CoE, to enhance civic participation, should utilize ‘more deliberative forms of decision-making, that is, involving the exchange of information and opinions (for example public meetings, citizens’ assemblies and juries or various types of citizens forums, groups, panels and public committees whose function is to advise or make proposals, or round tables, opinion polls and user surveys).’\footnote{2018 CoM Recommendation, \textit{supra} note 52, at App. B.III.3.ii.}

Further enhancing the normative value of the right to participate in local government is the conduct of the EU and the CoE with other states. The EU and CoE have established a ‘Partnership for Good Governance’ with the intention of strengthening the capacity of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine

\footnote{219 \textit{Ibid.}, at Preamble, Title II: Implementation and Delivery.}
\footnote{220 \textit{Ibid.} (As of 3 July 2019).}
\footnote{222 \textit{Ibid.}}
\footnote{223 \textit{Ibid.}, at 6.}
\footnote{224 2018 CoM Recommendation, \textit{supra} note 52, at App. B.III.3.ii.}
‘to implement standards of the Council of Europe and the European Union in the fields of human rights, democracy and the rule of law.’ The CoE and EU as part of their ‘capacity building’ function related to ‘[s]trengthening institutional frameworks for local governance’ have produced ‘Handbook[s] on Transparency and Citizen Participation’ for Armenia, Georgia, Moldova and the Ukraine, each of which endorse ‘public involvement in important decisions’ through public consultation and endorse participatory budgeting.

3. Local Governments Support the Implementation of Participatory Democracy at the Local Level, Also Increasing Its Normative Value

A number of networks and associations support participation at the local government level in Europe, further enhancing its normative value. The United Cities and Local Governments (‘UCLG’) is ‘an umbrella organisation for cities, local and regional governments, and municipal associations.’ The UCLG is an organization that represents and defends the interests of local governments on the world stage, regardless of

228 The OHCHR and the UCLG Committee for Social Inclusion, Participatory Democracy and Human Rights jointly facilitated a meeting between local government representatives and the Deputy Commissioner for Human Rights, Kate Gilmore, conducted in Geneva on 17 June 2019. One of the thematic topics focused on was the right to participation. See, Concept Note, Meeting on local governments and human rights -- Addressing economic and social inequalities at local level, Geneva, 17 June 2019, available at https://www.uclg-cisdp.org/sites/default/files/Concept%20note%20-%20201706%20Meeting.pdf. Prior to the meeting, the OHCHR had written to organizations like the UCLG to request contributions to assist in the preparation of her report requested in an HRC resolution on 27 September 2018. In her request, she specifically asked for suggestions on ways to ensure participation by local stakeholders in the implementations of the 2030 Agenda for sustainable development. See, letter to Civil Society Organizations from Nathalie Prouvez, Chief Rule of Law and Democracy Section, OCHCR, dated 13 December 2018, available at: https://www.uclg-cisdp.org/sites/default/files/Letter%20Civil%20Organisations_EN_final%20%281%29.pdf.
the size of the communities they serve. It has established the European Charter for Safeguarding Human Rights in the City. Article VIII of the Charter provides that:

Democratic participation is generally encouraged beyond the times of those periodic elections necessary for the election of municipal governments. To this end, citizens and their organisations can access public debates, direct enquiries to the municipal authorities over issues concerning the regional and local authority, and express their opinion either through a ‘municipal referendum’ or through public action and meetings.

More than four hundred cities have signed the European Charter for Safeguarding Human Rights in the City, which, whilst not binding in a strictly legal sense, is indicative of the growing European practice of participatory democracy.

Likewise, the Human Rights Cities Network (‘HRCN’) ‘fosters participatory democracy and social justice, by leaving no one behind.’ To proclaim itself a ‘Human Rights City,’ a city authority must commit to implementing ‘greater direct citizen participation’ and ‘[i]mprov[ing] the quality of life of residents through the implementation of a more inclusive and participatory approach.’ At present there are seven European human rights cities: Graz and Vienna in Austria; York in the United Kingdom; Barcelona in Spain, Utrecht and Middelburg in the Netherlands, and Lund in Sweden. As a Human Rights City, the City of Graz has established a ‘Human Rights Advisory Council,’ which as the name suggests, advises the municipal government, on the development and implementation of human rights in the City. The City has also developed ‘Guidelines for

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230 Ibid.
233 Human Rights Cities Network (‘HRCN’), ‘Who we are?’, available at https://humanrightscities.net/who-we-are/.
235 Ibid. (As of 6 July 2019).
Citizen Participation in Projects of the City of Graz,’ which were established on the basis of ‘dialogue between citizens, administration and politics.’ More importantly, the City has also established the Department for Citizen Participation that is responsible for the ‘preparation and implementation of participation processes.’ The priority given to participatory processes by Human Rights Cities like the City of Graz emphasize the normative value of participatory democracy.

D. THE EMERGENCE OF A RIGHT TO PARTICIPATE IN LOCAL GOVERNANCE AS A REGIONAL EUROPEAN NORM OF CUSTOMARY INTERNATIONAL LAW

A right to direct participation in governance at the local level may be emerging as a Europe-wide regional norm of customary international law. To establish a regional norm of customary international law, like global norms, state practice and opinio juris must be present. Part I demonstrated that the state practice of facilitating direct participation in local governance is increasing in Europe. There is also an array of material evidencing the development of opinio juris, including EU practice and recommendations and CoR papers, CoE guidelines, CoM Recommendations and PACE resolutions. These texts have normative value. European states are perhaps also more likely to believe they are duty bound to implement a right to participate in local government in accordance with the CoE’s Guidelines for Civil Participation, and its other resolutions and recommendations, because the CoE has recognized the right as a ‘human right.’ This evidence perhaps suggests that

239 Columbian-Peruvian Asylum Case, supra note 167, at 277. See also Case concerning Right of Passage over Indian Territory (Merits), Judgment, I.C.J. Reports 1960, p. 6, at 37. In the Right of Passage Case, the ICJ held that mutual obligations and rights between two states may arise as a result of ongoing, consistent and continued practice (‘the day-to-day exercise of the right to passage.’). Ibid.
240 Columbian-Peruvian Asylum Case, supra note 167, at 277.
241 CoE, Guidelines for Civil Participation, supra note 34.
a right to directly participate in local governance has satisfied both the state practice and opinio juris elements necessary to establish a rule of regional customary international law.

However, for a regional rule of customary international law to exist it must meet two additional requirements. First, there has to be at least a ‘tacit agreement’ between all of the parties as to the existence of a customary rule.242 ‘While in the case of a general customary rule the process of consensus is at work so that a majority or a substantial minority of interested states can be sufficient to create a new custom, a local custom needs the positive acceptance of both (or all) parties to the rule.’243 To exist the regional rule must be ‘established in such a manner that it has become binding on the other party.’244 Second ‘its existence must be proved by the State that invokes it.’ That is, if the State invoking a regional rule of customary international law fails to meet its burden, then the existence of the rule is denied. This is a stricter burden than imposed for establishing general rules of customary international law, ‘where it is for the international court itself to satisfy itself that a rule has not evolved.’245 As such, there is a presumption against the establishment of regional rules of customary international law.246

There appears to be emerging a tacit acceptance of a right to participate in local governance across Europe, beyond the 18 State Parties to the Additional Protocol to the Charter of Local Self-Government. The CoE Guidelines for Civil Participation are recommendations only, but they do recognize a ‘right’ to direct participation in local governance. It is perhaps arguable that the adoption of the CoE Guidelines for Civil Participation, at least in the states that approved the Guidelines, amounts to the ‘acceptance’ of a right. In establishing general customary international law silence amounts to acceptance, but in creating regional norms it appears that states must explicitly

242 Right of Passage Case, supra note 239, at 37.
244 Columbian-Peruvian Asylum Case, supra note 167, at 277.
acknowledge that they are subject to the regional norm and silence amounts to an
‘objection’ to the establishment of a regional rule.247

Furthermore, the rule must be ‘in accordance with a constant and uniform usage
practised by the States in question, and that this usage is the expression of right
appertaining to the State . . . and a duty incumbent on the territorial state.’248 As noted, the
facilitation of direct participation in local governance is becoming reasonably constant.
There is no single model of participatory democracy and thus no uniform practice adopted
at local level across Europe,249 however, the CoE Guidelines for Civil Participation do
recognize a number of necessary elements that satisfy ‘the right to seek to determine or to
influence the exercise of a public authority’s powers and responsibilities.’250 Although the
CoE Guidelines for Civil Participation may manifest tacit acceptance of the right, as
recommendations only it is unlikely that the Guidelines could be held to impose a ‘duty
incumbent’ on the Member States of the CoE. The Charter on Local Self-Government
imposes a duty on those 18 states ratifying it to facilitate a right to direct participation in
local governance. However, it does not impose a duty on the non-ratifying states.251

A European regional rule of customary international law that provides a right to
directly participate in local governance has not yet crystallized and without the explicit
acceptance of a legal duty to implement the right by all Member States of the CoE, or at

247 Ibid., at 572.
248 Ibid.
249 Any right to direct participation in local governance may be criticised for its ‘indeterminacy.’ The right to
democratic governance is similarly ‘indeterminate’ in that it only provides a right to participate in free and
genuine elections, without specifying a mode of election practice.
250 CoE Guidelines for Civil Participation, supra note 34, at Preamble.
251 In Columbian-Peruvian Asylum Case, supra note 167, at 277. The Court however, held that
even if the Montevideo Convention was a codification of regional international customary law it could not be
invoked because Peru had not ratified the Convention. Ibid. Here, only 18 Member States of the CoE have
ratified the Charter of Local Self-Government and in accordance with the ICJ’s judgment in the Columbian-
Peruvian Asylum Case the right to participation in local government as provided by the Charter would not apply
to the other states of the CoE, even if it reflected a regional norm of international law.
least the vast majority of them, it is unlikely to do so. Instead, like the universal right to participate in governance, it is emerging. In any event, the norm of direct participation in local governance is becoming the dominant paradigm in Europe.

Conclusion to Part II

A universal right to directly participate in public affairs at local government level is emerging. UN resolutions and declarations and the reports, recommendations and guidelines of the HRC are evidence of the international acceptance of a right to directly participate in governance -- opinio juris. Mechanisms of participatory democracy are being increasingly implemented in municipal governments around the world, manifesting evolving state practice. This opinio juris and state practice demonstrate a ‘gradual evolution’ of a universal right to directly participate in public affairs at the local government level: a right to directly participate in public affairs is emerging as a norm of customary international law.\(^{252}\)

In Europe, a right to participate in local governance is becoming the norm. The EU has adopted elements of participatory democracy and has embedded a legal framework for democratic participation in the governance of the EU. Indeed, the TEU now provides that ‘participation is an aspect of democratic legitimacy,’ which ‘postulates a normative shift in the way participation in EU law and governance is approached.’\(^ {253}\) The norm of direct participation in local government is also manifested by the soft-law instruments of the EU and its FRA and the CoR, and of the CoE’s PACE and CRLA. More importantly, the normative value of direct participation in local governance is demonstrated by the recognition of its importance by cities, municipalities and local authorities, and their representative organizations, and by the actual conduct of European cities and municipalities, facilitated by states, in implementing tools of participatory democracy, as

\(^{252}\) See, Petersen, supra note 169, at 36.

\(^{253}\) Mendes, supra note 174, at *8.
discussed in Part I. Accordingly, a right to participate in democratic governance may also be emerging as a regional principle in customary international law across Europe.

In any event, there is an individual right to participate at the local government level in the 18 Member States of the CoE that have ratified the Additional Protocol to the Charter of Local Self-Government.254

254 The 18 Member States that have acceded to the Additional Protocol are Armenia, Bulgaria, Cyprus, Estonia, Finland, Hungary, Iceland, Lithuania, Malta, Montenegro, Netherlands, North Macedonia, Norway, Serbia, Slovenia, Sweden, Switzerland and Ukraine. Albania, Belgium, France, Portugal and the United Kingdom have signed but not ratified the Additional Protocol. See, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/207/signatures?p_auth=zOiRQ9fq (as at 3 July 2019).
PART III
THE SOCIAL INCLUSION OF MINORITIES:
ENHANCING THE MINORITY RIGHT TO EFFECTIVE PARTICIPATION

Participation in public affairs is vital to the social inclusion of minorities. To ensure participation in public affairs and enhance social inclusion, international instruments have adopted the principle of ‘effective participation’ in public life. The CoE, in the FCNM, explicitly includes a minority right to effective participation. The minority right to effective participation has been implemented in various guises throughout Europe, primarily through constitutional and electoral mechanisms enabling the participation of minority representatives in elected assemblies. The representation of minorities in legislative assemblies is vital to their ‘effective’ participation and social inclusion. However, the constitutional and electoral mechanisms adopted to ensure minority representation are imperfect.

Despite the increasing use of mechanisms of participatory democracy in mainstream governance, European states and regional institutions have largely ignored the potential of minority-focused tools of participatory democracy to supplement the existing imperfect constitutional and electoral mechanisms. Europe’s failure to utilize direct participation in the minority protection context are manifest in the paucity of literature reviewing their implementation. Mechanisms of participatory democracy have enhanced social inclusion in mainstream governance, and, in the few examples available, minority-focused participation mechanisms have enhanced the ‘effective participation’ and social inclusion of the applicable minorities. Participatory democracy has significant potential to assist minorities in effectively participating in public affairs.

A. THE COE PROVIDES A RIGHT TO EFFECTIVE PARTICIPATION OF MINORITIES TO PROMOTE SOCIAL INCLUSION

To augment the integration and diversity policies of Member States, the FCNM includes Article 15, mandating ‘effective’ participation:
The Parties shall create the conditions necessary for the *effective participation* of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.  

The Explanatory Report provides that, to implement Article 15, State Parties should ensure ‘effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels.’

1. *‘Effective’ Political Participation Is an Important Element of Social Inclusion*

Integration policies should be based on social inclusion and participation. Effective participation in public affairs is of fundamental importance to social inclusion and therefore integration. The HCNM has also adopted the concept of ‘effective’ participation and has recognized that ‘[i]nclusiveness is . . . closely linked to the concept and practical manifestations of effective participation.’ In regard to new minorities, the FRA has also recognized the importance of participation to integration: ‘[t]he participation of immigrants

257 FCNM, *supra* note 18, at ¶80.
in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.\textsuperscript{260} The CoE’s Advisory Committee on the Framework Convention also recognized the importance of participation to social inclusion:

Effective participation of persons belonging to national minorities is also crucial for enhancing social cohesion, as keeping national minorities on the periphery of society can lead to social exclusion and tensions among groups.\textsuperscript{261}

Social cohesion depends, at least in part, on the ability of minorities to participate in public life.

In implementing the right to effective participation in public life, Member States of the CoE have utilized a variety of constitutional and electoral vehicles to ensure minority representation in national and sub-national decision-making assemblies.

2. The Misplaced Focus on Electoral Politics and Representation Provides Only Limited Participation and Minimal Social Inclusion

The almost exclusive reliance on representative politics provides only limited participation and singular representation; and the constitutional and electoral mechanisms utilized to select representatives are often imperfect and potentially counterproductive to the policy aims of social inclusion and integration. The ACFC and HCNM has recognized that a range of special mechanisms could be adopted to ensure minority participation in elected assemblies, in addition to majoritarian and proportional voting including ‘reserved seats, quotas, qualified majorities, dual voting or “veto” rights, may be introduced.’\textsuperscript{262} Like

\textsuperscript{260} EU Fundamental Rights Agency, \textit{Together in the EU: Promoting the Participation of Migrants and their Descendants: Recognized Importance of Participation To Integration} (2017), at CBP No. 9.


\textsuperscript{262} ACFC, Thematic Commentary No. 2, \textit{supra} note 261 at ¶72.
the electoral mechanisms referred to in Part I.A, the specific electoral mechanisms adopted to select representatives and enable minority representation in elected assemblies are imperfect, as are constitutional guarantees of representation, and, without more, provide minorities with only limited ‘effective’ participation.

a. **Guaranteed Representation May Be Tokenistic and Ineffective**

Mechanisms that specifically guarantee minority representation such as reserved seating, quotas and dual-voting arrangements often come with parallel restrictions on candidacy or voting, limiting either or both to the relevant minority. 263 Accordingly, members of minorities often must identify and register as a particular minority which ‘is a problematic aspect and a potentially sensitive matter.’ 264 These mechanisms are also open to corruption and abuse evidenced by certain minority candidates receiving many times the votes of the actual number of self-declared minority members. For example, in the 2012 Romanian elections the minority candidates for both the Albanian and Ruthenian minorities each received more than 20 times the number of votes than people who had declared their ethnicity as Albanian or Ruthenian. 265 Indeed, the Romanian reserved seat system has been credited with ‘the flourishing “ethno-business” and the creation of a kind of “service-client” relation between the government and the minority representative.’ 266

In any event, a guarantee of representation through reserved seats and quotas does not necessarily equate to the ‘effective participation’ of a minority. Quotas and reserved

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264 Ibid. See also, Andrew Reynolds, Electoral Systems and the Protection and Participation of Minorities, Minority Rights Group International (2006), at 5 (‘One of the basic ideas of liberal democracy is freedom of choice at the ballot box and if one is corralled into having to vote for a candidate of one’s own ethnicity, then that intrinsic free choice is constrained.’).

265 Marko and Constantin, supra note 263, at 371.

seating generally provide for one or only a few minority representatives in large assemblies dominated by generally class-based parties differentiated on a left/right ideological basis. Minority representatives in such situations often have little influence on the assembly’s decision-making process either generally or on issues particularly affecting the minority. ‘Effective participation should ensure that minorities represented in the legislative bodies have a real possibility to influence the decisions being made.’\textsuperscript{267} In Romania each minority is guaranteed a minimum of one seat in parliament\textsuperscript{268} and, following the 2016 elections, 16 national minorities have one seat in parliament (Albanians, Armenians, Bulgarians, Croatians, Germans, Greeks, Jews, Italians, Macedonians, Poles, Roma, Russians, Ruthenians, Serbs, Tartars, Turks and Ukrainians are all represented in Parliament).\textsuperscript{269} The more-numerous Hungarian minority achieved the electoral threshold of 5 per cent and therefore is represented in parliament without the invocation of the reserved seat guarantee.\textsuperscript{270} The Hungarian minority has 21 deputies.\textsuperscript{271} However, there are 329 members of the Chamber of Deputies of the Romanian parliament, which is dominated by the Social Democrats, with 139 seats, and the National Liberals with 66 seats.\textsuperscript{272} The single seats reserved for minorities cannot be expected to have an effect on decision-making; even the Hungarian minority with 21 deputies has little influence in the parliament. Accordingly, ‘the reserved seats mechanism may in fact be a window dressing exercise that leads to token representation of minorities rather than effective participation.’\textsuperscript{273}

\textsuperscript{267} Ibid., at 243.

\textsuperscript{268} The Constitution of Romania, Art. 62 (2) (‘Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law.’), available at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=3.


\textsuperscript{271} Romanian Chamber of Deputies, supra note 257.

\textsuperscript{272} Ibid.

\textsuperscript{273} Marko and Constantin, supra note 263, at 372. Minority parties have increased significance when their votes are required to form a parliamentary majority, but in those situations the minority parties frequently become captives of the dominant party.
b. Territorially Concentrated Minorities and Benign Gerrymandering
May Enable the Election of Minority Representatives, But May Also
Entrench Ethnic Divisions

If a minority is territorially concentrated it may be the majority within an electoral
district and therefore be able to elect a minority representative. Indeed, by way of
gerrymandering, electoral districts can be delineated to ensure that a minority is either the
majority, or in a proportional voting system, is sufficiently numerous to attain a quota
and/or exceed the requisite threshold.274 In both instances, to receive the majority or a
quota of votes, minority candidates frequently need to receive the vast majority of the
community’s votes. To do so, the minority electorate often needs to direct their votes to a
single candidate or party, encouraging the formation of minority ‘ethnic’ parties or the
merger of diverse intra-minority parties into a single party.275 In these situations
‘communal parties may be the only hope for effective representation of specific interests
and, thus, for effective participation.’ As such, the electoral system may encourage the
creation of political parties based on ethnic identification.

Ethnically based political parties do not represent the diversity within minorities and
the plurality of opinions, but only the ethnic nature of the minority. ‘In such circumstances,
ethnicity is prioritized over most other criteria in decision making.’276 More disconcerting
is that ‘the formation of political parties along ethnic lines can also contribute to the
creation of ethnic blocks and thus lead to a divided rather than an integrated society.’278
Integration and social inclusion are the dominant minority protection policies in Europe,
but:

274 In proportional voting systems, thresholds are used to prevent the fragmentation of representation between
a large number of parties, which reduces the ability to form a stable parliamentary majority. However,
thresholds also inhibit the potential of geographically dispersed minorities within large or even state-wide
districts to acquire the number of votes required to exceed the threshold.
275 See, Lantschner and Kmezić, supra note 266, at 227.
276 Lund Recommendations, supra note 258, at 24.
277 Lantschner and Kmezić, supra note 266, at 225.
278 Ibid., at 224.
Ethnic parties which are strongly determined by the belonging to the ethnic group might accentuate the difference between the minority and the majority to an extent which counteracts cohabitation free from tensions.\footnote{Ibid., at 224-25.}

The necessity to attain, and maintain, a majority in a single territorial unit may also encourage ghettoization, where minority populations remain or relocate to electoral districts where they are the majority on the basis, at least in part, that they will be represented. According to the HCNM, ‘full respect for equal rights and non-discrimination will reduce or eliminate the demand and need for political parties formed on the basis of ethnic ties.’\footnote{Lund Recommendations, supra note 258, at 24.} However, almost 30 years after the end of the Cold War and the adoption of democratic elections ethnic parties remain firmly entrenched, particularly in Eastern Europe.

c. **Consociational Systems Also Rely on Representation and Entrench Pre-Existing Ethnic Divisions and Exclude Small Minorities**

Consociational systems are ‘based on proportional representation of groups, veto powers, and segmental autonomy of cultural groupings.’\footnote{Marko and Constantin, supra note 263, at 373.} The states of Belgium, Switzerland and Bosnia-Herzegovina and regions of South Tyrol and Northern Ireland have adopted consociational systems in an effort to protect their minority communities. Belgium is probably the best exemplar of a consociational system, which is exemplified by bilingualism, biculturalism and binationalism.\footnote{Sammy Smooha, ‘The Model of Ethnic Democracy’, European Centre For Minority Issues (ECMI), Working Paper No. 13 (October 2001), at 6.} Consociational democracy is probably the best mechanism of ensuring the effective representation of minorities in elected assemblies. However, consociational democracy has virtually conceded that integration and the social inclusion of all elements of society is impossible and adheres to the view of John Stuart Mill that ‘there cannot be democracy in multiethnic states.’\footnote{Venice Commission, supra note 23, at 35.}
Consociational systems were adopted to provide representation to individual minorities in multi-nation states. However, while they do enable mutual governance within a state, they also entrench the segmentation of society into fixed and pre-determined ethnic groups. In Belgium, the constitutional system has recognized and entrenched the division between the French and Flemish populations of Wallonia and Flanders. Despite the complex nature of the Belgian federation and, its six attempts at reform, the Belgian consociational system has failed to satisfy all ethnic groups, and Flemish nationalists have maintained that the creation of a separate Chamber of Representatives in the predominantly Francophone Brussels-Capital electoral district, where it is unlikely that a Flemish candidate could win a seat, discriminates against them.

Bosnia-Herzegovina also adopted a consociational system as part of the Dayton peace accords, which ended the bloody conflict that resulted from the dissolution of the Former Soviet Republic of Yugoslavia. While the Dayton accords brought a semblance of peace to the country, it also entrenched pre-existing ethnic divisions. Bosnia-Herzegovina’s constitution provides for an ‘inclusive grand coalition government, mutual veto power on vital interest issues, proportional representation and [a] high degree of segmental autonomy for each group.’ This segmental autonomy perpetuates the country’s ethnic divisions.

Consociational democracy also tends to ignore the rights of the numerically inferior minorities. In Bosnia representation is divided between numerically superior Bosnian, Serbian and Croatian communities. In ‘[r]ecognizing the three warring ethnic groups as the three constituent peoples of Bosnia and Herzegovina, the Constitution fails to address the rights of citizens not belonging to any of the three groups and effectively bars these from

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285 Marko and Constantin, *supra* note 263, at 361.
running for public offices defined by strict ethnic quotas.\textsuperscript{287} Indeed, the Constitutional Court of Bosnia-Herzegovina confirmed that by virtue of the constitution distinguishing between the ‘constituent peoples’ (Bosnians, Serbs, and Croats) and minorities, ‘[t]he latter cannot claim to have the same rights in terms of participation and representation as conferred to the constituent peoples by the principle of collective equality.’\textsuperscript{288} Albanians, Ruthenians, Roma, Romanians and Jews all form significant minority communities in Bosnia-Herzegovina, but are excluded from participation in government. Indeed, the Constitution was challenged in the European Court of Human Rights (‘ECtHR’) by a member of each of the Jewish and Roma communities because they were barred from running for the presidency, and the Court held that Bosnia-Herzegovina violated the ECHR’s right to free elections\textsuperscript{289} and non-discrimination provision.\textsuperscript{290} However, Bosnia-Herzegovina, despite repeated demands by both the CoE and the EU, has failed to implement the decision.\textsuperscript{291}

Consociational democracies also frequently provide the dominant minorities with veto powers either formally, or otherwise by the nature of proportional representation within the legislative assembly, which tends to necessitate ‘grand coalitions’ in the formation of government. Veto powers do enable minorities to decisively affect decision-making but, according to the ACFC, ‘a system of “veto” or “quasi veto” rights can even lead to paralysis of state institutions.’\textsuperscript{292} More problematically, they have the potential to ‘turn democracy into ethnocracy’\textsuperscript{293} by the improper invocation of veto powers. The

\begin{itemize}
\item 287 Ibid., at 105.
\item 289 ECHR, supra note 189, at Art. 3, Protocol No. 1.
\item 291 See Marko and Constantin, supra note 263, at 355.
\item 292 ACFC, Thematic Commentary No. 2, supra note 261, at 7.
\item 293 Marko and Constantin, supra note 263, at 377.
\end{itemize}
Bosnian constitution provides each constituent people a veto over any decision declared to be ‘destructive of a vital interest.’\textsuperscript{294} The use of the ‘vital interest veto’ has resulted in governance being frequently obstructed and it has even been suggested that ‘the overly complex and inflexible power structure [is] vulnerable to the tyranny of a minority exercised through the vital interest veto.’\textsuperscript{295}

3. **Autonomous Self-Governing and Consultative Bodies Enhance Participation But Utilize Potentially Flawed Representative Governance**

Autonomous self-governing bodies enable minority representation on matters pertinent to each members’ identity -- they enable participation in matters ‘depending upon the salience of the identification and arrangement for her or him.’\textsuperscript{296} Purely consultative bodies are also an important supplement to traditional mechanisms of minority representation; although they have no decision-making power themselves, they do provide a channel for transmitting minority issues and opinions to government at the local, regional or national level.

\textbf{a. Autonomous Self-Governing Bodies Enhance Participation}

Autonomous and self-governing bodies provide minorities with self-government over issues that are directly pertinent and thereby intended to provide ‘effective participation’ in particular in matters ‘affecting them.’\textsuperscript{297} In regard to matters that do not directly affect minorities and are not within the jurisdiction of their self-governance powers, the autonomous body may also consult with the government authorities on ‘external matters.’ These self-governance arrangements generally focus exclusively on minority issues such as linguistic, cultural or education policies and operate in parallel to governmental authorities.

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\textsuperscript{294} Dayton Constitution, Ann. 4, Art. IV.3.(e) in Marko and Constantin, \textit{supra} note 263, at 377.

\textsuperscript{295} Balázs, \textit{supra} note 286, at 106, 117.

\textsuperscript{296} Lund Recommendations, \textit{supra} note 258, at 19.

\textsuperscript{297} FCNM, \textit{supra} note 18, at Art. 15.
Hungary, which has a comprehensive minority self-government framework, has ‘enshrined the right to cultural autonomy for thirteen ‘indigenous’ national minorities (Bulgarians, Greeks, Croatians, Poles, Germans, Armenians, Roma, Romanians, Carpatho-Rusyns, Serbs, Slovaks, Slovenes, and Ukrainians)’ and has enabled several minority self-governments to ‘establish schools and take over the running of other cultural institutions.’ Likewise, in Serbia there is a minority council for each minority, which has decision-making authority with regard to education. In Estonia, minority ‘Cultural Councils’ are tasked ‘with organising the cultural and educational life and social welfare of national minorities, governed by a Cultural Council elected by citizens who register as belonging to the relevant minority group.’ The Estonian Cultural Councils operate schools, theatres and museums.

The ACFC has endorsed autonomous bodies as ‘reinforc[ing] effective participation of persons belonging to national minorities in the management of affairs concerning them, and notes the general satisfaction of its interlocutors with these new opportunities for participation’.

b. Consultation Mechanisms also Enhance Participation

The HCNM, in the Lund Recommendations on the Effective Participation of National Minorities in Public Life (the ‘Lund Recommendations’), recognized that consultative bodies, in their advisory role:

. . . can constitute a useful intermediary institution between decisionmakers and minority groups. . . . Such bodies may also

299 Ibid., at Loc. 4760.
300 See, Marko and Constantin, supra note 263, at 390.
perform specific tasks related to the implementation of programs, e.g. in the field of education.\textsuperscript{303}

The ACFC has endorsed purely consultative bodies to supplement other participatory mechanisms.\textsuperscript{304} The representation of minorities in elected assemblies is important, but ‘oftentimes consultative mechanisms prove more effective in transmitting the interests of minority constituencies into the chain of legislative or political decision making.’\textsuperscript{305} The City of Graz has established a ‘Migrants’ Council’ that advises the local administration and ‘proposes solutions for problems such as political and social disadvantages, the housing situation or educational issues.’\textsuperscript{306} The Migrants’ Council has been successful in transmitting the interests of new minorities to the City’s decision-makers.

c. \textit{Autonomous and Consultative Bodies Enhance Participation, But the Selection of Minority ‘Representatives’ May Be Flawed}

Non-territorial, functional, personal, and cultural bodies\textsuperscript{307} and other self-governing and consultative bodies primarily rely on electoral mechanisms for their governance, with all the potential impediments to participation referred to above. At present, in regard to the governance of self-governing bodies ‘a fully democratic process can be expected,’\textsuperscript{308} together with the concomitant imperfect election processes. Analyses of the governance of culturally autonomous bodies ‘reveals manipulative practices and little real empowerment of the minorities.’\textsuperscript{309} Likewise, the selection of minority representatives to serve on

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{303} Lund Recommendations, \textit{supra} note 258, at ¶12.
\item \textsuperscript{304} ACFC, Thematic Commentary No. 2, \textit{supra} note 261, at ¶10.
\item \textsuperscript{307} The distinction between non-territorial autonomy, cultural autonomy, functional autonomy and personal autonomy is ambiguous. Here, I will adopt ‘cultural autonomy’ as an umbrella term. \textit{See, generally}, Marko and Constantin, \textit{supra} note 263, at 387.
\item \textsuperscript{308} Weller, \textit{supra} note 305, at 442.
\item \textsuperscript{309} Osipov, Alexander, ‘Non-Territorial Autonomy During and After Communism: In the Wrong or Right Place?’ \textit{12 Journal on Ethnopolitics and Minority issues in Europe} 1 (2013), 7-26. \textit{See also}, Lagerspetz \textit{supra} note 301, at 457-475.
\end{itemize}
\end{footnotesize}
consultation bodies is either undertaken through imperfect electoral processes or by government appointment, reducing the legitimacy of consultative bodies.\textsuperscript{310} Minority councils often consist of both government and minority representatives, which in and of itself may be beneficial in enabling direct communication and exchange between the government and the minority representatives;\textsuperscript{311} however, the legitimacy of a minority consultative body consisting of a majority of government representatives is doubtful.\textsuperscript{312}

\textbf{B. IRRESPECTIVE OF THE SYSTEM, MINORITY ‘REPRESENTATIVES’ ARE NOT REPRESENTATIVE}

There is no doubt that the \textquote{[r]epresentation of minorities in elected bodies at national and sub-national levels is an essential element of participation in public life.}\textsuperscript{313} However, the provision of minority participation through mechanisms of representation, incurs the same democratic deficit as any elected representative body,\textsuperscript{314} namely that minority representatives do not represent the general interest of the minority community.\textsuperscript{315} Moreover, minority representatives could not -- by their very nature as \textit{minority representatives} -- adequately represent their minority constituents other than in regard to their ethnic identity.

Ethnic identity is only one element of a person’s identity. As the Explanatory Note to the Lund Recommendations recognized:

\begin{quote}
Certainly, identities are not based solely on ethnicity, nor are they uniform within the same community; they may be held by different members in varying shades and degrees. Depending upon the specific matters at issue, different identities may be more or less salient.
\end{quote}

\begin{footnotesize}
\textsuperscript{310} See, Weller, \textit{supra} note 305, at 442.
\textsuperscript{311} ACFC, Thematic Commentary No. 2, \textit{supra} note 261, at ¶65.
\textsuperscript{312} See, Lantschner and Kmezić, \textit{supra} note 266, at 246.
\textsuperscript{313} Marko and Constantin, \textit{supra} note 263, at 343.
\textsuperscript{314} See \textit{supra}, Part II.
\textsuperscript{315} Marko and Constantin, \textit{supra} note 263, at 343.
\end{footnotesize}
As a consequence, the same person might identify herself or himself in different ways for different purposes, depending upon the salience of the identification and arrangement for her or him.\textsuperscript{316}

Minority representatives do not represent the diversity of a minority community. Minority communities are not homogenous and are themselves diverse. The various shades of socio-economic status, ideology or even cultural interests beyond ethnicity are not represented by reliance solely on ‘minority representatives.’\textsuperscript{317} This is particularly evident where minorities are not guaranteed representation through reserved seating or quota systems, and must unite together in one political party to maximize their vote and the prospect of representation.\textsuperscript{318} Even though the right to effective participation has a collective dimension, it does not mean that the participation of minorities, in its entirety, should be reflected or subsumed in mono-dimensional representation.\textsuperscript{319} Mono-dimensional representation limits the ‘effective’ participation of persons belonging to minorities.

C. ENHANCING THE EFFECTIVENESS OF MINORITY PARTICIPATION THROUGH DIRECT PARTICIPATION AT THE LOCAL LEVEL

The minority rights agenda purportedly includes ‘democratization and boosting participation of minorities in public life.’\textsuperscript{320} Participatory democracy has the potential to enhance the effective participation of minorities and otherwise limit or minimize the negative aspects of imperfect electoral and constitutional mechanisms of minority protection. The ACFC does not mention ‘direct participation’ or ‘participatory democracy’ in any of its four thematic commentaries or in either the first or second cycle ‘Compilation

\textsuperscript{316} Lund Recommendations, supra note 258, at 19.

\textsuperscript{317} ‘Although a minority might be united by common characteristics of a linguistic, cultural or historical nature, it is still composed of individuals who have different political and ideological perceptions.’ Lantschner and Kmezić, supra note 266, at 227.

\textsuperscript{318} For instance, the Constitution of Romania provides that ‘[c]itizens of a national minority are entitled to be represented by one organization only.’ Constitution of Romania, supra note 255, at Art. 62(2).

\textsuperscript{319} FCNM, supra note 18, at Art. 3 (‘Persons belonging to national minorities may exercise the rights . . . individually as well as in community with others.’).

\textsuperscript{320} Smith, supra note 298, Loc. 4635.
of Opinions of the Advisory Committee Relating to Article 15 of the Framework Convention. The OSCE has recognized that '[e]xamples of means and instruments that facilitate effective participation include electoral arrangements, specialized governmental bodies, consultative mechanisms, participatory decision-making procedures and awareness-raising campaigns.'\textsuperscript{321} Furthermore, ‘it is undeniable that effective participation is essentially linked to the level of government where it is implemented’; that is the local level.\textsuperscript{322} Tools of participatory democracy are under-utilized in facilitating the effective participation of minorities, but where they have been adopted at the local level, they have enhanced social inclusion and the empowerment of minorities.

1. \textbf{Direct Participation in Local Minority Organizations Enhances Social Inclusion}

Direct participation in minority organizations established at the local level can enhance the social inclusion of minorities and improve their effective participation in public life. A number of European states already facilitate cultural minority organizations at the local level. Autonomous bodies sometimes manage and operate minority schools and cultural institutions (such as theatres and museums) as well as promote minority languages. These autonomous bodies are often constituted in parallel to government authorities at the local, regional and national level. In Estonia, pursuant to the National Minorities Cultural Autonomy Act (1993), ‘national minorities with a population of over 3000 may establish cultural autonomy bodies’ and these minority cultural councils ‘may establish county or town cultural councils of the national minority, or to appoint local cultural councillors.'\textsuperscript{323} The Serbian Law on National Councils of National Minorities enables National minority

\textsuperscript{321} Ljubljana Guidelines, \textit{supra} note 259, at 25 (emphasis added).
councils to ‘found associations, funds, institutions of education and upbringing (art. 11), culture (art. 16), media (art. 19), the public use of languages and alphabets (art. 10),’ at the local level.\textsuperscript{324} Local consultative cultural organizations can also enhance participation. In Italy’s Province of Trento, local minority ‘Cultural Institutes’ provide the provincial administration with opinions, advice and proposals, and have an ‘essential role as scientific authorities on the standardisation of minority languages, setting and updating linguistic and writing rules, which represents the basis of all the complex of linguistic rights granted to the groups.’\textsuperscript{325}

Direct participation in locally based autonomous and consultative bodies will enhance social inclusion and empower minority communities, as well as improve the governance and legitimacy of the organizations. For instance, an autonomous body could be responsible for managing a minority school, or a number of minority schools within a locality. The body will likely enact governance plans, appoint a principal and adopt a budget. All of these decisions, made at least annually, could be made on the basis of one or more minority ‘town hall’ meetings or assemblies, involving the participation of members of the minority community.\textsuperscript{326}

In Brazil, a pioneer of participatory democracy, there are a plethora of national conferences on a variety of policy issues, including specific conferences for individual minorities. Although these conferences are national, the issues the subject of the conferences are precipitated at the local level and the ‘national conferences are but the culmination of a process that begins in municipalities,’ where citizens meet and elect


\textsuperscript{325} Daicampi, \textit{supra} note 322, at 111.

\textsuperscript{326} Importantly, the precursors to effective participation must be available, namely the prior access to information regarding the management of the school or schools, budgetary and financial information, sufficient notice to review and consider the information, and the opportunity to deliberate and debate before and during any town hall meeting adopts a final decision.
delegates from an open poll of participants. These ‘participatory mechanisms of deliberation within representative institutions may actually enhance the political inclusion of minority groups, advancing their preferred policies, fostering their rights and consolidating their identity.’ This participatory mechanism supplements representative democracy and enables minorities to overcome some of its flaws by influencing government from the bottom-up.

In a report concerning a number of minority projects funded by small grants throughout South-East Europe it was recognized that by enabling the ‘participation of persons belonging to national minorities to design and implement the project was of direct benefit to the minority community.’ As a result of this project, it was recommended that facilitators ‘[u]se all means available to ensure effective participation of persons belonging to national minorities . . . in all stages of policy-making, including in decision-making.’ The report highlighted that local ownership of the projects by minorities enhanced their effective participation.

Even if the participatory mechanism is purely consultative, it will provide minority members with the opportunity to participate in debate and deliberation, and enhance participation, particularly if the decision-making authority is required, as in the Aarhus Convention, to ‘seriously’ take into account the views and opinions of the minority participants. In doing so, members of the minority community who identify with their minority in regard to education or language or culture, can participate directly in regard to

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328 Ibid., at 4.
329 Ibid., at 5.
331 Ibid.
the ‘salient’ issue without the necessity of a potentially unrepresentative representative acting as an intermediary.

2. The Direct Participation of Roma at the Local Level Has Demonstratively Assisted in their Social Inclusion

With more that 10 million people, the Roma represent the largest -- and the most socially excluded -- minority in Europe. The Congress of Local and Regional Authorities recognized that, ‘as the public authorities closest to citizens, local and regional elected officials are best placed for devising policies to facilitate Roma access to rights.’ The Congress adopted a Resolution inviting local and regional authorities to ‘establish structures to ensure the voice of Roma is heard by those responsible for Roma issues (including the voice of women and young people), either in the form of Roma-specific consultative bodies, or by involving Roma in representative bodies for minorities and community groups generally.’ The CoE, in its Human Rights of Roma and Travellers in Europe suggested that ‘[a]dvisory bodies could be set up to give such consultations more continuity and promote the legitimacy of the Roma representatives.’ Direct participation in these local advisory bodies enhances the social inclusion of the most excluded minority in Europe.

For instance, the Gostivar municipality of North Macedonia has established an ‘Advisory Committee’ on Roma issues that establishes action plans, focusing on health, housing and education, and designed to improve the living conditions of the Roma community. The Advisory Committee consists of members of the Roma community, Roma representatives on the Municipal Council, representatives of the municipality and

333 Ibid., at ¶8.
334 Ibid., at ¶2.
other interested citizens. The involvement of the Gostivar Roma community on the Advisory Committee increased their participation in public life and enhanced their social inclusion.

In the Italian region of Lombardy, the Lombardy Regional Authority adopted mechanisms of participatory governance to promote Roma labour integration in the *Valore Lavoro* project. The *Valore Lavoro* project adopted elements of participatory democracy to enable the ‘effective active involvement into the decision-making process of a specific vulnerable group’ -- the Roma. The ‘Roma people and their families’ were directly involved in ‘the process of shaping their paths towards job insertion that would better fit their starting conditions and meet their real needs.’ As a result of collaborating directly with and between Roma, ‘the collaborative logic strengthened the opportunity for Roma to access sustainable jobs, adequate according to their skills and fitting their needs.’

**Conclusion to Part III**

The social inclusion of minorities is one of the primary policy objectives of the EU, OSCE and CoE. The effective participation of minorities in public life enhances social inclusion. The CoE has mandated the principle of ‘effective participation’ in the FCNM. In implementing the minority right of effective participation, Member States of the CoE have predominantly relied on elements of representative democracy. Electoral representation in national and subnational parliaments and legislatures is a vital element of minority participation and social inclusion. *Supplementing* minority participation in elected assemblies by implementing minority-focused mechanisms of participatory democracy at

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337 Ibid.
339 Ibid., at ¶3.
340 Ibid., at ¶43.
341 Ibid., at ¶49.
the local level has the potential to significantly improve the effective participation of minorities and reduce the disenfranchising potential of representative politics.

In implementing tools of participatory democracy, the effective participation and social inclusion of the local Roma population in Gostivar and Lombardy has been enhanced. The direct participation in small local projects has also demonstratively improved minority participation and social inclusion in South-East Europe. In utilizing tools of participatory democracy in local autonomous and consultative bodies, in addition to their representation in elected assemblies, the effective participation and social inclusion of minorities will be enhanced.

Importantly, tools of participatory democracy have the potential to enable effective minority participation irrespective of any flaws in the electoral and constitutional processes specifically adopted to enhance minority representation. Furthermore, the representation of minorities in majority bodies ignores the multiple identities of minority members and the reliance on minority ‘representatives’ to act as intermediaries limits effective minority participation. The ability of minority members to ‘selectively’ participate in local autonomous and consultative bodies also enhances minority participation and social inclusion.
PART IV

UTILIZING THE EXISTING LEGAL FRAMEWORK TO ENHANCE INTEGRATION AT THE LOCAL LEVEL

Liberal democracies have accepted that diversity is beneficial to democracies, and in doing so they have adopted polices endorsing multiculturalism, ‘insofar as cultural diversity should be recognized as valuable for democratic societies as a whole.’\(^{342}\) Indeed, ‘[t]here is an international emerging consensus recognizing the special needs of minorities and an obligation to protect their security, identity, and lifestyle, *not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.*’\(^{343}\) Policies of recognizing diversity and encouraging social inclusion and integration, although facing challenges from the populist and xenophobic far-right, remain the dominant paradigm of Europe’s minority protection scheme. The integration of minorities depends on their social inclusion, but integration also depends on the adaptation of the majority.

There is significant potential for mechanisms of participatory democracy, referred to in *Part I*, to enhance the effective participation of both minorities and majorities. Participatory budgeting and consultation processes also improve governance, reduce corruption, enhance transparency and accountability and reduce poverty. As demonstrated in *Part II*, there is an emerging universal right to participation provided by global practice and international instruments; and, in Europe, there is a legal right to participate in local governance in the 18 states that have ratified the Charter of Local Self-Government and it is emerging as the dominant paradigm across Europe. Mechanisms of participatory democracy are best suited to local governance.


\(^{343}\) *Ibid.*, at 321 (emphasis added).
The interaction of these norms, together with the right to effective participation of minorities discussed in Part III, enables and encourages the creation of locally based minority organizations, governed on a participatory basis. These local minority organizations that facilitate the direct participation of minority members enhance their social inclusion and their effective participation in public life. These emerging norms also enable and encourage the creation of locally based participatory bodies that enable the participation of both minorities and majorities and focus on establishing mutual trust. These participatory ‘mixed-bodies’ facilitate interaction, mutual engagement and dialogue between minorities and majorities, enhancing integration. The social inclusion of the alienated segment of the majority population will also be enhanced by the implementation of participatory democracy at the local level.

A. INTEGRATION, DIVERSITY AND MULTICULTURALISM -- THE POLICY OBJECTIVES OF THE EU, COE AND OSCE

The TEU specifically provides that the EU ‘shall combat social exclusion and discrimination’ and ‘respect [Europe’s] rich cultural and linguistic diversity.’ In 1999, the Lund Recommendations, in the very first ‘General Principle,’ expressed its aim to facilitate both inclusion and diversity: ‘[t]hese Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.’

The dual goals of integration and social inclusion permeate the CoE’s FCNM. Most obviously, Article 5 of the FCNM, requires State Parties to ‘undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.’ State Parties are also to ‘refrain from policies or practices aimed at assimilation’; but, at the same time, the restraint on assimilationist

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344 TEU, supra note 97, at Art. 3(3).
345 Lund Recommendations, supra note 258, at 7.
policies is ‘[w]ithout prejudice to measures taken in pursuance of their general integration policy.’ Accordingly, Article 5 allows states to adopt policies to integrate minorities, but those policies are to avoid assimilationist tendencies. Article 5 requires a balanced approach endeavouring to achieve both integration and the preservation of minority identity, ‘reflecting the general international approach to diversity management through integration of diverse societies in which persons belonging to national minorities are recognized as different but equal.’

B. INTEGRATION IS A TWO-WAY STREET THAT CAN BE FACILITATED BY LOCAL PARTICIPATION

The integration of minorities depends on their social inclusion; but what is often ignored is that integration is a two-way process. Integration depends on minorities and the dominant population adapting with and to each other. Societies are diverse, and that the existence of mono-cultural homogeneous societies is a myth. The implementation of participatory democracy at the local level can facilitate interaction and dialogue. Online platforms can also facilitate some interaction and dialogue, thereby promoting integration. Importantly, mixed local participatory bodies can also assist in the social inclusion of the alienated segments of the majority population, as well as persons belonging to minorities.

346 FCNM, supra note 18, at Art. 5(2) (emphasis added).

347 Petra Roter, ‘Commentary of Article 5 of the Framework Convention for the Protection of National Minorities’, in Rainer Hoffman, Tove Malloy and Detlev Rein (eds.), The Framework Convention for the Protection of National Minorities: A Commentary (2018) 126, at 144. This balancing act between promoting integration and fostering diversity is probably best manifested by the dualistic nature of Article 4 of the FCNM. Article 4 of the FCNM provides that State Parties are to adopt adequate measures to promote the ‘full and effective equality between persons belonging to a national minority and those belonging to the majority’ in political life, taking into account the specific conditions of persons belonging to national minorities. FCNM, supra note 17, at Art. 4(2). In doing so, those measures shall not be considered to be acts of discrimination. Ibid., at Art. 4(3). (emphasis added). See also, Barbara Wilson, ‘Commentary of Article 4 of the Framework Convention for the Protection of National Minorities,’ in Rainer Hoffman, Tove Malloy and Detlev Rein (eds.), The Framework Convention for the Protection of National Minorities: A Commentary (2018), 111, at 125. According to Wilson, Article 4 ‘should be adapted to allow persons belonging to national minorities to preserve their identities and, at the same time, to participate fully in public life as an integral part of society.’ Ibid. (emphasis added).
1. Integration Requires Interaction Between Minorities and the Majority

The *Ljubljana Guidelines on Integration of Diverse Societies* specifically acknowledge that ‘[d]iversity is a feature of all contemporary societies and of the groups that comprise them.’\(^{348}\) Accordingly, integration of diverse societies requires the integration of all elements of society. The ACFC has defined ‘integration’ in its Commentary on Language Rights:

Integration, as opposed to assimilation, is considered a legitimate aim to which *both* the majority and minority cultures contribute. It is understood, in this context, as a process of social cohesion that respectfully accommodates diversity while promoting a positive sense of belonging for all members of society. . . . *As a two-way process, integration requires recognition and respect on both sides and may often lead to changes within both the majority and the minority cultures.*\(^{349}\)

It is therefore important to involve both majorities and minorities in the integration process ‘in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal, through recognition, mutual accommodation and active engagement on all sides.’\(^{350}\)

A common feature of the EU’s, OSCE’s and CoE’s integration policies is recognition that integration is a ‘two-way process.’ The FRA’s first Common Basic Principle for Immigrant Integration Policy in the EU recognizes that ‘[i]ntegration is a dynamic, *two-way process* of mutual accommodation by all immigrants and residents of Member States.’\(^{351}\) The FCNM provides that State Parties shall ‘take effective measures to

\(^{348}\) Ljubljana Guidelines, *supra* note 259, at 14.
\(^{350}\) *Ibid.*, at ¶54.
promote mutual respect and understanding and co-operation among all persons living in their territory irrespective of those persons’ ethnic, cultural, linguistic or religious identity. . .

352 The HCNM has stated that:

Integration is a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels.353

Successful integration requires ‘in the end, a sincere willingness on both sides -- majority and minority -- for continuous interaction, mutual adjustments and accommodation.’354

The FCNM provides that State Parties, to facilitate integration, ‘shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living in their territory irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.’355 Similarly, the HCNM ‘referred to protecting the rights of national minorities and aimed for a fair balance between integration policy and the promotion of minority rights . . . . . , the Ljubljana Guidelines call for balancing the rights and interests of all groups, minorities and majorities alike.’356

Despite the rhetoric of these European institutions, it appears that integration policies focus primarily on the social inclusion of minorities and only on their adaptation to mainstream society.357 To assist integration, European institutions should implement a two-way process that facilitates interaction, dialogue and mutual engagement between

352 FCNM, supra note 18, at Art. 6 (emphasis added).
353 Ljubljana Guidelines, supra note 259, at 3 (emphasis added).
354 Roberta Medda-Windischer, Old and New Minorities: Reconciling Diversity and Cohesion (2009), at 257.
355 FCNM, supra note 18, at Art. 6 (emphasis added).
357 See, Marko supra note 20, at 3.
minorities and majorities. European regional institutions have recognized the importance of intercommunity dialogue in the integration process, but European states have done little to facilitate interaction, dialogue and mutual engagement between minority and majority communities.

2. Local Participatory Democracy Facilitates Inter-Cultural Interaction, Dialogue and Mutual Engagement

The ACFC, in their Fourth Thematic Commentary, *The Framework Convention: a key tool to managing diversity through minority rights*, has recognized that ‘[t]he availability of effective platforms for the discussion of relevant concerns with such groups may not only promote trust among minority communities, but it may also serve to facilitate open and flexible solutions to issues that prevent access to rights, and may thereby promote societal cohesion and stability.’\(^{358}\) The HCNM, in the *Tallinn Guidelines on National Minorities and the Media in the Digital Age*, has recognized the importance of facilitating inter-community dialogue, deliberation and debate:

> Pluralistic democratic society requires ample space for interaction, deliberation and debate on matters of importance and interest to the population. Such spaces should be inclusive: all members of society, including national minorities, should be able to access those spaces without discrimination and participate effectively in the deliberation that takes place in them. Inclusive deliberative spaces allow different groups in society to interact with each other, to explore and develop their identities and articulate their views, and to share information and perspectives. These activities can play instrumental roles in enhancing understanding and reducing intolerance and mutual distrust in diverse societies and thereby strengthen societal

integration, cohesion and stability. They can also provide valuable safeguards against societal tensions and conflicts.\textsuperscript{359}

Mechanisms of participatory democracy provide effective platforms for discussion, mutual engagement and intercommunity dialogue.

Tools of participatory democracy applied at the local level in accordance with Europe’s emerging normative framework and adapted to the particular circumstances of both minority and majority communities, will enable ‘interaction, deliberation and debate on matters of importance and interest to the population.’\textsuperscript{360} In doing so, participatory democracy will facilitate dialogue and communication, and thereby enhance the social inclusion of minorities and majorities and the integration of diverse societies. For instance, local town hall meetings and consultative assemblies could be utilized to encourage intercommunity dialogue on issues that affect everyone in the locality. Even participatory budgeting will enable intercommunity dialogue, deliberation and debate.

In regard to the integration of Roma, the EU, in the \textit{10 Common Basic Principles on Roma Inclusion}, has recognized the value of inter-community dialogue in enhancing the social inclusion of Roma and promotes ‘inter-cultural learning and skills’ to ‘help the [majority population] understand Roma culture, and the Roma . . . to understand mainstream culture.’\textsuperscript{361} Promoting ‘mutual understanding helps tackle prejudice on both sides.’\textsuperscript{362} Common Basic Principle No. 10 recognizes the importance of public debate in supporting the participation of Roma in public life.\textsuperscript{363} Common Basic Principle No. 8 acknowledges that ‘regional and local governance as actors at local level are essential for

\textsuperscript{359} HCNM, \textit{The Tallinn Guidelines on National Minorities and the Media in the Digital Age and Explanatory Note} (February 2019), at 7 (emphasis added).
\textsuperscript{360} \textit{Ibid.}
\textsuperscript{362} \textit{Ibid.}
\textsuperscript{363} \textit{Ibid.}, at CBP No. 10.
Roma inclusion. Inter-community open assemblies and meetings, conducted at the local level, enable both Roma and majorities to participate in inter-cultural dialogue.

As a result of societal and economic discrimination, certain issues have an exacerbated impact on both minorities and the politically alienated, such as healthcare, employment and housing. The HCNM has recommended that ‘[p]rocedures should be established that enable co-operation and shared responsibility by members of all relevant groups, including majorities and minorities.’ Shared procedures of participatory democracy, such as participatory budgeting and consultative assemblies, could be utilized in a local setting, to address issues relating to each of healthcare, employment and housing. These mechanisms will ‘enable co-operation and shared responsibility by members of all relevant groups, including majorities and minorities.’ Indeed, participatory budgeting attracts both minorities and people with low socio-economic status (including the white working-class), thereby promoting the 'higher representation by politically marginalized groups (the less well-off, the elderly, and ethnic minorities).'

The Report on Minority Protection in South East Europe emphasized the importance and benefits realized by direct participation by both minorities and majorities:

This project has demonstrated that even small grants, or small grants in particular, make a huge difference in actual lives of individuals -- both persons belonging to national minorities as well as those belonging to the ethnic majority group and living in a diverse society. Local ownership and active participation of representatives of different communities, including national minorities, have been two important elements that have contributed to the success of this

364 Ibid., at CBP No. 8.
365 Ljubljana Guidelines, supra note 259, at 32.
366 Ibid.
project, given the assessments produced by the project’s evaluators and given the anecdotal evidence of the beneficiaries.\textsuperscript{368}

In South America it has been recognized that the implementation of mechanisms of participatory democracy at the local level have fostered the inclusion of all vulnerable groups, including ethnic minorities, women and youth, as well as majorities. For example, in Brazil, the national public policy conferences ‘give shape to a form of participatory democratic governance’ that began at the local level. It enabled women ‘to voice their demands,’ empowered indigenous peoples ‘to express their own preferences,’ and facilitated ‘blacks [sic] stepping forward to defend their own interests.’\textsuperscript{369} In Bolivia’s Curahuara de Carangas, an impoverished and remote Andean village, ‘participatory budgeting has not only reinvigorated traditional indigenous organizations, it has helped transform them to be more inclusive of women, more engaged with broader indigenous movements, and more focused on long-term sustainable development.’\textsuperscript{370}

Obviously, depending on the historical relationship between the minority and majority populations certain safeguards may be necessary to ensure peaceful interaction and mutually respectful dialogue. In circumstances of entrenched animosity between communities, local mechanisms enable personal interaction, mutual understanding, and tolerance. The broader implementation of participatory democracy has the potential to also assist in the inclusion of the socially disenfranchised members of the majority, thereby reducing the attraction of populism and far-right parties.

\textsuperscript{368} Roter, \textit{supra} note 330, at 14 (emphasis added).
\textsuperscript{369} Pogrebinschi, \textit{supra} note 327, at 4.
C. THE VALUE, ALBEIT LIMITED, OF E-DEMOCRACY TO THE SOCIAL INCLUSION OF MINORITIES AND THE POLITICALLY ALIENATED

As noted in Part I, internet and communications technology can enhance participation through platforms designed to enable the public to comment on public issues, submit proposals, vote in surveys and opinion polls, submit e-petitions, engage in virtual discussions and debate, and participate in decision-making. E-Democracy ‘can facilitate democratic deliberation, participation in public debate and public affairs, and [the] integration of diverse societies.’371 Indeed, the Internet ‘has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest.’372

These mechanisms may be adapted for minority specific issues and enable the direct participation of minorities in public life. E-Democracy can provide minorities with alternative autonomous ‘discursive spaces,’ which will enable ‘persons belonging to national minorities to articulate, explore and sustain their cultural and linguistic identities.’373 In utilizing tools of E-Democracy, such as minority specific consultation and deliberative platforms, the effective participation of minorities in public life will be enhanced, particularly in matters pertaining directly to them.

Inter-community shared online discursive spaces will also enhance the social inclusion of alienated segments of the majority population. ‘[S]hared discursive spaces . . . can help to advance intergroup and intercultural awareness, dialogue and understanding and to reduce intolerance.’374 These inter-community online spaces ‘can contribute to conflict

371 Tallinn Guidelines, supra note 359, at 6.
372 Ahmet Yildirim v. Turkey, ECtHR, No. 3111/10, Judgment of 18 December 2012 (Final 18 March 2013), at ¶54.
373 Tallinn Guidelines, supra note 359, at 29.
374 Ibid.
prevention and resolution and to peace, societal cohesion and stability.\footnote{Ibid.} Inter-community web platforms may thus assist in the inclusion of the politically alienated.

Participation utilizing E-Democracy, however, ‘presupposes access to relevant infrastructure such as high-speed Internet throughout the country, including in remote areas which are often inhabited by national minority communities.’\footnote{ACFC, Thematic Commentary No. 4, supra note 358, at ¶70.} Moreover, minority communities and the politically alienated must have the knowledge base to utilize internet and communications technology to facilitate their participation.\footnote{Tallinn Guidelines, supra note 359, at 6 (‘A range of media and information literacy skills are needed to use new communications technologies in an effective manner: cognitive, technical, civic and social. Acquiring this skill-set can empower individuals in the multimedia environment and facilitate their participation in public debate and public affairs more generally.’)} Furthermore, online interaction is far less effective that in-person interaction in advancing mutual tolerance, respect, inclusion and integration.

A politics without face-to-face socializing might take the form of [an] . . . electronic town hall, a kind of plebiscitary democracy. Many opinions would be heard, but only as a muddle of disembodied voices neither engaging with one another nor offering much guidance to decision makers.\footnote{Putnam, supra note 14, at 341.}

Mutual engagement and personal interaction are fundamental elements of social inclusion and integration. In any event, compared to face-to-face communication, online interaction exaggerates differences and the perception of disagreement is exacerbated in online forums.\footnote{Matthew Barnidge, ‘Social Affect and Political Disagreement on Social Media’, Social Media + Society, (July-September 2018)1, at 1.} E-Democracy tools can also provide a platform for disinformation and racist and hate inspired rhetoric -- advancing intolerance and exclusion and not integration and inclusion.\footnote{Tallinn Guidelines, supra note 359, at 65.}

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\textsuperscript{375} Ibid. \\
\textsuperscript{376} ACFC, Thematic Commentary No. 4, supra note 358, at ¶70. \\
\textsuperscript{377} Tallinn Guidelines, supra note 359, at 6 (‘A range of media and information literacy skills are needed to use new communications technologies in an effective manner: cognitive, technical, civic and social. Acquiring this skill-set can empower individuals in the multimedia environment and facilitate their participation in public debate and public affairs more generally.’) \\
\textsuperscript{378} Putnam, supra note 14, at 341. \\
\textsuperscript{379} Matthew Barnidge, ‘Social Affect and Political Disagreement on Social Media’, Social Media + Society, (July-September 2018)1, at 1. \\
\textsuperscript{380} Tallinn Guidelines, supra note 359, at 65.
\end{flushright}
Conclusion to Part IV

Diverse societies are a reality and Europe’s primary policy objective is the integration of diverse societies. Integration requires the engagement, interaction and dialogue between minority and majority communities. Although European institutions have recognized that integration is a ‘two-way’ process and inter-cultural engagement is vital to integration, there has been little focus on the potential of mechanisms of participatory democracy to enhance integration and the social inclusion of the disempowered.

Mechanisms of participatory democracy at the local level provide a platform for interaction, dialogue, discussion, debate and deliberation, thereby assisting in the implementation of Europe’s integration policies. Tools of participatory democracy focused on issues that have a disproportionate effect on minorities and the socially excluded members of the majority community can also assist in the inclusion of the political alienated segment of the majority population. The political alienation and disempowerment of the segments of the majority population has led to, at least in part, the increase in popularity of far-right parties. Tools of participatory democracy utilized at the local level and focused on the disempowered will enhance their social inclusion and potentially reduce the attraction of populism.
THE FINAL CONCLUSION

Representative democracy is ‘in crisis’ largely because it limits civic participation to indirect participation through intermediaries and these intermediaries -- the purported representatives -- are not representative of the general interest. Representative democracy leaves significant segments of the population socially excluded and politically alienated, increasing the attraction of populist parties. Governments and international organizations have recognized that it is imperative to supplement representative democracy with alternative forms of governance. In recognizing this crisis in representation, the Council of Europe and the European Union have endorsed mechanisms of participatory democracy, and European states have been rapidly implementing them.

Participation in your own governance is inherently beneficial -- irrespective of whether it is in minority or mainstream governance. Participation is also empowering and facilitates social inclusion. Direct participation in governance, particularly at the local level, may be facilitated by adopting mechanisms of participatory democracy. Participatory democracy, such as participatory budgeting, direct decision-making and consultative processes, and E-Democracy, demonstratively increase the number of participants involved in the policy and decision-making process, are broadly inclusive and intensify active engagement. In doing so, it is clear that mechanisms of participatory democracy enhance social inclusion and empowerment.

Since Brazil’s Porte Alegre experiment with participatory budgeting in 1999, local participatory budgeting has become widespread across the world. In Europe, both large and small municipalities have designated some or all of their annual budgets for allocation by residents. In doing so, residents can propose and adopt projects directly. Two of Europe’s largest cities -- Madrid and Paris -- have each designated €100 million annually to participatory budgeting. Participatory budgeting has demonstratively improved social inclusion and empowerment for both participants and the most vulnerable members of society. Likewise, citizens’ assemblies, advisory councils and neighbourhood councils, where residents are invited to meet, discuss and deliberate on public issues, have also been extensively implemented by local and municipal authorities across Europe. A plethora of
European states, including Sweden, Bulgaria, Spain, Germany and Austria, have adopted these mechanisms to enhance civic participation. These tools increase the number of citizens involved in the decision-making process by facilitating dialogue, deliberation and debate. These processes are inclusive, empowering and improve governance by increasing transparency and reducing corruption. Dialogue, deliberation and debate are also facilitated by online platforms, which have been utilized at all levels of governance. Governments in most, if not all, European states have adopted elements of E-Democracy. Indeed, the European Union has embraced participatory democracy, primarily by implementing tools of E-Democracy, to reduce its perceived ‘democratic deficit.’

At the same time that European states have been implementing mechanisms of participatory democracy, regional and international organizations have recognized the inclusive and empowering potential of these mechanisms and have endorsed participatory democracy. The UN’s Office of the High Commissioner of Human Rights has submitted to the Human Rights Council ‘Draft guidelines for States on the effective implementation of the right to participate in public affairs.’ The Council of Europe has also adopted ‘Guidelines for civil participation in political decision making.’ The Parliamentary Assembly of the Council of Europe has even described participation in governmental decision-making as a ‘human right.’ Both the Treaty of the European Union and the Treaty of the Functioning of the European Union recognize the virtues of participatory democracy. States and international organizations have also recognized that participatory democracy is best suited to implementation at the local level.

As a consequence of the increasing implementation and endorsement of participatory democracy at the local level, direct participation in local government is emerging as a normative right. At the end of the Cold War, with the purported ‘end of history’ and triumphalist victory of liberal democracy -- manifested in the increasing number of states with elected governments -- academic illuminati engaged in a debate as to whether the epoch was witnessing the emergence of a ‘right to democratic governance.’ Today, with the ongoing emergence of participatory democracy at the local level becoming
the norm, it is similarly likely that a right to direct participation in local government is emerging at the European, and international level.

Customary international law consists of two interrelated elements: state practice and *opinio juris*. As demonstrated, the implementation of mechanisms of participatory democracy is increasing. The series of UN comments, resolutions and a declaration endorsing participatory democracy, have normative value evidencing the existence of *opinio juris*. However, it is somewhat difficult to suggest that states are implementing mechanisms of participatory democracy because they believe that they are under a legal duty to do so. In any event, a right to directly participate in local governance is beginning to emerge.

European states and regional organizations have increasingly facilitated and endorsed direct participation in local governance to an even greater extent than their international counterparts. The prevalence of state practice and the endorsement by the Council of Europe of a *right* to directly participate in local governance suggests that a regional right to directly participate in governance may also be emerging. In addition to *opinio juris* and state practice, regional customary international law requires the acceptance of the rule by all relevant states. There is also a presumption *against* the existence of regional rules of customary international law. The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority specifically provides that there is an individual ‘right’ to participate in local government in its 18 State Parties. European states, in addition to the 18 State Parties to the Additional Protocol, are increasingly accepting the existence of a right to participate in local government. However, it is unlikely that such a right to participate in local government will crystallize as a regional rule of customary international law until all, or at least a substantial majority, of the Member States of the Council of Europe accede to the Additional Protocol or otherwise explicitly accept the existence and application of a ‘right’ to direct participation in local government. In any event, a right to participate in local government is also beginning to emerge as a regional norm of customary international law.
Irrespective of the existence of any international or regional right to directly participate in local governance, the existing European legal framework both enables and encourages direct participation at the local level. The European minority protection scheme, through the Council of Europe’s Framework Convention for the Protection of National Minorities, mandates a minority right to ‘effective participation.’ The primary aim of the minority right to effective participation is social inclusion. Participatory democracy enhances social inclusion. States, however, generally implement this minority right exclusively utilizing tools of representative democracy. These tools of representative democracy are imperfect and potentially limit minority inclusion. Despite the manifest ability of participatory democracy to enhance social inclusion, mechanisms that enable direct minority participation are largely ignored in implementing the minority right to effective participation. The social inclusion of minorities has the potential to be improved by the adoption of mechanisms of participatory democracy in the governance of local minority bodies. Indeed, in the few instances where participatory democracy has supplemented representative democracy in local minority bodies, there has been a demonstrable improvement in inclusion and empowerment, such as in the Lombardy region of Italy, the Gostivar municipality of North Macedonia and elsewhere in South-East Europe. Mechanisms of participatory democracy should be adopted, as a supplement to representative democracy, in governing local bodies focused on minority issues. For instance, participatory budgeting at the local level could include segregated funds for promoting minority culture, and members of the local minority community should be able to directly determine the use of those funds, thereby improving social inclusion and empowerment.

Social inclusion is also a fundamental element of integration. Europe’s policy paradigm is to foster integration and the EU, OSCE and the CoE have all endorsed the integration of diverse societies. They have also recognized that the integration of diverse societies is a two-way process and requires both majorities and minorities to be willing to adapt to each other. Integration is enhanced by interaction and dialogue both within majorities and minorities and between majorities and minorities. The importance of
dialogue has been specifically recognized by European regional institutions. However, despite the recognition of the important role of inter-community dialogue and interaction, States have relied on electoral engineering and representative democracy. Representative democracy focuses on the interaction between government and the intermediaries purporting to represent citizens, and, in the case of minorities, between government intermediaries and the purported minority representatives. In involving intermediaries in interaction, intercommunity and intracommunity dialogue and discussion is limited -- and so is integration. Interaction and dialogue between minority and majority communities, with the specific purpose of encouraging trust and tolerance has been largely ignored, to the detriment of integration and social inclusion.

There is no doubt that representative democracy is a necessary component of democratic governance in large, multifaceted and complex societies. However, mechanisms of participatory democracy should be utilized in addition to representative democracy to increase civic participation in governance and empower communities. Furthermore, adopting participation mechanisms at the governance level closest to the people, that is local government, will facilitate direct interaction and dialogue between communities. It will also provide both minority and majority communities with a sense of ownership in decisions made at the local level if all parties are able to participate, engage in dialogue and debate, deliberate and have effective input in the ultimate decision.

Participatory budgeting in Madrid and Paris demonstratively enhances social inclusion of both minorities and majorities. Advisory councils in the city of Graz have assisted in the social inclusion of new migrants. E-democracy has empowered the vast majority of the residents of Estonia to participate in decision-making. Participatory budgets, neighbourhood councils and citizens assemblies, and mutually engaging e-democracy platforms, should continue to be increasingly adopted at the level closest to the people. These mechanisms should ensure access and participation by both minorities and majorities to enhance social inclusion and integration. Participatory budgets and resident assemblies should focus, in particular, on areas specifically affecting the vulnerable members of society such as healthcare and housing. Vulnerable members of the
community should be encouraged to participate, and steps must be taken to ensure that everyone has the opportunity and ability to participate, as well as have a sufficient knowledge base and education on the pertinent issues. In mutually participating in decisions on a shared local budget or other relevant policy, communities will share a sense of ownership of any decisions made, and solidarity in implementing them. Social inclusion and empowerment of all parties will be fostered. The effective participation of minorities, together with their social inclusion, will also be enhanced by adopting supplementary mechanisms of participatory democracy in local minority bodies.

Interactions between minorities and majorities have all-too-often deteriorated into violent encounters. There is a risk that any attempt at direct interaction and dialogue, even at the local level, or perhaps because it is at the local level, will deteriorate into violence. However, the current exclusive reliance on representative governance has left too many people -- members of minorities and majorities -- alienated and socially excluded. If integration is to progress further, instead of being mired in a quagmire of ethnic-based parties and the populist fringe, states should take a calculated risk and further adopt policies that will facilitate interaction and dialogue both within and between communities.

If Europe assumes that minorities and majorities will never be able to engage in dialogue, debate and deliberation, and interact for their shared benefit, then it may as well give up on the integration project and concede that ‘multiculturalism is dead.’
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The emerging right to directly participate in local governance: enhancing the social inclusion of minorities and the politically alienated

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