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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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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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Anti-Plagiarism Declaration¹

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TABLE OF ABBREVIATIONS/ACRONYMS

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

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INTRODUCTION

Representative democracy has been the subject of extensive criticism for a generation and trust in politicians, democratic governance, political institutions¹ and existing democratic processes has been progressively declining for decades.² Voter turnout has also been steadily falling.³ Elected assemblies are decreasingly representative and representative democracy does not represent the general interest.⁴ Today, according to the Parliamentary Assembly of the Council of Europe ('PACE'), there is a 'crisis of democracy' and a 'crisis in representation.'⁵ This crisis in democracy is manifested by 'political disenchantment, indifference to political affairs [and] high abstention rates.'⁶ A significant segment of the population feel that political processes do not work for them and their purported 'representatives' are not representative.⁷ 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.⁸ 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

¹ More than half of the citizens of Member States of the European Union 'tend not to trust' their national governments or national parliaments. European Commission, Standard Eurobarometer 90, Autumn 2018, 'First results Public opinion in the European Union, Fieldwork: November 2018', available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2215>, at 5.

² Karl-Peter Sommermann, 'Citizen Participation in Multi-Level Democracies: An Introduction', in Cristina Fraenkel-Haerberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 1, at 4.

³ Dietlind Stolle and Marc Hooghe, 'Inaccurate, Exceptional, One-Sided or Irrelevant? The Debate about the Alleged Decline of Civic Engagement and Social Capital in Western Societies', 35 *British Journal of Political Science* (2004) 149, at 157 ('[V]oter turnout also shows a downward trend in most industrialized countries.').

⁴ Ank Michels and Laurens De Graaf, 'Examining Citizen Participation: Local Participatory Policy Making and Democracy', 36 *Local Government Studies* 4 (2010) 471, at 475.

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.’⁹ The demise of trust in representative democracy undermines community cohesion.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.¹¹ ‘A deep sense of political alienation is a fertile breeding ground for populists.’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.’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.’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.

⁹ PACE, Res. 1746, *supra* note 5, at ¶1.2.

¹⁰ Chwalisz, *supra* note 7, at 12.

¹¹ ‘Europe’, unless otherwise specified, refers to the Member States of the Council of Europe, collectively.

¹² Chwalisz, *supra* note 7, at 12. *See also*, Michael Cox, ‘Understanding The Global Rise Of Populism’, *LSE-Ideas, Strategic Update* (February 2018), available at: <http://www.lse.ac.uk/ideas/Assets/Documents/updates/LSE-IDEAS-Understanding-Global-Rise-of-Populism.pdf>.

¹³ Chwalisz, *supra* note 7, at 4.

¹⁴ William Kornhauser, *The Politics of Mass Society* (1959), at 73. *See also*, Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (2000), at 338.

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.¹⁵ PACE has recognized that ‘representation can no longer be the only expression of democracy.’¹⁶ There is an increased awareness that representative democracy must be supplemented with ‘more sustained forms of interaction between citizens and the authorities.’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’).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,’¹⁹ and others such as (then) British Prime Minister David

¹⁵ Sabine Kropp, ‘Federalism, People’s Legislation and Associative Democracy,’ in Cristina Fraenkel-Haeblerle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 41, at 49.

¹⁶ PACE, Res. 1746, *supra* note 5, at ¶2.

¹⁷ *Ibid.*, at ¶2.1.

¹⁸ Framework Convention for the Protection of National Minorities (ETS No. 157) and Explanatory Report, H (95) 10.

¹⁹ See Will Kymlicka, *Multicultural Odysseys* (2007), at 123.

Cameron, (still) German Chancellor Angela Merkel and (then) French President Nicolas Sarkozy go further, declaring, in 2010 and 2011, that ‘multiculturalism is dead,’²⁰ 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).

*** *** ***

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

²⁰ Joseph Marko, ‘Introduction’, in Joseph Marko and Sergiu Constantin (eds.), *Human and Minority Rights Protection by Multiple Diversity Governance* (2019) 1, at 2.

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 disenfranchised 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

crystalized 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.

²² The distinction between indigenous peoples, 'old' minorities and 'new' minorities is somewhat nebulous. See, Roberta Medda-Windischer, 'Old and New Minorities: Diversity Governance and Social Cohesion from the Perspective of Minority Rights', 11 *Acta Univ, Sapientias, European and Regional Studies*, 11 (2017) 25, at 27 nl.

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.

*** *** ***

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; it 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.²³ Each of these electoral mechanisms are imperfect and the ‘representativeness’ of the elected candidates is potentially limited. For

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 over 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.’²⁴ However, proportional representation results in the fragmentation of representative parties and often makes it near-impossible to form stable parliamentary majorities.²⁵ One of the main criticisms of representative democracy ‘is that the general interest is not represented satisfactorily in practice.’²⁶ Elected assemblies are perceived ‘as less and less representative.’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.”’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.²⁹ Indeed, ‘empirical studies [have shown] that it is predominantly the male, well-educated middle class which participates in plebiscites.’³⁰ Accordingly, democracy ‘requires more citizen involvement beyond the established elements of direct democracy that simply enable voters to decide between “yes” or “no”.’³¹

²⁴ *Ibid.*, at ¶17.

²⁵ *Ibid.*, at ¶15.

²⁶ Sommermann, *supra* note 2, at 10.

²⁷ Francesco Palermo, ‘Participation, Federalism and Pluralism: Challenges to Decision Making and Responses by Constitutionalism’, in Cristina Fraenkel-Haerberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 31, at 32.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Kropp, *supra* note 15, at 57.

³¹ Sommermann, *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 inclusion³⁴ by redirecting resources to the most vulnerable in society.³⁵ Just as importantly, civic participation improves governance, accountability,³⁶ transparency³⁷ 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

³² Additional Protocol to the Charter of Local Self-Government, *supra* note 21. *See also*, Victor Cuesta Lopez, 'The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy', 16 *European Public Law* 1 (2010) 123, at 124 quoting B. Kohler-Koch and B. Rittberger (eds.), 'Charting Crowded Territory: Debating the Democratic Legitimacy of the European Union', in *Debating the Democratic Legitimacy of the European Union* (2007), at 16 ('[P]articipation is considered an inherent value of democracy that "enables individuals to rise above their private existence and become emancipated citizens, hopefully, more knowledgeable, more attentive to the interests of others, and more probing of their own interests."').

³³ Anwar Shah, 'Overview', in Anwar Shah (ed.), *Public Sector Governance and Accountability Series, Participatory Budgeting* (2007), at 1. *See also*, C. Patsias, 'Participatory Democracy, Decentralization and Local Governance. The Montreal Participatory Budget in the Light of "Empowered Participatory Governance"', 6 *International Journal of Urban and Regional Research* (2013) 2214, at 2221.

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.')

³⁵ Benjamin Goldfrank, 'The World Bank and the Globalization of Participatory Budgeting,' 8 *Journal of Public Deliberation* 2, Art. 7 (2012), at 3.

³⁶ Brian Wampler, Stephanie McNulty, and Michael Touchton, *Participatory Budgeting: Does Evidence Match Enthusiasm?* Open Government Partnership, 2 November 2017, available at: <https://www.opengovpartnership.org/stories/participatory-budgeting-does-evidence-match-enthusiasm>, at 2.

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.’³⁹

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.⁴⁰ Participants can also change their views of government and become more involved in the community.⁴¹ 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.⁴² Politicians, by simply participating in mechanisms of participatory democracy, will become more accessible to citizens, and civil servants will work more closely with them.⁴³ 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.⁴⁴ 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.’⁴⁵ Participation also includes actively taking part in charitable organizations or groups that advocate for or against certain causes.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.’⁴⁷ Participatory democracy is a valuable *addition* to representative democracy.

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.⁴⁸ To assist states in the implementation of mechanisms of participatory democracy, the CoE has adopted ‘*Guidelines for civil participation in political decision making*’ (‘CoE Guidelines for Civil Participation’).⁴⁹ The CoE

⁴⁵ Ramon Canal, *Social Inclusion and Participatory Democracy, From the Conceptual Discussion to Local Action* (2010), at 18.

⁴⁶ Delia Ferri, ‘Participation in EU Governance: A “Multi-Level” Perspective and a Multifold Approach’, in Cristina Fraenkel-Haerberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 334, at 345 n45.

⁴⁷ Palermo, *supra* note 27, at 24. *See also*, Kropp, *supra* note 15, at 61.

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.

⁴⁹ CoE Guidelines for Civil Participation, *supra* note 34, at 31. The Committee of the Regions and the Fundamental Rights Agency also have jointly produced an information booklet: *Making Rights Real: A guide for Local and Regional Authorities* (2014), available at https://fra.europa.eu/sites/default/files/fra-cormaking_rights_real-booklet_en.pdf. *See also*, Wolfgang Benedek, Gerd Oberleitner, and Klaus Starl, ‘Global Obligations -- Local Action: How to Develop the Local Level to Strengthen Human Rights’, in Patricia Hladschik/Fiona Steinert (eds.), *Making Human Rights Work, Festschrift for Manfred Nowak and Hannes Tretter* (2019) 127, at 138.

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,⁵⁰ and authorities throughout Europe, indeed the world, have adopted an array of mechanisms to enhance participation in local governance.⁵¹ 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.’⁵² 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.⁵³ ‘[T]he essence of PB lies in collective deliberation and decision making on the allocation of a portion of a public budget,’⁵⁴ and

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.

⁵² Council of Ministers (‘CoM’) of the CoE, ‘Recommendation CM/Rec(2018)4 of the CoM to Member States on the participation of citizens in local public life,’ (Adopted by the CoM on 21 March 2018 at the 1311 meeting of the Ministers’ Deputies) (the ‘2018 CoM Recommendation’), at App. B. III(7).

⁵³ Mario Martini and Saskia Fritzsche, ‘E-Participation in Germany: New Forms of Citizen Involvement between Vision and Reality’, in Cristina Fraenkel-Haeberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015), 121 at 139.

⁵⁴ Karl Kössler, ‘Laboratories of Democratic Innovation? Direct, Participatory and Deliberative Democracy in Canadian Provinces and Municipalities’, in Cristina Fraenkel-Haeberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 286, at 302.

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 Porto 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 Porto 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

⁵⁵ Sara Parolari and Jens Woelk, ‘The Referendum in the United Kingdom: Instrument for Greater Constitutional Legitimacy, Tool of Political Convenience, or First Step to Revitalize Democracy’, in Cristina Fraenkel-Haerberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 265, at 280.

⁵⁶ Shah, *supra* note 33, at 1.

⁵⁷ World Bank, Social Development Team, *Participatory Budgeting Toolkit for Local Governments in Albania, Europe and Central Asia Region* (2006) (emphasis added).

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

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.

⁶³ Helmut Klages, ‘Perspectives on the Institutionalization of Citizen Participation at the Municipal Level: A First Hand Report’, in Cristina Fraenkel-Haeberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 114, at 115.

⁶⁴ Yves Cabannes, ‘Participatory Budgeting in Paris: Act, Reflect, Grow’, in Yves Cabannes (ed.), *Another City Is Possible with Participatory Budgeting* (2017) 179, at 181.

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.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.’⁶⁹ A winning project from 2018 from the 14th Arrondissement proposed developing luggage storage services for the homeless and had a budget of €500,000.⁷⁰ 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.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

⁶⁸ *Ibid.*, at 186, 188.

⁶⁹ City of Paris, Project No. 54, *Develop support for people in precarious situations*, Participatory Budget 2015, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=1999&portlet_id=158.

⁷⁰ City of Paris 14th Arrondissement, Project No. 11, *Luggage storage for the homeless*, Participatory Budget 2018, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=6036&portlet_id=158.

⁷¹ City of Paris Project No. 20, *#VilleRefuge - Facilities for migrants and the homeless*, Participatory Budget 2017, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=3765&portlet_id=158.

training and has a budget of only €5,000.⁷² Other projects relate to health issues,⁷³ urban farming,⁷⁴ disability services,⁷⁵ and the environment.⁷⁶

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;⁷⁷ a project to directly provide economic resources to eradicate food poverty;⁷⁸ and the funding of a municipal office for the promotion of personal autonomy and the independence of people with disabilities.⁷⁹ More importantly, from a progressive social

⁷² City of Paris, 19th Arrondissement, Project No. 9, *Save lives - first aid initiation*, Participatory Budget 2018, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=6412&portlet_id=158.

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 neighbourhoods.).

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, e.g., 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.').

⁷⁷ City Council of Madrid, Investment Project Code No. 1448, *Creation of a food bank of municipal management for families without recourse*, 1 March 2017, available at: <https://decide.madrid.es/presupuestos/presupuestos-participativos-2017/proyecto/1448#tab-milestones>.

⁷⁸ City Council of Madrid, Investment Project Code No. 2271, *Economic assistance to ensure a basic diet in Madrid*, 6 March 2017, available at: <https://decide.madrid.es/presupuestos/presupuestos-participativos-2017/proyecto/2271#tab-milestones>.

⁷⁹ City Council of Madrid, Investment Project Code No. 2899, *Municipal independent living office for people with disabilities*, 8 March 2017, available at: <https://decide.madrid.es/presupuestos/presupuestos-participativos-2017/proyecto/2899#tab-milestones>.

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.'⁸⁰

Participatory budgeting manifestly increases the number of actors participating in the decision-making process.⁸¹ 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.'⁸² 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.⁸³ 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.

⁸³ Anna Gamper, 'Forms of Democratic Participation in Multi-Level Systems', in Cristina Fraenkel-Haeberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 67, at 69.

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.

⁸⁶ Bulgaria, Direct Citizen Participation in State and Local Government Act, Promulgated, SG No. 44/12.06.2009 (as amended), available at: www.legislationline.org/documents/id/21686, at Art. 55(1).

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.’⁹¹ In particular, ‘[t]hey are regularly used in Bavaria for establishing citizens’ priorities and preferences in public policy.’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.

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.⁹³ However, the small size of citizens’ juries provides only limited opportunity for direct participation.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.⁹⁵ For instance, after

⁹¹ *Ibid.*, at 42.

⁹² *Ibid.*

⁹³ Tom Wakeford, ‘Citizens Juries: a radical alternative for social research’, 37 *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.’).

⁹⁴ The EU utilized citizens’ juries in considering ‘How the Participatory Democracy Toolbox Can Make The European Union Less Remote From Citizens.’ In doing so, ‘[r]andomly selected citizens, representative of the national population, came together in citizens’ panels to discuss how they would like to be involved in EU decision-making.’ European Citizens’ Panel: Final Report ‘How the participatory democracy toolbox can make the European Union less remote from citizens’ (26 February 2010), available at: <https://www.scribd.com/document/32473022/European-Citizens-Panel-Final-Report-How-the-participatory-democracy-toolbox-can-make-the-European-Union-less-remote-from-citizens>, at 5.

⁹⁵ Michels and De Graaf, *supra* note 4, at 10.

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/>.

⁹⁷ Consolidated Version of the Treaty on European Union [2016] OJ C202/1 ('TEU'), at Art. 11(4).

⁹⁸ *Ibid.*

⁹⁹ Revision of the European Citizens' Initiative Regulation, State of the Union 2017, Fact Sheet, available at: https://ec.europa.eu/commission/sites/beta-political/files/european-citizens-initiative-factsheet-sept2017_en.pdf.

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,¹⁰¹ 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.'¹⁰² The EU has also adopted a number of online participatory mechanisms itself, with the aim of increasing participation.¹⁰³ 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.'¹⁰⁴ It has also adopted a hybrid in-person and online approach, 'Citizen Dialogues',¹⁰⁵ to its citizen consultations in regard to the White Paper on the Future of Europe.¹⁰⁶ The EU has

¹⁰¹ See, *infra*, at Part IV. C.

¹⁰² CLRA, *E-Democracy*, available at: https://www.coe.int/en/web/congress/e-democracy/-/asset_publisher/GYGCPNHZVwF5/content/-the-congress-is-fully-involved-in-the-effort-to-engage-municipalities-in-smart-modernisation-says-xavier-cadoret.

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.

¹⁰⁴ EC, 'Consultations', available at: <https://ec.europa.eu/info/consultations>.

¹⁰⁵ EU 'Citizen Dialogues' are meetings between EC representatives and citizens on the 'Future of Europe', and other public issues. See, https://ec.europa.eu/info/events/citizens-dialogues_en.

¹⁰⁶ EC, 'Consultation on the Future of Europe', available at: https://ec.europa.eu/commission/future-europe/consultation-future-europe_en.

funded projects for the development of web platforms and online tools for e-participation.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.¹⁰⁸ Various authorities at national and subnational level utilize online discussion forums to facilitate interaction among citizens and between citizens and government.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.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

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>.

¹⁰⁸ See, United Kingdom Parliament, *DirectGov*, available at: <https://petition.parliament.uk/>.

¹⁰⁹ See, Government of Hungary, 'eDemocracy Services', available at: <https://edemokracia.magyarorszag.hu/edemokracia>.

¹¹⁰ *Ibid.*

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

¹¹¹ Estonia State Chancellery, Oseale.ee, ‘The age limit for legal sexuality should be raised again to the age of 16’, available at: <https://www.oseale.ee/ideed/idea/view/3034>.

¹¹² Best, Augustyn and Lambermont, *supra* note 60, at 60.

¹¹³ Rupuk Patel and Scott Fletcher, ‘Decide.Madrid.es Online Participatory Budgeting,’ *Participedia*, 19 January 2018, available at <https://participedia.net/en/cases/decidemadrides-online-participatory-budgeting>.

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.*

¹¹⁶ City Council of Madrid, ‘Debates’, decide.madrid.es, available at: <https://decide.madrid.es/debates>.

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

¹¹⁸ City Council of Madrid, ‘Madrid – 100% Sustainable’, decide.madrid.es, available at: <https://decide.madrid.es/proposals/199-madrid-100-sostenible>.

¹¹⁹ City Council of Madrid, decide.madrid.es, available at: <https://decide.madrid.es/primera-votacion-ciudadana-resultados>.

¹²⁰ City Council of Madrid, ‘Single ticket for public transport’, decide.madrid.es, available at: <https://decide.madrid.es/proposals/9-billete-unico-para-el-transporte-publico>.

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.’).

¹²² City Council of Madrid, ‘Collaborative Legislation’, decide.madrid.es, available at: <https://decide.madrid.es/procesos>.

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

¹²⁸ Thomas M. Franck, ‘The Emerging Right to Democratic Governance’, 86 *The American Journal of International Law*, No. 1 (1992) 46, at 90.

¹²⁹ Gregory H. Fox, ‘The Right to Political Participation in International Law’, 17 *Yale Journal of International Law* (1992) 539, at 607.

¹³⁰ See, Susan Marks, ‘What has Become of the Emerging Right to Democratic Governance?’ 22 *The European Journal of International Law* No. 2 (2011), 507 at 522-524; see also, Fabienne Peter, ‘The Human Right to Political Participation’, 7 *Journal of Ethics & Social Philosophy* No. 2 (2013) 1.

administrative functions at all levels of government.¹³¹ 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.'¹³² 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 . . .'.¹³³ Both the UDHR and the ICCPR refer to a right to either *direct* participation in public affairs or *indirect* participation 'through freely chosen representatives.'¹³⁴ 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.¹³⁵

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.'¹³⁶ Article 25(b) of the ICCPR, like Article 21(3) of the UDHR,¹³⁷ 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

¹³¹ UN Human Rights Committee, General Comment No. 25, Article 25, 'The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service' ('General Comment No. 25'), 12 July 1996, CCPR/C/21/Rev.1/Add.7, at ¶5; *see also*, Annelies Verstichel, *Participation, Representation and Identity: The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits* (2009), at 128.

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).

¹³⁵ *Marshall v. Can.*, Comm. 205/1986, U.N. Doc. A/47/40, at 205 (HRC 1991), ¶¶ 5.4.

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.

See also, Sarah Joseph and Melissa Castan, *The International Covenant of Civil and Political Rights: Cases, Materials and Commentary* (3rd. ed., 2013).

¹³⁶ HRC, Report of the Office of the United Nations High Commissioner for Human Rights ('OHCHR'), 'Draft guidelines for States on the effective implementation of the right to participate in public affairs' (20 July 2018), A/HRC/39/28, at ¶25 ('HRC Guidelines on 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,¹³⁸ which requires the elections be ‘genuine’, ‘periodic’, ‘by universal and equal suffrage,’ and by ‘secret ballot.’¹³⁹ The ICCPR does not specify or impose a mode of elections or any particular electoral system, or any other mode of participation.¹⁴⁰

It has been suggested that ‘[s]ince paragraph (b) requires genuine, periodic elections, paragraph (a) must contemplate additional means of influencing public policy.’¹⁴¹ The direct means of taking part in public affairs includes all of the mechanisms described in *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.’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.’¹⁴³ Accordingly, governance in accordance with representative democracy is overwhelmingly accepted as the primary method of democratic governance and is the international norm.¹⁴⁴

¹³⁸ General Comment No. 25, *supra* note 131, at ¶21.

¹³⁹ Fox, *supra* note 129, at 555.

¹⁴⁰ Like the UDHR and the ICCPR, both the African (Banjul) Charter on Human Rights and the American Convention on Human Rights also provide for either a right to participate in public affairs directly or through elected representatives. *See*, African Union (AU) (formerly Organization of African Unity (OAU)), African Charter on Human and Peoples’ Rights (‘Banjul Charter’) (1981), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), at Art.15(1); Organization of American States (OAS), American Convention on Human Rights (1969), at Art. 23(1).

¹⁴¹ Fox, *supra* note 129, at 555.

¹⁴² *Ibid.*, at 552.

¹⁴³ *Marshall v Can.*, *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.’); *see also*, Joseph, *supra* note 132, at [22.16].

¹⁴⁴ Palermo, *supra* note 27, at 33.

2. The Emerging Norm of *Direct Participation in Public Affairs*

Rules of customary international law are precipitated through ‘general practice accepted as law.’¹⁴⁵ The two elements, general practice and *opinio juris* are closely related.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.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.’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.¹⁴⁹ As noted, Article 25 of the ICCPR has been satisfied by enabling voting in the election of representatives. However, as demonstrated in *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,¹⁵⁰ depending on ‘its content

¹⁴⁵ Art. 38 of the Statute of the International Court of Justice.

¹⁴⁶ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 25 February 2019, General List No. 169 [I.C.J. Reports (2019), **], at ¶149.

¹⁴⁷ *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 3, ¶77.

¹⁴⁸ Christian Pippan, ‘International Law, Domestic Political Orders, and the Democratic Imperative: Has Democracy Finally Emerged as a Global Entitlement?’ *Jean Monnet Working Paper 2/10* (2010), at 25.

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. *Ibid.*

¹⁵⁰ *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.

¹⁵² GA Res. A/RES/53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (adopted by the General Assembly, 8 March 1999), available at: <https://www.refworld.org/docid/3b00f54c14.html>.

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.

¹⁵⁵ ‘Right to Development as Integral Part of Fundamental Human Rights’, GA/9532, 9 December 1998, Press Release, General Assembly Reaffirms Importance Of Right To Development As Integral Part Of Fundamental Human Rights, available at: <https://www.un.org/press/en/1998/19981209.ga9532.html>.

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’,¹⁵⁸ noted that alternative methods of civic participation are included in the right to take part in public affairs.¹⁵⁹

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.¹⁶⁰

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.¹⁶¹ 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.’¹⁶² 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.’¹⁶³ 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.’¹⁶⁴ 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

¹⁶⁵ UN Development Program, ‘The Sustainable Development Goals and Addressing Statelessness’, March 2017, available at: <https://www.refworld.org/docid/58b6e3364.html>, at 16.7.

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.¹⁷¹

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

¹⁷¹ Karl-Peter Sommermann, 'Preface', in Cristina Fraenkel-Haerberle, Sabine Kropp, Francesco Palermo and Karl-Peter Sommermann (eds.), *Citizen Participation in Multi-Level Democracies* (2015) (i), at (ix) (emphasis added).

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.

¹⁷³ Lopez, *supra* note 32, at 125 quoting *European Governance: A White Paper*, COM (2001) 428 final, 25/7/01.

Now, '[f]or the first time at Treaty level participation in decision making beyond political representation is explicitly linked to democracy.'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.'¹⁷⁵ The TEU also specifically provides that '[e]very citizen shall have *the right to participate in the democratic life* of the Union.'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.'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.'¹⁷⁸ And it has also adopted the citizens' initiative.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.¹⁸⁰

¹⁷⁴ Joana Mendes, Participation and the Role of Law After Lisbon: A Legal View on Article 11 TEU', (2011) 6 *Common Market Law Review* 1849-1878, at *1.

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.').

¹⁷⁶ TEU, *supra* note 97, at Art. 10(3) (emphasis added).

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.

¹⁷⁸ TEU, *supra* note 97, at Art. 11(1)-(3) (emphasis added).

¹⁷⁹ *Ibid.*, at Art. 11(4).

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,¹⁸¹ but Article 11(3) transforms the Commission’s consultative practices into a duty.¹⁸² 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.¹⁸³ The EU and the UN Economic Commission for Europe (‘UNECE’) established the Aarhus Convention, which has been ratified by all of the EU’s Member 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.’¹⁸⁴ Accordingly, the Aarhus Convention provides that ‘each Party shall guarantee the rights of . . . public participation in decision-making,’¹⁸⁵ 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.’¹⁸⁶ 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

¹⁸¹ EC, ‘Communication from the Commission: Towards a Reinforced Culture of Consultation And Dialogue - General Principles and Minimum Standards For Consultation of Interested Parties By the Commission, Commission of the European Communities’, COM(2002) 704 Final, at 7.

¹⁸² Mendes, *supra* note 174, at *16.

¹⁸³ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), 2161 UNTS 447 (the ‘Aarhus Convention’), available at: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

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.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.’¹⁹²

Although the ECHR does not 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,’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 *human right* and a fundamental political freedom, which should thus be embodied as such in the European Convention on Human Rights.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 *Guiding Principles for Open and Inclusive Policy Making*.¹⁹⁵ Article 2 of the OECD’s Guiding Principles acknowledge ‘[c]itizens “rights to information, consultation and public participation in policy making.”’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.’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

¹⁹¹ Verstichel, *supra* note 131, at 137.

¹⁹² *Mathieu-Mohin and Clerfayt v. Belgium*, ECtHR, No. 9267/81, Judgment (2 March 1987), at ¶54.

¹⁹³ PACE, Res. 1746, *supra* note 5, at ¶2.2.

¹⁹⁴ *Ibid.*, at ¶3 (emphasis added).

¹⁹⁵ ‘Partnership for Good Governance I’, available at: <https://pjp-eu.coe.int/web/eap-pcf/home>.

¹⁹⁶ OECD, *Guiding Principles for Open and Inclusive Policy Making* (2001), available at <http://www.oecd.org/gov/42370872.pdf>, at Art. 2 (emphasis added).

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.

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

¹⁹⁸ European Charter of Local Self-Government and Explanatory Report, 1985, ETS No. 122, at Preamble.

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.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.’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-eminent importance of this principle [the right to participate] for local self-government.’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.’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).²⁰⁵

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

²⁰¹ Additional Protocol to the Charter of Local Self-Government, *supra* note 21, at Art. 1(1). *See also*, Explanatory Report to the Additional Protocol, *ibid.*, at 3.

²⁰² *See* Declaration of the 15th session of the Ministerial Conference, Valencia, 15-16 October 2007; referred to in Explanatory Report to Additional Protocol, *supra* note 21, at 2.

²⁰³ Additional Protocol to Additional Protocol to the Charter of Local Self-Government, *supra* note 21, at Preamble.

²⁰⁴ *Ibid.* (emphasis added).

²⁰⁵ *See*, CoE, Chart of signatures and ratifications of Treaty 207, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/207/signatures?p_auth=O31WDb3V (As of 3 July 2019).

²⁰⁶ Additional Protocol to the Charter of Local Self-Government, *supra* note 21, at Art. 1(1). *See also*, Explanatory Report to Additional Protocol, *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.²⁰⁷ According to the Explanatory Report:

The establishment of an *individual right to participate* in the affairs of a local authority reflects a long-term societal development in European States. *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.²⁰⁸

In 2018, the CoM reaffirmed that 'participation is at the very heart of the idea of democracy.'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 *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.²¹⁰ As demonstrated in *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.

²⁰⁷ *Ibid.* Art. 1(2).

²⁰⁸ Charter of Local Self-Government, *supra* note 198, at Exp. Rep. 3 (emphasis added).

²⁰⁹ 2018 CoM Recommendation, *supra* note 52, at Preamble.

²¹⁰ *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.²¹¹ 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.’²¹² The CoR,²¹³ in its advisory role to the EC, ‘encourages participation at all levels, from regional and local authorities to individual citizens.’²¹⁴ 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.’²¹⁵ To do so, it recommended ‘establishing appropriate tools to support participatory democracy.’²¹⁶ In 2014, the CoR adopted the Charter for Multi-Level Governance in Europe (‘MLG Charter’).²¹⁷ The signatories to the MLG Charter recognized that multilevel governance enables the development of participatory democracy ‘bringing the European Union closer

²¹¹ See, e.g. *supra* at Part II, B. 2. See also, Benedek, Oberleitner and Starl, *supra* note 49, at 281.

²¹² FRA, *Joining Up Fundamental Rights, Toolkit for Local, Regional and National Public Officials*, available at <https://fra.europa.eu/en/joinedup/tools/participation-and-civil-society/facilitating-participation>.

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.*

²¹⁴ EU, *About the EU*, available at https://europa.eu/european-union/about-eu/institutions-bodies/european-committee-regions_en.

²¹⁵ CoR, *The Committee of the Regions’ White Paper on Multi-Level Governance* (2009), at 5.

²¹⁶ *Ibid.*, at 17.

²¹⁷ CoR, News & Events, ‘The Committee of the Regions adopts the Charter for Multilevel Governance in Europe’ (3 April 2014), available at <https://portal.cor.europa.eu/mlgcharter/highlights/Pages/The-Committee-of-the-Regions-adopts-the-Charter-for-Multilevel-Governance-in-Europe.aspx>.

to the citizens.’²¹⁸ 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.’²¹⁹ The MLG Charter is open to the signature of local and regional authorities in Europe and, presently, there are 220 signatories.²²⁰

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.’²²¹ The Reference Framework recognized that ‘good governance’ requires ‘a policy of citizen participation in the management of public affairs,’²²² 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.’²²³ 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).’²²⁴

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

²¹⁸ CoR, *Charter for Multi-Level Governance in Europe* (20 February 2014), available at: <https://portal.cor.europa.eu/mlgcharter/Pages/MLG-charter.aspx>, at Preamble.

²¹⁹ *Ibid.*, at Preamble, Title II: Implementation and Delivery.

²²⁰ *Ibid.* (As of 3 July 2019).

²²¹ CLRA, *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.

²²² *Ibid.*

²²³ *Ibid.*, at 6.

²²⁴ 2018 CoM Recommendation, *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.’²²⁵ 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 consultation²²⁶ and endorse participatory budgeting.²²⁷

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.²²⁸ The United Cities and Local Governments (‘UCLG’) is ‘an umbrella organisation for cities, local and regional governments, and municipal associations.’²²⁹ The UCLG is an organization that ‘represents and defends the interests of local governments on the world stage, regardless of

²²⁵ ‘Partnership for Good Governance I’, available at: <https://pjp-eu.coe.int/web/eap-pcf/home>.

²²⁶ See, CoE/EU Partnership for Good Governance, Armenia Handbook on Transparency and Citizen Participation (2017) (‘Armenia Handbook’), at 37; CoE/EU Partnership for Good Governance, Georgia Handbook on Transparency and Citizen Participation (2017) (‘Georgia Handbook’), at 39; CoE/EU Partnership for Good Governance, Republic of Moldova Handbook on Transparency and Citizen Participation (2017) (‘Moldova Handbook’), at 41; and CoE/EU Partnership for Good Governance, Ukraine Handbook on Transparency and Citizen Participation (2017) (‘Ukraine Handbook’), at 41.

²²⁷ See, *Ibid.*, Armenia Handbook, at 35; Georgia Handbook, at 37; Moldova Handbook, at 39; Ukraine Handbook, at 41. The Handbooks refer to the OECD Policy Brief No. 22, which ‘provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.’

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-cisd.org/sites/default/files/Concept%20note%20-%201706%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-cisd.org/sites/default/files/Letter%20Civil%20Society%20Organisations_EN_final%20%281%29.pdf.

²²⁹ UCLG website, ‘About Us’, available at <https://www.uclg.org/en/organisation/about>.

the size of the communities they serve.’²³⁰ It has established the European Charter for Safeguarding Human Rights in the City.²³¹ 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.²³²

Likewise, the Human Rights Cities Network (‘HRCN’) ‘fosters participatory democracy and social justice, by leaving no one behind.’²³³ 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.’²³⁴ 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.²³⁵ 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.²³⁶ The City has also developed ‘Guidelines for

²³⁰ *Ibid.*

²³¹ UCLG, European Charter Safeguarding Human Rights in the City, at Art. VIII, available at https://www.uclg-cisd.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_baixa_3.pdf.

²³² UCLG, Committee on Social Inclusion, Participatory Democracy and Human Rights, available at <https://www.uclg-cisd.org/en/right-to-the-city/european-charter>.

²³³ Human Rights Cities Network (‘HRCN’), ‘Who we are?’, available at <https://humanrightscities.net/who-we-are/>.

²³⁴ HRCN, ‘What we do?’, available at <https://humanrightscities.net/what-we-do/>.

²³⁵ *Ibid.* (As of 6 July 2019).

²³⁶ *See*, City of Graz Human Rights Advisory Council, ‘First Human Rights City of Europe’, available at https://www.graz.at/cms/dokumente/10231141_7771489/9f37580b/HRC-Folder-eng-web.pdf.

Citizen Participation in Projects of the City of Graz,’ which were established on the basis of ‘dialogue between citizens, administration and politics.’²³⁷ More importantly, the City has also established the Department for Citizen Participation that is responsible for the ‘preparation and implementation of participation processes.’²³⁸ 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.²³⁹ To establish a regional norm of customary international law, like global norms, state practice and *opinio juris* must be present.²⁴⁰ *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.’²⁴¹ This evidence perhaps suggests that

²³⁷ City of Graz, *Guidelines for Citizen Participation for projects of the city of Graz*, available at https://www.graz.at/cms/beitrag/10244969/7755171/Leitlinien_fuer_BuergerInnenbeteiligung.html.

²³⁸ City of Graz, Department of Citizen Participation, available at https://www.graz.at/cms/beitrag/10029087/8335146/Referatfuer_BuergerInnenbeteiligung.html.

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.

²⁴³ Malcolm N. Shaw, *International Law* (8th ed. 2017), at 68.

²⁴⁴ *Columbian-Peruvian Asylum Case*, *supra* note 167, at 277.

²⁴⁵ Antonio Cassese, *International Law* (2nd ed., 2005), at 164.

²⁴⁶ Laurence R. Helfer and Ingrid B. Wuerth, ‘Customary International Law: An Instrument Choice Perspective’, 37 *Michigan Journal of International Law* (2016) 563, at 572.

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*, Columbia asserted that, even though Peru had not ratified the Convention (1933), its relevant provisions were applicable because the ‘Convention has merely codified principles which were already recognized by Latin-American custom, and that it is valid against Peru as a proof of customary law.’ *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.²⁵⁵

The Explanatory Report provides that, to implement Article 15,²⁵⁶ 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.’²⁵⁷

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’ participation²⁵⁸ and has recognized that ‘[i]nclusiveness is . . . closely linked to the concept and practical manifestations of effective participation.’²⁵⁹ In regard to new minorities, the FRA has also recognized the importance of participation to integration: ‘[t]he participation of immigrants

²⁵⁵ FCNM, *supra* note 18, at Art. 15 (emphasis added).

²⁵⁶ Article 15 of the FCNM applies to national and new minorities and indigenous peoples irrespective of their citizenship status. *See, supra* note 18, at Art. 15. Only 3 articles of the FCNM do not apply to non-citizens, and Article 15 is not one of them. Benedek, ‘The Relevance of the Local Level for the Protection of the Human Rights’, in Daniel Thürer and Raoul Blindenbacher (eds.), *Embracing Differences: A Commitment for Minorities and Managing Diversity* (2018) 105, at 107 (‘According to a recent study only three articles are not applicable, which are mainly related to language rights,’ citing Roberta Medda-Windischer, ‘Integration of New and Old Minorities in Europe: Different or similar policies and indicators?’ in *Integrim Online Papers*, 2015 No. 2, available at: <http://www.integrim.eu/wp-content/uploads/2014/02/MEDDA-integration-of-new-and-old-minirities.pdf>).

²⁵⁷ FCNM, *supra* note 18, at ¶80.

²⁵⁸ HCNM, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note* (September 1999). The *Central European Initiative Instrument for the Protection of Minority Rights* (1994) also adopts the concept of effective participation: ‘In accordance with the policies of the States concerned, States will respect the right of persons belonging to national minorities to effective participation in public affairs, in particular in the decision-making process on matters affecting them.’ Central European Initiative, *Instrument for the Protection of Minority Rights* (1994), available at <http://www.forost.ungarisches-institut.de/pdf/19941115-1.pdf>, at Art. 22.

²⁵⁹ HCNM, *The Ljubljana Guidelines on Integration of Diverse Societies and Explanatory Note* (November 2012), at 28.

in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.’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.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.’²⁶² Like

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

²⁶¹ ACFC, Thematic Commentary No. 2, *The Effective Participation of Persons Belonging to National Minorities in Cultural, Social And Economic Life and in Public Affairs*, 27 February 2008, at ¶9. See also, Tove H. Malloy, ‘Commentary on Article 15 of the Framework Convention for the Protection of National Minorities’, in Rainer Hoffman, Tove Malloy and Detlev Rein (eds.), in *The Framework Convention for the Protection of National Minorities: A Commentary* (2018) 269.

²⁶² ACFC, Thematic Commentary No. 2, *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

²⁶³ For example, Romania, Slovenia, Croatia and Kosovo all ‘guarantee’ minority representation through reserved seating. Joseph Marko and Sergiu Constantin, ‘Against Marginalization: The right to effective participation’, in Marko, J. and Constantin, S. (eds.), *Human Rights Protection By Multiple Diversity Governance: History, Law, Ideology and Politics in European Perspective* (2019) 340, at 370-71.

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.

²⁶⁶ Emma Lantschner and Marko Kmezić, ‘Political Participation of Minorities in Central Europe: Is it Effective or Just Window-Dressing?’ in Emma Lantschner, Sergiu Constantin and Joseph Marko (eds.), *Practice of Minority Protection in Central Europe* (2012) 223, at 238.

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.'²⁶⁷ In Romania each minority is guaranteed a minimum of one seat in parliament²⁶⁸ 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).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.²⁷⁰ The Hungarian minority has 21 deputies.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.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.'²⁷³

²⁶⁷ *Ibid.*, at 243.

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.

²⁶⁹ Romanian Chamber of Deputies, Political Parties in the Chamber of Deputies, available at <http://www.cdep.ro/pls/parlam/structura.fp?leg=2016&idl=2>.

²⁷⁰ Parliament of Romania, Law No. 208/2015, available at: https://asfromania.ro/files/ENGLEZA/legislation/capital/Lege%20268_2015_E.pdf, at Art. 56(1). *See also*, Marko and Constantin, *supra* note 263, at 371.

²⁷¹ Romanian Chamber of Deputies, *supra* note 257.

²⁷² *Ibid.*

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.'²⁷⁶ 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.'²⁷⁷ 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.²⁷⁹

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.’²⁸⁰ 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.’²⁸¹ 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.²⁸² 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.’²⁸³

²⁷⁹ *Ibid.*, at 224-25.

²⁸⁰ Lund Recommendations, *supra* note 258, at 24.

²⁸¹ Marko and Constantin, *supra* note 263, at 373.

²⁸² Sammy Smooha, ‘The Model of Ethnic Democracy’, *European Centre For Minority Issues (ECMI), Working Paper No. 13* (October 2001), at 6.

²⁸³ 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,²⁸⁴ 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.²⁸⁵

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*.'²⁸⁶ 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

²⁸⁴ Francesco Palermo and Karl Kössler, *Comparative Federalism -- Constitutional Arrangements and Case Law* (2017), at 23.

²⁸⁵ Marko and Constantin, *supra* note 263, at 361.

²⁸⁶ Lilla Balázs, 'Bosnia And Herzegovina: "'Transition, Times Two"', *L'Europe en Formation*, 3 n^o 349 – 350 (2008) 99, at 106 (emphasis added).

running for public offices defined by strict ethnic quotas.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.’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 elections²⁸⁹ and non-discrimination provision.²⁹⁰ However, Bosnia-Herzegovina, despite repeated demands by both the CoE and the EU, has failed to implement the decision.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.’²⁹² More problematically, they have the potential to ‘turn democracy into ethnocracy’²⁹³ by the improper invocation of veto powers. The

²⁸⁷ *Ibid.*, at 105.

²⁸⁸ Case U-5/98, in *Sluzbeni glasnik* (official gazette) No. 23/2000, 14 September 2000, available at: www.ustavisud.ba/english/default.htm. See also, Francesco Palermo and Jens Woelk, ‘No representation without recognition: The right to political participation of (National) minorities’, 25 *Journal of European Integration* 3 (2003) 225, at 239.

²⁸⁹ ECHR, *supra* note 189, at Art.3, Protocol No. 1.

²⁹⁰ See *Sejdic and Finci v. Bosnia and Herzegovina*, ECtHR, App. Nos. 27966/06 and 34836/06, Judgment, 22 December 2009. See also, ECHR, *supra* note 189, at Art. 14.

²⁹¹ See Marko and Constantin, *supra* note 263, at 355.

²⁹² ACFC, Thematic Commentary No. 2, *supra* note 261, at 7.

²⁹³ Marko and Constantin, *supra* note 263, at 377.

Bosnian constitution provides each constituent people a veto over any decision declared to be ‘destructive of a vital interest.’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.’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.’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.

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.’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.

²⁹⁴ Dayton Constitution, Ann. 4, Art. IV.3.(e) in Marko and Constantin, *supra* note 263, at 377.

²⁹⁵ Balázs, *supra* note 286, at 106, 117.

²⁹⁶ Lund Recommendations, *supra* note 258, at 19.

²⁹⁷ FCNM, *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)’²⁹⁸ and has enabled several minority self-governments to ‘establish schools and take over the running of other cultural institutions.’²⁹⁹ Likewise, in Serbia there is a minority council for each minority, which has decision-making authority with regard to education.³⁰⁰ 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.’³⁰¹ 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’.³⁰²

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

²⁹⁸ David J. Smith, ‘NTA as Political Strategy in Central and Eastern Europe’, in Tove H. Malloy and Francesco Palermo (eds.), *Minority Accommodation through Territorial and Non-Territorial Autonomy (Minorities & Non-Territorial Autonomy)* (2015) Loc. 4620, at 4714.

²⁹⁹ *Ibid.*, at Loc. 4760.

³⁰⁰ *See*, Marko and Constantin, *supra* note 263, at 390.

³⁰¹ Mikko Lagerspetz, ‘Cultural Autonomy of National Minorities in Estonia: The Erosion of a Promise’, 45 *Journal of Baltic Studies* 4 (2014), 457-475.

³⁰² ACFC, Third Opinion on Hungary (adopted on 18 March 2010), ACFC/OP/III(2010)001, accessed 27 November 2012, available at http://www.coe.int/t/dghl/monitoring/minorities/3_fcnmdocs/PDF_3rd_OP_Hungary_en.pdf.

perform specific tasks related to the implementation of programs, e.g. in the field of education.³⁰³

The ACFC has endorsed purely consultative bodies to supplement other participatory mechanisms.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.’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.’³⁰⁶ The Migrants’ Council has been successful in transmitting the interests of new minorities to the City’s decision-makers.

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

Non-territorial, functional, personal, and cultural bodies³⁰⁷ 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,’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.’³⁰⁹ Likewise, the selection of minority representatives to serve on

³⁰³ Lund Recommendations, *supra* note 258, at ¶12.

³⁰⁴ ACFC, Thematic Commentary No. 2, *supra* note 261, at ¶10.

³⁰⁵ Marc Weller, ‘Minority Consultative Mechanisms: Towards Best Practices’, in *European Yearbook of Minority Issues*, Vol. 7, 2007/8, 425, at 426.

³⁰⁶ *See*, City of Graz Human Rights Advisory Council, ‘First Human Rights City of Europe’, available at <https://www.graz.at/cms/dokumente/102311417771489/9f37580b/HRC-Folder-eng-web.pdf>.

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. *See, generally*, Marko and Constantin, *supra* note 263, at 387.

³⁰⁸ Weller, *supra* note 305, at 442.

³⁰⁹ Osipov, Alexander, ‘Non-Territorial Autonomy During and After Communism: In the Wrong or Right Place? 12 *Journal on Ethnopolitics and Minority issues in Europe* 1 (2013), 7-26. *See also*, Lagerspetz *supra* note 301, at 457-475.

consultation bodies is either undertaken through imperfect electoral processes or by government appointment, reducing the legitimacy of consultative bodies.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;³¹¹ however, the legitimacy of a minority consultative body consisting of a majority of government representatives is doubtful.³¹²

B. IRRESPECTIVE OF THE SYSTEM, MINORITY ‘REPRESENTATIVES’ ARE NOT REPRESENTATIVE

There is no doubt that the ‘[r]epresentation of minorities in elected bodies at national and sub-national levels is an essential element of participation in public life.’³¹³ However, the provision of minority participation through mechanisms of representation, incurs the same democratic deficit as any elected representative body,³¹⁴ namely that minority representatives do not represent the general interest of the minority community.³¹⁵ Moreover, minority representatives could not -- by their very nature as *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:

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.

³¹⁰ See, Weller, *supra* note 305, at 442.

³¹¹ ACFC, Thematic Commentary No. 2, *supra* note 261, at ¶65.

³¹² See, Lantschner and Kmezić, *supra* note 266, at 246.

³¹³ Marko and Constantin, *supra* note 263, at 343.

³¹⁴ See *supra*, Part II.

³¹⁵ Marko and Constantin, *supra* note 263, at 343.

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.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.’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.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.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.’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

³¹⁶ Lund Recommendations, *supra* note 258, at 19.

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.

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).

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.’).

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.*’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.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. 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.’³²³ The Serbian Law on National Councils of National Minorities enables National minority

³²¹ Ljubljana Guidelines, *supra* note 259, at 25 (emphasis added).

³²² Matteo Daicampi, ‘Effective Participation of Minorities in Public Affairs in the Local Government: Towards a Subsidiarity in Diversity Accommodation? The Case of Law No. 6/2008 of the Province of Trento’, 2 *Peace Human Rights Governance* 1 (2018) 97, at 104.

³²³ National Minorities Cultural Autonomy Act, Passed by the Act of 26 October 1993 (RT I 1993, 71, 1001), entered into force 28 November 1993, at Art. 2(2), 11(2).

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.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.’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.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

³²⁴ Leonas Tolvaišis, ‘Ethnic Minority Policies as an Ethnic Cleavage Dimension Within Post-Communist Party Systems: Case Studies of Vojvodina Hungarians and Estonian Russians’, 13 *Serbian Political Thought* 1 (2016) 29, at 38.

³²⁵ Daicampi, *supra* note 322, at 111.

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.³²⁷ 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.’³²⁸ This participatory mechanism supplements representative democracy and enables minorities to overcome some of its flaws by influencing government from the bottom-up.³²⁹

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.’³³⁰ 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.’³³¹ 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

³²⁷ Thamy Pogrebinschi, ‘Participatory Democracy and the Representation of Minority Groups in Brazil’, *American Political Science Association -- Conference Paper* (January 2011), available at: https://www.researchgate.net/publication/228296624_Participatory_Democracy_and_the_Representation_of_Minority_Groups_in_Brazil, at 2.

³²⁸ *Ibid.*, at 4.

³²⁹ *Ibid.*, at 5.

³³⁰ Petra Roter, Report ‘On minority protection and policy recommendations as applicable to South East Europe (2017), available at <https://pjp-eu.coe.int/documents/3513035/4042040/Report+on+Minority+Protection+in+SEE+-+Petra+Roter/dfd49f07-0f26-4b0c-88a5-6648827115ee>, at 7.

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 than 10 million people, the Roma represent the largest -- and the most socially excluded -- minority in Europe.³³² 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.’³³³ 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.’³³⁴ 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.’³³⁵ 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.³³⁶ The Advisory Committee consists of members of the Roma community, Roma representatives on the Municipal Council, representatives of the municipality and

³³² CLRA, Resolution 333 (2011)1, ‘The situation of Roma in Europe: a challenge for local and regional authorities’, at ¶1.

³³³ *Ibid.*, at ¶8.

³³⁴ *Ibid.*, at ¶2.

³³⁵ CoE Commissioner of Human Rights, *Human Rights of Roma and Travellers in Europe*, 2012, at 214.

³³⁶ OSCE, *Implementing Citizens Participation in Decision Making at Local Level—Toolkit* (2014), at 23.

other interested citizens.³³⁷ 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.³³⁸ 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.³³⁹ 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.’³⁴⁰ 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.’³⁴¹

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

³³⁷ *Ibid.*

³³⁸ Francesco Marcaletti and Veronica Riniolo, ‘A Participatory Governance Model Towards the Inclusion of Ethnic Minorities. An Action Research Experience in Italy’, 53 *Revue Interventions économiques* [Online] (2015), available at: <http://journals.openedition.org/interventionseconomiques/2609>, at ¶2.

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 policies 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.

³⁴² Joseph Marko, ‘Against Discrimination: The Right to Equality and the Dilemma of Difference’, in Joseph Marko and Sergiu Constantin (eds.), *Human and Minority Rights Protection by Multiple Diversity Governance* (2019) 306, at 317.

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.’³⁴⁴ 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.’³⁴⁵

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

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*.'³⁴⁶ 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.'³⁴⁷

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.

³⁴⁹ ACFC, Thematic Commentary No. 3, *The Language Rights of Persons belonging to National Minorities under the Framework Convention*, Adopted on 24 May 2012, ACFC/44DOC(2012)001 rev, p. 9, at ¶25.

³⁵⁰ *Ibid.*, at ¶54.

³⁵¹ EU, Justice and Home Affairs Council, *Common Basic Principle ('CBP') for Immigrant Integration Policy* (2004), available at https://www.eesc.europa.eu/resources/docs/common-basic-principles_en.pdf, at CBP 1 (emphasis added).

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).

³⁵⁶ Merja Pentikäinen, 'Social Integration of 'Old' and 'New' Minorities in Europe in Views of International Expert Bodies Relying on Human Rights: Contextual Balancing and Tailoring', 14 *Journal on Ethnopolitics and Minority Issues in Europe* 1 (2015) 26, at 30 (emphasis added). *See also* Ljubljana Guidelines, *supra* note 259, at ¶49.e.

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

³⁵⁸ ACFC, Thematic Commentary No. 4, *The Scope of Application of the Framework Convention for the Protection of National Minorities -- The Framework Convention: a key tool to managing diversity through minority rights* (27 May 2016), ACFC/56DOC(2016)001, at ¶76.

integration, cohesion and stability. They can also provide valuable safeguards against societal tensions and conflicts.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.'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 *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.'³⁶¹ Promoting 'mutual understanding helps tackle prejudice on both sides.'³⁶² Common Basic Principle No. 10 recognizes the importance of public debate in supporting the participation of Roma in public life.³⁶³ Common Basic Principle No. 8 acknowledges that 'regional and local governance as actors at local level are essential for

³⁵⁹ HCNM, *The Tallinn Guidelines on National Minorities and the Media in the Digital Age and Explanatory Note* (February 2019), at 7 (emphasis added).

³⁶⁰ *Ibid.*

³⁶¹ EU, *Vademecum: The 10 Common Basic Principles on Roma Inclusion* (2010), available at <https://publications.europa.eu/en/publication-detail/-/publication/7573706d-e7c4-4ece-ae59-2b361246a7b0>, at CBP No. 3.

³⁶² *Ibid.*

³⁶³ *Ibid.*, at CBP No. 10.

Roma inclusion.’³⁶⁴ 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.’³⁶⁵ 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.’³⁶⁶ 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).’³⁶⁷

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.*

³⁶⁷ Dmytro Khutkyy, ‘Participatory budgeting: An Empowering Democratic Institution’, *Eurozine* (31 October 2017), available at <https://www.eurozine.com/participatory-budgeting-an-empowering-democratic-institution/?pdf>, at 3.

project, given the assessments produced by the project's evaluators and given the anecdotal evidence of the beneficiaries.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.'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.'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.

³⁶⁸ Roter, *supra* note 330, at 14 (emphasis added).

³⁶⁹ Pogrebinschi, *supra* note 327, at 4.

³⁷⁰ Benjamin Goldfrank, 'Lessons from Latin America's Experience with Participatory Budgeting', in Anwar Shah (ed.), *Public Sector Governance and Accountability Series, Participatory Budgeting*, (2007) 91, at 112.

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.³⁷⁵ 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.’³⁷⁶ Moreover, minority communities and the politically alienated must have the knowledge base to utilize internet and communications technology to facilitate their participation.³⁷⁷ Furthermore, online interaction is far less effective than 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.³⁷⁸

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.³⁷⁹ 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.³⁸⁰

³⁷⁵ *Ibid.*

³⁷⁶ ACFC, Thematic Commentary No. 4, *supra* note 358, at ¶70.

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.’)

³⁷⁸ Putnam, *supra* note 14, at 341.

³⁷⁹ Matthew Barnidge, ‘Social Affect and Political Disagreement on Social Media’, *Social Media + Society*, (July-September 2018)1, at 1.

³⁸⁰ Tallinn Guidelines, *supra* note 359, at 65.

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.’

BIBLIOGRAPHY

A. PRIMARY SOURCES

1. Cases

Constitutional Court of Bosnia and Herzegovina

Case U-5/98, in *Sl̇uzbeni glasnik* (official gazette) No. 23/2000, 14 September 2000, available at: www.ustavnisud.ba/english/default.htm.

Court of Justice of the European Union

SA Roquette Frères v. Council of the European Communities, CJEU, Case C-138/79, ECLI:EU:C:1980:249.

European Court of Human Rights

Mathieu-Mohin and Clerfayt v. Belgium, ECtHR, No. 9267/81, Judgment, 2 March 1987.

Sejdic and Finci v. Bosnia and Herzegovina, ECtHR, Nos. 27966/06 and 34836/06, Judgment, 22 December 2009.

Yildirim v. Turkey, ECtHR, No. 3111/10, Judgment, 18 December 2012 (Final 18 March 2013).

International Court of Justice

Case Concerning Right of Passage over Indian Territory (Merits), Judgment, I.C.J. Reports 1960, p. 6.

Columbian-Peruvian Asylum Case, Judgment, I.C.J. Reports 1950, p. 266.

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 25 February 2019, General List No. 169 [I.C.J. Reports (2019), **].

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226.

North Sea Continental Shelf, Judgment, I.C.J. Reports 1969, p. 3.

UN Human Rights Committee

Marshall v. Can., Comm. 205/1986, U.N. Doc. A/47/40 (HRC 1991).

2. Treaties

United Nations/UN Economic Commission for Europe

International Covenant on Civil and Political Rights (1966), 999 UNTS 171.

The Convention On Access To Information, Public Participation In Decision-Making and Access To Justice In Environmental Matters (1998), 2161 UNTS 447.

European Union

Consolidated Version of the Treaty on European Union [2016] OJ C202/1.

Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C202/1.

Council of Europe

Convention for the Protection of Human Rights and Fundamental Freedoms (as amended) (1950), ETS No. 5.

European Charter of Local Self-Government and Explanatory Report (1985), ETS No. 122.

Convention on the Participation of Foreigners in Public Life at Local Level (1992), ETS No. 144.

Framework Convention for the Protection of National Minorities (1995), ETS No. 157.

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.

Miscellaneous

African Union (formerly Organization of African Unity (OAU)), *African Charter on Human and Peoples' Rights* ('Banjul Charter'), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

Organization of American States (OAS), *American Convention on Human Rights* ('Pact of San Jose'), Costa Rica, 22 November 1969.

3. Official Documents, Policy Papers, Recommendations, Comments, Reports and Other Publications

United Nations

UN Development Program, 'The Sustainable Development Goals and Addressing Statelessness', March 2017.

UN Economic Commission for Europe, 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).

UN Economic Commission for Europe (Ebbesson, J. et al.), *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.

General Assembly, *Universal Declaration of Human Rights*, 217 A (III) (10 December 1948).

General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144 (8 March 1999).

UN Habitat, Governing Council of the United Nations Human Settlements Programme, 'Guidelines on Decentralization and Strengthening of Local Authorities', HSP/GC/21/3 (20 April 2007).

Human Rights Committee, CCPR General Comment No. 25: 'The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service', CCPR/C/21/Rev.1/Add.7 (12 July 1996).

Human Rights Council, Res. 24/8, 'Equal Political Participation', A/HRC/RES/24/8 (8 October 2013).

Human Rights Council, Advisory Committee, 'Role of Local Government in the Promotion and Protection of Human Rights', A/HRC/30/49 (7 August 2015).

Human Rights Council, Res. 30/9, 'Equal participation in political and public affairs', A/HRC/RES/30/9 (12 October 2015).

Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, 'Draft guidelines for States on the effective implementation of the right to participate in public affairs', A/HRC/39/28 (20 July 2018).

Human Rights Council, Res. 39/7, 'Local government and human rights', A/HRC/RES/39/7 (27 September 2018).

European Union

European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, 'The Principles of Subsidiarity and Proportionality: Strengthening their Role in the EU's Policymaking', COM(2018) 490-491.

European Commission, Communication from the Commission, 'Towards a Reinforced Culture of Consultation And Dialogue - General Principles and Minimum Standards For Consultation of Interested Parties By the Commission, Commission of the European Communities', COM(2002) 704 (Final).

European Commission, *European Governance: A White Paper*, COM (2001) 428 (Final).

Committee of Regions, *The Committee of the Regions' White Paper on Multi-Level Governance* (2009).

Committee of Regions, *Charter for Multi-Level Governance in Europe* (2014).

Committee of Regions and EU Fundamental Rights Agency, *Making Rights Real: A guide for Local and Regional Authorities* (2014).

Fundamental Rights Agency, *Together in the EU: Promoting the Participation of Migrants and their Descendants: Recognized Importance of Participation To Integration* (2017).

Justice and Home Affairs Council, *Common Basic Principles for Immigrant Integration Policy* (2004).

Vademecum: The 10 Common Basic Principles on Roma Inclusion (2010).

Council of Europe

ACFC, Thematic Commentary No. 2, *The Effective Participation of Persons Belonging to National Minorities In Cultural, Social And Economic Life And In Public Affairs* (27 February 2008).

ACFC, Third Opinion on Hungary, ACFC/OP/III(2010)001 (18 March 2010).

ACFC, Thematic Commentary No. 3, *The Language Rights of Persons belonging to National Minorities under the Framework Convention*, ACFC/44DOC(2012)001 rev. (24 May 2012).

ACFC, Thematic Commentary No. 4, *The Scope of Application of the Framework Convention for the Protection of National Minorities -- The Framework Convention: a key tool to managing diversity through minority rights*, ACFC/56DOC(2016)001 (27 May 2016).

Commissioner of Human Rights, *Human Rights of Roma and Travellers in Europe* (2012).

Commissioner for Human Rights, *Time for Europe to get migrant integration right* (2016).

Committee of Ministers, Statutory Resolution 'Relating to the Congress of Local and Regional Authorities of the Council of Europe and the Revised Charter Appended Thereto', CM/Res (2011) 2 (19 January 2011).

Committee of Ministers, *Guidelines for civil participation in political decision making* (27 September 2017).

Committee of Ministers, Recommendation to Member States on ‘the participation of citizens in local public life’, CM/Rec(2018)4 (21 March 2018).

Congress of Local and Regional Authorities of the Council of Europe, *Council of Europe Reference Framework for Regional Democracy* (2009).

Congress of Local and Regional Authorities, Res. 333, ‘The situation of Roma in Europe: a challenge for local and regional authorities’ (2011).

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.

European Commission for Democracy Through Law (Venice Commission), *Report on Non-Citizens And Minority Rights*, Study No. 294/ 2004 Cdl-Ad(2007)001.

CoE/EU Partnership for Good Governance, *Armenia Handbook on Transparency and Citizen Participation* (2017).

CoE/EU Partnership for Good Governance, *Georgia Handbook on Transparency and Citizen Participation* (2017).

CoE/EU Partnership for Good Governance, *Republic of Moldova Handbook on Transparency and Citizen Participation* (2017).

CoE/EU Partnership for Good Governance, *Ukraine Handbook on Transparency and Citizen Participation* (2017).

Parliamentary Assembly of the Council of Europe, Res. 1746, *Democracy in Europe: crisis and perspectives* (2010).

Roter, P., Report ‘On minority protection and policy recommendations as applicable to South East Europe (2017), available at <https://pjp-eu.coe.int/documents/3513035/4042040/Report+on+Minority+Protection+in+SEE+-+Petra+Roter/dfd49f07-0f26-4b0c-88a5-6648827115ee>.

OSCE Documents and Texts

HCNM, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note* (September 1999).

HCNM, *The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note* (November 2012).

HCNM, *The Tallinn Guidelines on National Minorities and the Media in the Digital Age & Explanatory Note* (February 2019).

OSCE, *Implementing Citizens Participation in Decision Making at Local Level—Toolkit* (2014).

3. National Statutory Instruments and Constitutions

Bulgaria

Direct Citizen Participation in State and Local Government Act, Promulgated, SG No. 44/12.06.2009 (as amended), available at: www.legislationline.org/documents/id/21686.

Romania

Constitution of Romania, available at: http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=3.

Parliament of Romania, Law No. 208/2015, available at: https://asfromania.ro/files/ENGLEZA/legislation/capital/Lege%20268_2015_E.pdf.

B. SECONDARY SOURCES

1. Books/Manuscripts

Best, E., Augustyn M., and Lambermont, F., *Direct and Participatory Democracy at Grassroots Level: Levers for forging EU citizenship and identity?* (2011).

Brinkerhoff, D. W. and Azfar, O., *Decentralization and Community Empowerment: Does Community Empowerment Deepen Democracy and Improve Service Delivery?* (2006).

Campbell, T., *The Quiet Revolution: Decentralization and the Rise of Political Participation in Latin American Cities* (2003).

Canal, R., *Social Inclusion and Participatory Democracy, From the Conceptual Discussion to Local Action* (2010).

Cassese, A., *International Law* (2nd ed., 2005).

Chwalisz, C., *The Populist Signal: Why Politics and Democracy Need to Change* (2015).

Joseph, S. and Castan, M., *The International Covenant of Civil and Political Rights: Cases, Materials and Commentary* (3rd. ed., 2013).

Kornhauser, W., *The Politics of Mass Society* (1959).

Kymlicka, W., *Multicultural Odysseys* (2007).

Malloy, T. H., and Palermo, F., *Minority Accommodation through Territorial and Non-Territorial Autonomy (Minorities & Non-territorial Autonomy)* (2015).

Medda-Windischer, R., *Old and New Minorities: Reconciling Diversity and Cohesion* (2009).

Nabatchi, T., and Leighninger, M., *Public Participation for 21st Century Democracy* (2015).

Palermo, F., and Kössler, K., *Comparative Federalism -- Constitutional Arrangements and Case Law* (2017).

Putnam, R. D., *Bowling Alone: The Collapse and Revival of American Community* (2000).

Reynolds, A., Minority Rights Group International, *Electoral Systems and the Protection and Participation of Minorities* (2006).

Rosenzweigova, I., and Skoric, V., *Civil Participation in Decision-Making Processes: An Overview of Standards and Practices in Council of Europe Member States* (2016).

Shaw, M. N., *International Law* (8th ed. 2017).

Verstichel, A., *Participation, Representation and Identity: The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs, Content, Justification and Limits* (2009).

World Bank, Social Development Team, *Participatory Budgeting Toolkit for Local Governments in Albania, Europe and Central Asia Region* (2006).

2. Chapters in Books

Bardhan, P., and Mookherjee, D., ‘The Rise of Local Governments: An Overview’, in Bardhan, P., and Mookherjee, D. (eds.), *Decentralization and Local Governance in Developing Countries: A Comparative Perspective* (2005).

Benedek, W., ‘The Relevance of the Local Level for the Protection of the Human Rights’, in Thürer, D., and Blindenbacher, R. (eds.), *Embracing Differences: A Commitment for Minorities and Managing Diversity* (2018) 105.

Benedek, W., Oberleitner, G., and Starl, K., ‘Global Obligations – Local Action: How to Develop the Local Level to Strengthen Human Rights’, in Patricia Hladschik, P. and Steinert, F. (eds.), *Making Human Rights Work, Festschrift for Manfred Nowak and Hannes Tretter* (2019) 127.

Cabannes, Y., ‘Participatory Budgeting in Paris: Act, Reflect, Grow’, in Cabannes, Y. (ed.), *Another City Is Possible with Participatory Budgeting* (2017) 179.

Ferri, D., 'Participation in EU Governance: A "Multi-Level" Perspective and a Multifold Approach' in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 334.

Gamper, A., 'Forms of Democratic Participation in Multi-Level Systems' in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 67.

Goldfrank, B., 'Lessons from Latin America's Experience with Participatory Budgeting', in Anwar Shah (ed.), *Public Sector Governance and Accountability Series, Participatory Budgeting* (2007) 91.

Kies, R., and Nanz, P., 'Introduction,' in Kies, R., and Nanz, P. (eds.), *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations* (2013) 1.

Klages, H., 'Perspectives on the Institutionalization of Citizen Participation at the Municipal Level: A First Hand Report', in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 114.

Kössler, K., 'Laboratories of Democratic Innovation? Direct, Participatory and Deliberative Democracy in Canadian Provinces and Municipalities', in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 286.

Kropp, S., 'Federalism, People's Legislation and Associative Democracy', in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 41.

Marko, J., 'Introduction', in Marko, J., and Constantin, S. (eds.), *Human and Minority Rights Protection by Multiple Diversity Governance* (2019) 1.

Marko, J., 'Against Discrimination: The Right to Equality and the Dilemma of Difference', in Marko, J., and Sergiu, C. (eds.), *Human and Minority Rights Protection by Multiple Diversity Governance* (2019) 306.

Marko, J., and Sergiu, C., 'Against Marginalization: The right to effective participation', in Marko, J. and Constantin, S. (eds.), *Human Rights Protection By Multiple Diversity Governance: History, Law, Ideology and Politics in European Perspective* (2019) 340.

Martini, M., and Saskia Fritzsche, S., 'E-Participation in Germany: New Forms of Citizen Involvement between Vision and Reality', in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 121.

Palermo, F., 'Participation, Federalism and Pluralism: Challenges to Decision Making and Responses by Constitutionalism' in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 31.

Parolari, S., and Woelk, J., 'The Referendum in the United Kingdom: Instrument for Greater Constitutional Legitimacy, Tool of Political Convenience, or First Step to Revitalize Democracy', in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 265.

Roter, P., 'Commentary of Article 5 of the Framework Convention for the Protection of National Minorities', in Hoffman, R., Malloy, T. H., and Rein, D. (eds.), *The Framework Convention for the Protection of National Minorities: A Commentary* (2018) 126.

Shah, A., 'Introduction', in Shah, A. (ed.), *Public Sector Governance and Accountability Series, Participatory Budgeting* (2007) 1.

Smith, D. J., 'NTA as Political Strategy in Central and Eastern Europe', in Malloy, T. H., and Palermo, F. (eds.), *Minority Accommodation through Territorial and Non-Territorial Autonomy (Minorities & Non-Territorial Autonomy)* (2015) Loc. 4620.

Sommermann, K. P., 'Preface' in Fraenkel-Haeberle, C., Kropp, S., Palermo, F. and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) (ix).

Sommermann, K-P., 'Citizen Participation in Multi-Level Democracies: An Introduction', in Fraenkel-Haeberle, C., Kropp, S., Palermo, F., and Sommermann, K-P. (eds.), *Citizen Participation in Multi-Level Democracies* (2015) 1.

Weller, M., 'Minority Consultative Mechanisms: Towards Best Practices', in *European Yearbook of Minority Issues*, Vol. 7 (2007/8) 425.

Wilson, B., 'Commentary of Article 4 of the Framework Convention for the Protection of National Minorities,' in Hoffman, R., Malloy, T. H., and Rein, D. (eds.), *The Framework Convention for the Protection of National Minorities: A Commentary* (2018) 111.

3. Journal Articles

Balázs, L., 'Bosnia And Herzegovina: "Transition, Times Two"', (2008) 3 *L'Europe en Formation* 349 – 350, 99.

Barnidge, M., 'Social Affect and Political Disagreement on Social Media', (July-September 2018) *Social Media + Society* 1, available at: <https://journals.sagepub.com/doi/pdf/10.1177/2056305118797721>.

Cox, M., 'Understanding The Global Rise Of Populism', *LSE-Ideas, Strategic Update* (February 2018).

Cuesta Lopez, V., 'The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy', (2010)16 *European Public Law* 1, 123.

- Matteo Daicampi, 'Effective Participation of Minorities in Public Affairs in the Local Government: Towards a Subsidiarity in Diversity Accommodation? The Case of Law No. 6/2008 of the Province of Trento', 2 *Peace Human Rights Governance* 1 (2018) 97.
- Dallyn, S., 'World Bank Participatory Budgeting Pilots in Albania: 'Empowerment' in Practice?' *British International Studies Association Conference* (December, 2008).
- Dehousse, R., 'The Legitimacy of the European Governance: The Need for a Process-Based Approach', (2002) *Cahiers Européens de Sciences Po* 1, 26.
- Dufek, P., 'Why strong moral cosmopolitanism requires a world state', (2013) 5 *International Theory* 2, 177-212.
- Fox, G. H., 'The Right to Political Participation in International Law', (1992) 17 *Yale Journal of International Law* 2, 539.
- Franck, T. M., 'The Emerging Right to Democratic Governance', (1992) 86 *The American Journal of International Law* 1, 46.
- Goldfrank, B., 'The World Bank and the Globalization of Participatory Budgeting', (2012) 8 *Journal of Public Deliberation* 2, Art. 7.
- Helfer, L. R., and Wuerth, I. B., 'Customary International Law: An Instrument Choice Perspective', (2016) 37 *Michigan Journal of International Law* 563.
- Khutkyy, D., 'Participatory budgeting: An Empowering Democratic Institution', 31 October 2017, *Eurozine*, available at: <https://www.eurozine.com/participatory-budgeting-an-empowering-democratic-institution/?pdf>.
- Lagerspetz, M., 'Cultural Autonomy of National Minorities in Estonia: The Erosion of a Promise', (2014) 45 *Journal of Baltic Studies* 4, 457.
- Lenaerts, K., 'The Principle of Democracy in the Case Law of the European Court of Justice', (2013) 62 *The International Law Quarterly*, 2, 271.
- Marcaletti, F., and Riniolo, V., 'A Participatory Governance Model Towards the Inclusion of Ethnic Minorities. An Action Research Experience in Italy', (2015) 53 *Revue Interventions économiques* [Online], available at: <http://journals.openedition.org/interventions-economiques/2609>.
- Marks, S., 'What has Become of the Emerging Right to Democratic Governance?' (2011) 22 *The European Journal of International Law* 2, 507.
- Medda-Windischer, R., 'Integration of New and Old Minorities in Europe: Different or similar policies and indicators?' in *Integrim Online Papers*, 2015 No. 2, available at: <http://www.integrim.eu/wp-content/uploads/2014/02/MEDDA-integration-of-new-and-old-minorities.pdf>.

Medda-Windischer, R., Old and New Minorities: Diversity Governance and Social Cohesion from the Perspective of Minority Rights, (2017) 11 *Acta Univ, Sapientias, European and Regional Studies*, 25.

Mendes, J., Participation and the Role of Law After Lisbon: A Legal View on Article 11 TEU', (2011) 6 *Common Market Law Review* 1849.

Michels, A., and De Graaf, L., 'Examining Citizen Participation: Local Participatory Policy Making and Democracy', (2010) 36 *Local Government Studies* 4, 471.

Osipov, A., 'Non-Territorial Autonomy During and After Communism: In the Wrong or Right Place?' (2013) 12 *Journal on Ethnopolitics and Minority issues in Europe* 12, 1.

Palermo, F., and Woelk, J., 'No representation without recognition: The right to political participation of (National) minorities', (2003) 25 *Journal of European Integration* 3, 225.

Patel, R., and Fletcher, S., 'Decide.Madrid.es Online Participatory Budgeting,' *Participedia*, 19 January 2018, available at: <https://participedia.net/en/cases/decidemadrides-online-participatory-budgeting>.

Patsias, C., 'Participatory Democracy, Decentralization and Local Governance. The Montreal Participatory Budget in the Light of "Empowered Participatory Governance"', (2013) 6 *International Journal of Urban and Regional Research*, 2214.

Pentikäinen, M., 'Social Integration of 'Old' and 'New' Minorities in Europe in Views of International Expert Bodies Relying on Human Rights: Contextual Balancing and Tailoring, (2015) 14 *Journal on Ethnopolitics and Minority Issues in Europe* 1, 26.

Peter, F., 'The Human Right to Political Participation,' (2013) 7 *Journal of Ethics & Social Philosophy* 2, 1.

Niels Petersen, 'The Principle of Democratic Teleology in International Law', (2008) 34 *Brooklyn Journal of International Law*, 33.

Pippan, C., 'International Law, Domestic Political Orders, and the Democratic Imperative: Has Democracy Finally Emerged as a Global Entitlement?' (2010) 2 *Jean Monnet Working Paper* 10.

Pogrebinschi, T., 'Participatory Democracy and the Representation of Minority Groups in Brazil, *American Political Science Association -- Conference Paper* (January 2011), available at: https://www.researchgate.net/publication/228296624_Participatory_Democracy_and_the_Representation_of_Minority_Groups_in_Brazil.

Smootha, S., 'The Model of Ethnic Democracy', *European Centre For Minority Issues (ECMI), Working Paper No. 13* (October 2001).

Stolle, D., and Hooghe, M., 'Inaccurate, Exceptional, One-Sided or Irrelevant? The Debate about the Alleged Decline of Civic engagement and Social Capital in Western Societies', (2004) 35 *British Journal of Political Science* 149.

Toivanen, R., 'Rethinking the concept of effective participation: Are minorities similar to women?', (2010) 9 *Journal on Ethnopolitics and Minority Issues in Europe*, 2, 1.

Tolvaišis, L., 'Ethnic Minority Policies as an Ethnic Cleavage Dimension Within Post-Communist Party Systems: Case Studies of Vojvodina Hungarians and Estonian Russians', 13 *Serbian Political Thought* 1 (2016) 29.

Wampler, B., McNulty, S., and Touchton, M., *Participatory Budgeting: Does Evidence Match Enthusiasm?* Open Government Partnership, 2 November 2017, available at: <https://www.opengovpartnership.org/stories/participatory-budgeting-does-evidence-match-enthusiasm>.

Wakeford, T., 'Citizens Juries: a radical alternative for social research', (2002) 37 *Social Research Update: Citizens Juries*, 37.

Yusoff, M. A., Sarjoon, A., and Hassan, M. A., 'Decentralization as a Tool for Ethnic Diversity Accommodation: A Conceptual Analysis', (2016) 9 *Journal of Politics and Law* 1, 55.

C. INTERNET SOURCES

EU

Fundamental Rights Agency, *Joining Up Fundamental Rights, Toolkit for Local, Regional and National Public Officials*, available at: <https://fra.europa.eu/en/joinedup/tools/participation-and-civil-society/facilitating-participation>.

European Commission, Standard Eurobarometer 90, Autumn 2018, 'First results Public opinion in the European Union, Fieldwork: November 2018', available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/STANDARD/surveyKy/2215>.

European Commission, Revision of the European Citizens' Initiative Regulation, State of the Union 2017, Fact Sheet, available at: https://ec.europa.eu/commission/sites/beta-political/files/european-citizens-initiative-factsheet-sept2017_en.pdf.

European Commission, '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.

European Commission, 'Consultations', available at: <https://ec.europa.eu/info/consultations>.

European Commission, 'Consultation on the Future of Europe', available at: https://ec.europa.eu/commission/future-europe/consultation-future-europe_en.

European Commission, 'EGovernment4U', available at: <https://ec.europa.eu/futurium/en/egovernment4eu/webinar-lets-talk-about-e-participation>.

European Commission, 'STEP', available at: <https://ec.europa.eu/futurium/en/egovernment4eu/webinar-lets-talk-about-e-participation>.

Committee of Regions, News & Events, 'The Committee of the Regions adopts the Charter for Multilevel Governance in Europe' (3 April 2014), available at: <https://portal.cor.europa.eu/mlgcharter/highlights/Pages/The-Committee-of-the-Regions-adopts-the-Charter-for-Multilevel-Governance-in-Europe.aspx>.

Committee of Regions, 'About the EU', available at: https://europa.eu/european-union/about-eu/institutions-bodies/european-committee-regions_en.

EMPATIA, 'Final Report, Enabling Multichannel Participation Through ICT Adaptations', available at: <https://empatia-project.eu/the-project/>.

OPIN, 'Toolbox for youth E-Participation projects', available at: <https://www.euthproject.eu/>.

Council of Europe

Reservations and Declarations for Treaty No.157 -- Framework Convention for the Protection of National Minorities Declarations, available at: <https://www.coe.int/en/web/conventions/search-on-reservations-and-declarations/>.

Congress of Local and Regional Authorities, *E-Democracy*, available at: https://www.coe.int/en/web/congress/e-democracy/-/asset_publisher/GYGCPNHZVwF5/content/-the-congress-is-fully-involved-in-the-effort-to-engage-municipalities-in-smart-modernisation-says-xavier-cadoret.

Ratification Documents, and Reservations and Declarations for Treaty No. 122 -- European Charter of Local Self-Government, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122/declarations?p_auth=alYwcqcL.

International Organizations

Central European Initiative, *Instrument for the Protection of Minority Rights* (1994), available at: <http://www.forost.ungarisches-institut.de/pdf/19941115-1.pdf>.

OECD, *Guiding Principles for Open and Inclusive Policy Making* (2001), available at: <http://www.oecd.org/gov/42370872.pdf>.

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>.

United Cities and Local Government, Committee for Social Inclusion, Participatory Democracy and Human Rights, *European Charter for Safeguarding Human Rights in the City* (October 2012), available at: https://www.uclg-cisd.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_baixa_3.pdf.

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-cisd.org/sites/default/files/Concept%20note%20-%201706%20Meeting.pdf>.

City Council of Madrid

‘Debates’, decide.madrid.es, available at: <https://decide.madrid.es/debates>.

‘Proposals’, decide.madrid.es, available at: <https://decide.madrid.es/proposals>.

‘Madrid – 100% Sustainable’, decide.madrid.es, available at: <https://decide.madrid.es/proposals/199-madrid-100-sostenible>.

‘decide.madrid.es’, available at: <https://decide.madrid.es/primera-votacion-ciudadana-resultados>.

‘Single ticket for public transport’, decide.madrid.es, available at: <https://decide.madrid.es/proposals/9-billete-unico-para-el-transporte-publico>.

‘Results First Citizen Poll February 13-19, 2017’, decide.madrid.es, available at: <https://decide.madrid.es/primera-votacion-ciudadana-resultados>.

‘Collaborative Legislation’, decide.madrid.es, available at: <https://decide.madrid.es/procesos>.

Investment Project Code No. 1448, *Creation of a food bank of municipal management for families without recourse*, 1 March 2017, available at: <https://decide.madrid.es/presupuestos/presupuestos-participativos-2017/proyecto/1448#tab-milestones>.

Investment Project Code No. 2271, *Economic assistance to ensure a basic diet in Madrid*, 6 March 2017, available at: <https://decide.madrid.es/presupuestos/presupuestos-participativos-2017/proyecto/2271#tab-milestones>.

Investment Project Code No. 2899, *Municipal independent living office for people with disabilities*, 8 March 2017, available at: <https://decide.madrid.es/presupuestos/presupuestos-participativos-2017/proyecto/2899#tab-milestones>.

'Frequently asked questions about participatory budgets', available at: <https://decide.Madrid.es/mas-informacion/presupuestos-participativos?locale=en>.

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.

Project No. 9, 19th Arrondissement, *Save lives - first aid initiation*, Participatory Budget 2018, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=6412&portlet_id=158.

Project No. 11, 14th Arrondissement, *Luggage storage for the homeless*, Participatory Budget 2018, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=6036&portlet_id=158.

Project No. 20, *#VilleRefuge - Facilities for migrants and the homeless*, Participatory Budget 2017, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=3765&portlet_id=158.

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.

Project No. 25, 10th arrondissement, *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.

Project No. 54, *Develop support for people in precarious situations*, Participatory Budget 2015, available at: https://budgetparticipatif.paris.fr/bp/jsp/site/Portal.jsp?document_id=1999&portlet_id=158.

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.

Miscellaneous

Estonia State Chancellery, Oseale.ee, *The age limit for legal sexuality should be raised again to the age of 16*, available at: <https://www.osale.ee/ideed/idea/view/3034>.

Hungary, eDemocracy Services, available at: <https://edemokracia.magyarorszag.hu/edemokracia>.

van der Kooi, V., '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-wijkbewoners-overlaten~ac23ac74/>.

Participedia, *Better Reykjavik: Iceland's Online Participation Platform*, available at: <https://participedia.net/case/5320>.

Romanian Chamber of Deputies, Political Parties in the Chamber of Deputies, available at: <http://www.cdep.ro/pls/parlam/structura.fp?leg=2016&idl=2>.

United Kingdom Parliament, *DirectGov*, available at: <https://petition.parliament.uk/>.